SIXTH DIVISION
September 27, 2013

No. 1-12-1083

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).

HISPANIC HOUSING, as property manager for CHICAGO HOUSING AUTHORITY,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellee,	)	
v.	)	No. 11 M1 717667
SHANTAY JONES, DARNELL MORTON, AND ALL UNKNOWN OCCUPANTS,	)	Honorable Leonard Murray,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 Held: The circuit court denied a tenant's motion to vacate an order of possession. The appellate court dismissed the appeal for lack of jurisdiction, because the order of possession did not resolve the landlord's claim against another tenant who was never served.

¶ 2 Defendant Shantay Jones (Jones) appeals an order of the circuit court of Cook County granting possession of her apartment to plaintiff Hispanic Housing after Jones failed to tender a payment under a plan memorialized in a prior agreed order entered in this action, which Hispanic Housing brought pursuant to the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/ 9-

101 *et seq*. (West 2010)). On appeal, Jones argues: (1) she did not assent to all terms of the agreed order; (2) the agreed order is unconscionable; and (3) she was denied a jury trial, in violation of the Act and her due process rights. For the following reasons, we dismiss the appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On August 9, 2011, Hispanic Housing filed a complaint for possession of 137 North Kingsbury Street, #C, in Chicago, and for all rents through trial in the circuit court. The complaint alleges Jones, Darnell Morton (Morton) and unknown owners unlawfully withheld possession of the premises from Hispanic Housing based on various provisions of a lease prohibiting activities that threaten the health, safety or right to peaceful enjoyment of Chicago Housing Authority (CHA) premises by other residents, CHA employees or agents, or other individuals in the immediate vicinity of the premises. The record also indicates the Cook County Sheriff served Jones on August 15, 2011, but did not serve Morton. The record further indicates Jones informed the sheriff Morton did not reside at the premises. There is no indication in the record of Hispanic Housing attempting alternate service on Morton.

¶ 5 On October 4, 2011, Jones and Hispanic Housing entered into an agreed order. The order required Jones to submit to Hispanic Housing past due or uncollected rents in the amount of $769.69 on October 4, and $417 on or before October 18, 2011. The order also barred Morton from the premises and placed Jones on a "general probation" for 12 months.

¶ 6 Paragraph 4 of the agreed order further provided:

> "In the event Defendant violates the terms of his current or future leases, fails to pay current or future rent or fails to meet the terms of this Order, on motion of Plaintiff with Notice to Defendant, the Court shall thereupon reinstate this matter and thereafter conduct an immediate hearing on such asserted violation. No additional notice shall be required. Should Plaintiff establish at such hearing that Defendant violated the terms of his/her lease, future leases, or this Order, as is asserted in such Motion, a judgment for possession shall be entered in favor of Plaintiff, a judgment for the remaining amount due and the Order of Possession shall be stayed only for the statutory minimum number of days. Defendant waives his right to discovery or a Jury Demand at any such hearing _____."

In the order, Hispanic Housing acknowledged "he /she was afforded the opportunity to consult with counsel and either willingly chose not to consult with counsel or has consulted counsel." The agreed order does not specify Jones was afforded an opportunity to consult with counsel. The order, was signed by Jones, Hispanic Housing and the trial judge.

¶ 7 On January 13, 2012, Hispanic Housing filed an emergency notice of motion, stating that on January 24, 2012, Hispanic Housing intended to present an attached motion for reinstatement and possession. The emergency notice contains a certification of service on Jones by Hispanic Housing's counsel. The service month and date in the certification was left blank, though it specified the year 2011.

¶ 8 The motion for reinstatement alleges Jones violated the agreed order by failing to tender rent payments as reflected by Hispanic Housing's ledger attached to the motion as an exhibit.

The relevant portion of the ledger specifies Jones paid $770 on October 6, 2011, resulting in a credit balance of $0.04. The ledger also denotes Jones did not tender rent payments of $37 on the first day of the following three months.

¶ 9 On January 24, 2012, the circuit court entered an order reinstating the case. The trial court also granted Hispanic Housing possession of the premises and judgment in the amount of $527.96 against Jones and unknown occupants. Enforcement of the order was stayed until January 31, 2012.

¶ 10 On March 19, 2012, Jones filed a *pro se* notice of emergency motion to be presented the following day. In the motion, Jones requests her belongings not be removed from her unit and that she be permitted to return to the apartment until such time as Jones was provided an opportunity to defend herself in court. Jones also states she had no knowledge of a request for her appearance in court on January 24, 2012. Jones further asserted the proof of service was improper, lacking a date and the wrong year.

¶ 11 On March 20, 2012, Jones filed a jury demand. On the same date, the circuit court entered an order: (1) granting Jones until April 3, 2012, to respond to the motion for possession; (2) granting Hispanic Housing until April 6, 2012 to reply; (3) setting a hearing for April 10, 2012; (4) granting Jones access to the apartment for 30 minutes on March 21, 2012; and (5) maintaining the status quo regarding belongings.

¶ 12 On April 3, 2012, Jones, through counsel, filed her response to the motion to reinstate, which also sought to strike the October 4, 2011, agreed order or continue the matter for discovery and jury trial. Jones argued: (1) disposing of the matter pursuant to the agreed order denied her a

trial by jury, in violation of the Act and her due process rights; (2) paragraph 4 of the agreed order was void for lack of consent, violated the Act and due process, and was unconscionable; and (3) even if the agreed order was valid, Jones was entitled to a jury trial under the Act.

¶ 13 Jones supported her motion in part with a sworn declaration. Jones stated she had no income and signed the agreed order while she was not represented by counsel. Jones also stated she knew she did not have the money to make the second payment required by the agreed order and did not know how she would obtain funds, but thought Hispanic Housing would provide her the time to obtain the funds. Jones declared she signed the preprinted form because she believed she had no choice other than eviction and she further asserted that she neither read the agreed order nor understood she was forfeiting her rights to a five-day notice, discovery and a trial by jury.

