

No. 2—10—0161  
Order filed February 25, 2011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE VILLAGE OF WARREN,	)	Appeal from the Circuit Court
	)	of Jo Daviess County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09—MR—1
	)	
ORLANDO VALENTE and URSULA	)	
VALENTE,	)	
	)	
Defendants-Appellants	)	
	)	Honorable
(National Bank and Trust Company of	)	William A. Kelly,
Sycamore, Defendant).	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

*Held:* Although the trial court entered summary judgment on count I of plaintiff's complaint, it didn't resolve counts II and III insofar as they requested fines, which weren't sought in count I; as the claims for fines remained pending, and as the trial court didn't enter a Rule 304(a) finding, defendants' appeal of the summary judgment was premature, and we dismissed it subject to their invocation of Rule 303(a)(2) if necessary.

Defendants Orlando and Ursula Valente appeal from an order of the circuit court of Jo Daviess County authorizing the Village of Warren (Village) to demolish a building owned by the Valentés. Because appellate jurisdiction is lacking, we dismiss the appeal.

The Village filed a three-count complaint against the National Bank and Trust Company of Sycamore (Bank) and the Valentés. The complaint alleged that the Bank, as trustee, was the owner of record of certain real property on which several commercial buildings were located and that the Valentés had asserted an interest in the property. As an exhibit to the complaint, the Village attached the report of a licensed structural engineer who examined the exteriors of the buildings and concluded that the buildings “ha[ve] numerous issues that create health and safety concerns for the community,” including “loose and deteriorated brick facing, exposed access way into the building, deformation in structural steel above overhead doors, collapsing roof and supporting structures, and deterioration in the foundation.” The report further indicated that “the structural integrity of [one of the buildings] is in question” and recommended that the interior of the building be inspected for structural deficiencies.

In count I of the complaint, the Village sought entry of an order authorizing an inspection of the interiors of the buildings by a structural engineer. The Village further sought, *inter alia*, authority pursuant to section 11—31—1 of the Illinois Municipal Code (65 ILCS 5/11—31—1 (West 2008)) to repair, enclose, or demolish the buildings at the Bank’s and the Valentés’ expense. In count II, the Village sought similar relief pursuant to a local ordinance making it unlawful to maintain or permit the existence of an unsafe or blighted building. In addition, however, the Village sought to impose fines of not less than \$25 and not more than \$500 for each day the property was in violation of the ordinance. In count III, the Village alleged that the condition of the property

constituted a nuisance. The Village sought entry of an order both requiring the Bank and the Valentés to abate the nuisance and authorizing the Village to do so. The Village also sought imposition of fines in the same amount as requested in count II. The Bank successfully moved to be dismissed from the action and is not a party to this appeal. Thereafter, on January 20, 2010, the trial court entered summary judgment for the Village on count I of the complaint and granted the Village authority to demolish the buildings. The Valentés filed a notice of appeal on February 16, 2010.

Although the parties have raised no issue concerning this court’s jurisdiction, a reviewing court has an independent duty to examine its jurisdiction and to dismiss an appeal if jurisdiction is wanting. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985). Our jurisdiction is limited to appeals from final judgments unless an appeal is within the scope of one of the exceptions established by our supreme court permitting appeals from interlocutory orders in certain circumstances. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A judgment is final if it terminates the litigation between the parties on the merits or disposes of the parties’ rights with regard to either the entire controversy or a separate part of it. *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998). Where the trial court enters a final judgment as to only part of the controversy, appellate jurisdiction depends on Supreme Court Rule 304(a) (eff. Jan 1, 2006), which provides, in pertinent part, “[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims *only if* the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.” (Emphasis added.)

The order entering summary judgment for the Village on count I of its complaint did not dispose of the entire controversy before the court. In counts II and III, the Village sought imposition of fines against the Valentés pursuant to local ordinances. Count I, in contrast, was based entirely on a statutory provision authorizing a municipality, with court approval, to demolish an unsafe structure and recover the cost of doing so from the structure's owner. The statute in question does not authorize imposition of a fine, and the Village made no request in count I that any fine be imposed. The Village's request in the remaining counts that the Valentés be ordered to pay fines is clearly a claim for purposes of Rule 304(a); in this setting, a "claim" is "any right, liability or matter raised in an action. [Citation.]" (Internal quotation marks omitted.) *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). The order entering summary judgment on count I did not dispose of the Village's claim for fines. Because the trial court did not enter a written finding pursuant to Rule 304(a), the Valentés' notice of appeal was premature. In the absence of such a finding, the trial court's order authorizing the Village to demolish the building "is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006).

It should be noted that *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (2007), provides for the possible reinstatement of an appeal dismissed as premature. In *Knoerr*, this court stated:

"[W]e dismiss respondent's appeal because *on the present record*, respondent's notice of appeal is premature. We presume that respondent can timely file a notice of appeal upon the resolution of the pending petition for a rule to show cause and any other pending claims in this matter. However, if pending claims have been resolved and the time to file a new notice

of appeal has expired, [Supreme Court] Rule 303(a)(2) [(eff. May 1, 2007)] allows respondent to establish the effectiveness of the present notice of appeal. In the latter event, respondent may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits.” (Emphasis added.) *Knoerr*, 377 Ill. App. 3d at 1049-50.

Thus, if, during the pendency of this appeal, the trial court disposed of the Village’s request for the imposition of fines, the Valentés may file a petition for rehearing and to supplement the record in order to establish jurisdiction. At present, however, the appeal must be dismissed.

For the foregoing reasons, the appeal is dismissed.

Appeal dismissed.