



which, *inter alia*, Franklin was dismissed from the case and her settlement with the plaintiff was found to be made in good faith. The medical defendants filed a motion to dismiss this appeal, which we have taken with the case. The medical defendants argue that we lack jurisdiction to consider this appeal. We agree.

¶ 3

### BACKGROUND

¶ 4 On March 6, 2009, a jury entered a verdict in favor of the plaintiff for injuries to her right forearm and right index finger, assessed the total damages at \$307,000, and found Franklin 75% at fault and the medical defendants 25% at fault. The medical defendants appealed the jury's verdict. On October 6, 2010, the Fourth District Illinois Appellate Court reversed and remanded the case for a new trial due to the trial court's improper refusal of the medical defendants' tendered verdict form and its acceptance of the plaintiff's verdict form instead. *Auten v. Franklin*, 404 Ill. App. 3d 1130, 1145 (2010).

¶ 5 The appellate court found that the plaintiff sustained two distinct injuries, only one of which included the claim against the medical defendants, and that the two separate and distinct injuries required separate treatment in the jury instructions. *Id.* at 1144. Because the verdict form tendered by the plaintiff and given to the jury did not separate the damages for the separate injuries, "there was no way provided for the jury to hold the medical defendants accountable for only the injuries they may have caused to plaintiff's index finger." *Id.* at 1145. The appellate court ruled that, since the medical defendants "ought not have *any* liability imposed or pay any damages for the forearm injury, their tendered instruction should have been given to the jury." (Emphasis in original.) *Id.* at 1146.

¶ 6 Before the appellate court's mandate issued, Franklin paid the plaintiff \$232,787.61 in settlement of the case against her. On December 1, 2010, over the medical defendants' objection, the circuit court entered an order finding that the settlement between Franklin and the plaintiff had been entered into in "good faith as that term is used in 740 ILCS 100/2

[(West 2010)]" and dismissed the case against Franklin with prejudice.

¶ 7 On February 28, 2011, the plaintiff and Franklin filed a document titled, "Stipulation for Satisfaction of Judgment against Christine Franklin Only and For Apportionment." By their stipulation, the plaintiff and Franklin agreed that, pursuant to the jury's apportionment of damages in the first trial, "25% of the payment of \$232,787.61 amounting to \$58,196.60 constitutes compensation for the hand injury sustained by [the plaintiff] in the motor vehicle accident and subsequent medical treatment described in [the plaintiff's] complaint." The plaintiff and Franklin also stipulated that the plaintiff's right to pursue the medical defendants for the plaintiff's hand injury "is fully preserved and completely unaffected by this stipulation and the resulting order of dismissal and satisfaction of judgment."

¶ 8 On March 10, 2011, the medical defendants filed a motion to strike the stipulation filed by the plaintiff and Franklin. In that motion, the medical defendants argued that, by entering into the stipulation, the plaintiff and Franklin were "attempting to circumvent the Appellate Court's ruling" by apportioning the damages rather than allowing the jury to do so on retrial. On May 9, 2011, the medical defendants filed a motion for setoff, asking the court to enter an order allowing them a setoff in the full amount of Franklin's settlement.

¶ 9 On May 26, 2011, the circuit court entered an order granting the medical defendants' motion to strike the plaintiff and Franklin's stipulation. In that order, the court reaffirmed its finding that Franklin's settlement was made in good faith and its dismissal of the plaintiff's case against her. The court also specifically stated that it reserved ruling on the medical defendants' request for a setoff.

¶ 10 On August 23, 2011, the circuit court entered an order after a hearing on Franklin's motion that she be dismissed from the case. In the August 23 order, the court noted Franklin's settlement in the amount of \$232,787.61 and that it had earlier granted Franklin's motion for a good-faith finding regarding that settlement. The court found that the

"remaining issues in this case involve possible re-trial" of the plaintiff's malpractice action against the medical defendants. The court also specifically found that the issue of "the proper allocation of setoff of the settlement monies" paid by Franklin to the plaintiff "against any judgment entered in the anticipated jury trial" against the medical defendants remained to be resolved. The court found that the remaining issues had no bearing on the cause of action against Franklin and dismissed all causes of action against her. To the order, the court added language from Supreme Court Rule 304(a) (eff. Feb. 26, 2010) that there was no just reason to delay enforcement or appeal of the order. The plaintiff filed a timely notice of appeal from that order. Due to the recusal of the judges in the Fourth District, the Illinois Supreme Court assigned the determination of this cause to the judges of the Fifth District of the Appellate Court.

¶ 11

#### ANALYSIS

¶ 12 The appellate court has jurisdiction to consider appeals in civil cases from final judgments pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). "A judgment or order is 'final' if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). In this appeal, the plaintiff argues that we should reverse the "trial court's refusal to apportion damages" and that we should instruct the trial court to adopt the apportionment of the jury in the first trial. We do not have jurisdiction over this appeal.

¶ 13 The order from which the plaintiff appeals is not a final order, despite the trial court's addition of Rule 304(a) language. The order is final only as to Franklin's dismissal and the court's approval of her settlement. Otherwise, the trial court has resolved none of the issues that remain between the plaintiff and the medical defendants. The plaintiff argues that the trial court has refused to apportion damages, but the record belies that argument. That issue remains to be decided by the trial court.

¶ 14 "To determine the finality of an order, the court must consider its substance rather than its form." *Pottorf v. Clark*, 134 Ill. App. 3d 349, 351 (1985). "An order which leaves the cause still pending and undecided is not a final order." *Id.* Even if the trial court adds "the special finding required by Rule 304, this fact cannot confer appellate jurisdiction if the order is not in fact final." *Prado v. Evanston Hospital*, 72 Ill. App. 3d 622, 624 (1979). "An order is final if it either terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate branch thereof." *Id.* In the case at bar, the issues between the plaintiff and the medical defendants, the only parties to this appeal, have not been decided on the merits or disposed of in any way. "An order is not final if the court retains jurisdiction for future determination of matters of substantial controversy." *Id.* at 624-25. The matters that remain pending in the trial court are the same issues the plaintiff raises in this appeal, and they are matters of substantial controversy over which we currently have no jurisdiction.

¶ 15 CONCLUSION

¶ 16 For all of the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 17 Appeal dismissed.