¶ 14 On April 6, 2012, Hispanic Housing filed a "Response to Defendant's Motion to Vacate the Agreed Order." Hispanic Housing represented that Jones was forcibly evicted on March 15, 2012. In response to the claim that Jones never received the motion and the copy in the court file lacked a date for service, Hispanic Housing stated the court date is unknown when the motion is filed. Hispanic Housing contended counsel mailed the document with a proof of service dated January 13, 2012. Hispanic Housing further argued Jones "must also be contending she did not receive the sheriff's notices that they would be coming out to evict." Hispanic Housing otherwise argued: (1) Jones was not entitled to a trial; (2) the agreed order did not unreasonably favor Hispanic Housing; (3) paragraph 4 of the agreed order did not require Jones' initials and the blank in the order was a scrivener's error; (4) there was no gross disparity in bargaining position

between the parties; (5) Jones stated no meritorious defenses; and (6) Jones waived any right to a jury trial.

¶ 15 On April 10, 2012, the circuit court entered an order denying the motion to vacate the order of possession and granting Jones until April 24, 2012 to retrieve her belongings from the apartment. On April 16, 2012, Jones filed a timely notice of appeal to this court.

¶ 16 DISCUSSION

¶ 17 Initially, we address the issue of jurisdiction. Although the parties do not dispute this court's jurisdiction, we have an independent duty to consider the issue and dismiss the appeal where our jurisdiction is lacking. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011); *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935 (2007). Jones asserts this court has jurisdiction because she appeals from a final judgment for possession of the property.

¶ 18 Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) provides every final judgment in a civil case is appealable as of right. " '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.' " *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 156 (2006) (quoting *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997)). Illinois Supreme Court Rule 304(a), however, provides a party may appeal from a final judgment not disposing of the entire proceeding "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." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Absent a finding pursuant to Supreme Court Rule 304(a), a final order disposing of fewer than all of the parties'

claims is not an appealable order. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). "Such an order does not become appealable until all of the claims in the multiclaim litigation have been resolved. Once the entire action is terminated, all final orders become appealable under Rule 301." *Dubina*, 178 Ill. 2d at 502-03. The purpose behind requiring a Rule 304(a) finding is " 'to discourage piecemeal appeals.' " *Gutman*, 232 Ill. 2d at 151 (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)).

¶ 19 For example, in *Mares v. Metzler*, 87 Ill. App. 3d 881, 882, (1980), Mares filed suit against defendants Raymond Metzler, Catherine Metzler, and T. Atkinson. The Metzlers were served with summons, but Atkinson was never served. *Id*. On Mares's motion, the trial court entered a default judgment against Raymond and Catherine Metzler. *Id*. The trial court subsequently vacated the default and Mares appealed. *Id*. On appeal, this court observed "under the authority of Supreme Court Rule 304(a), the court may vacate a default judgment which was entered as to less than all parties at any time (including after 30 days), provided there was no express finding that the order was appealable and that judgment has not yet been entered as to all parties." *Id*. at 883. The order at issue contained no Rule 304(a) finding. *Id*. at 884.

¶ 20 In support of his position that the default judgment determined the rights of all parties, Mares argued that although Atkinson was named as a defendant with the Metzlers, he was never served with summons and cannot be viewed as a "party" under Rule 304(a). *Id*. This court rejected the argument, reasoning that while Mares never secured service of process on Atkinson, there was no specific time limit within which a defendant must be served. *Id*. The *Mares* court continued:

> "Although Supreme Court Rule 103(b) provides that an action may be dismissed as to an unserved defendant if the plaintiff fails to exercise reasonable diligence to obtain service (Ill. Rev. Stat. 1979, ch. 110A, par. 103(b)), such dismissals are within the sound discretion of the trial court (*Martin v. Lozada* (1974), 23 Ill. App. 3d 8), and it is possible that Atkinson could still be served with summons and a judgment entered against him which could be the subject of an appeal." *Id*.

This court concluded such a result would conflict with the purpose of Rule 304(a), which is to discourage piecemeal appeals. *Id*.

¶ 21 The language of Illinois Supreme Court Rule 103(b) remains substantially similar to the language of the rule at the time this court decided *Mares*. Compare Ill. S. Ct. R. 103(b) (eff. July 1, 2007) with Ill. Rev. Stat. 1979, ch. 110A, ¶ 103(b). In particular, there is still no specific time limitation for service provided by Rule 103(b). *Verploegh v. Gagliano*, 396 Ill. App. 3d 1041, 1045 (2009). Accordingly, there is no reason for this court to reconsider our decision in *Mares*.

¶ 22 In this case, Hispanic Housing filed a complaint against Jones, Morton and unknown owners. The record also reflects the Cook County Sheriff served Jones, but did not serve Morton. Thereafter, Jones and Hispanic Housing entered into an agreed order barring Morton from the premises, but Morton is not a party to the agreed order. The trial court ultimately entered a judgment against Jones and unknown owners, without any reference to Morton. Hispanic Housing never amended its complaint to remove Morton as a party or obtained any judgment against him. There is no record that Hispanic Housing ever sought to dismiss Morton as a party to the action. Therefore, we conclude the judgment for possession was not appealable

because it did not resolve any claim regarding Morton and did not contain a Rule 304(a) finding. See *Mares*, 87 Ill. App. 3d at 885. Thus, this court lacks jurisdiction over this appeal.

¶ 23 CONCLUSION

¶ 24 For all of the aforementioned reasons, we dismiss this appeal for lack of jurisdiction.

¶ 25 Appeal dismissed.