

No. 1-12-2288

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JITU BROWN, KRISTA ALSTON, on behalf of)	Appeal from the Circuit
herself and as next friend to G.A., TOMMY)	Court of Cook County.
ANDERSON, JOSE CANDELARIO, on behalf of)	
himself and as next friend to C.C., MATILDE)	
CORTES, on behalf of herself and as next friend to)	
M.C., STEVEN GUY, on behalf of himself and as)	
next friend to T.G., KIM HEMPHILL, on behalf of)	
herself and as next friend to J.W., RONALD)	
JACKSON, MATTHEW JOHNSON, SUE B.)	
LADD, MARIA ISABEL RODRIGUEZ, on behalf)	
of herself and as next friend to J.P., LATRICE)	
WATKINS, on behalf of herself and as next friend)	
to S.S., and WILLIE WILLIAMS, on behalf of)	No. 12 CH 04526
himself and as next friend to D.J.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BOARD OF EDUCATION OF THE CITY OF)	
CHICAGO and JEAN-CLAUDE BRIZARD, in his)	
official capacity as Chief Executive Officer of the)	
Chicago Public Schools,)	
)	
Defendants-Appellees)	
)	The Honorable
(Jitu Brown, Krista Alston, and Steven Guy,)	Michael B. Hyman,
Appellants).)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal was dismissed for lack of jurisdiction.

¶ 2 The plaintiffs, Jitu Brown, Krista Alston (on behalf of herself and as next friend to G.A.), and Steven Guy (on behalf of himself and as next friend to T.G.) appeal from the order of the circuit court dismissing their complaint challenging the school closings, phase-outs, or turn-arounds planned by the defendants, the Board of Education of the City of Chicago (Board) and its Chief Executive Officer Jean-Claude Brizard. (The initial complaint was prosecuted by several additional plaintiffs who are not parties to this appeal.) On appeal, the plaintiffs argue that the circuit court erred in concluding that they had failed to state causes of action and that they lacked standing to bring their suit. While this appeal was pending, we granted two motions for leave to file *amicus curiae* briefs, from The Chicago Lawyers' Committee for Civil Rights Under Law, Inc.; and from Clarice Berry, Cecile Carroll, Stacey Davis-Gates, Laurene Heybach, and Valencia Rias. The first *amicus* brief seeks to clarify the standards for evaluating the plaintiffs' claims. The second brief argues that the defendants' plans violate the School Code (105 ILCS 5/1-1 *et seq.* (West 2010)). For the reasons that follow, however, we must dismiss the appeal for lack of jurisdiction.

¶ 3 In February 2012, the plaintiffs filed their initial four-count complaint alleging that the defendants had unlawfully set certain public schools for "closure, phase-out, or reconstitution and 'turnaround.'" The complaint sought relief based on the defendants' violation of the School Code (Counts I and II) and the Illinois Civil Rights Act of 2003 (Civil Rights Act) (740 ILCS 23/1 *et seq.* (West 2010)) (Counts III and IV). Pursuant to an agreed order granting them leave, the plaintiffs

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filed an amended complaint alleging the same basic four counts. In March 2012, on motion from the defendants, the circuit court entered a memorandum opinion dismissing Counts I and II of the first amended complaint with prejudice and dismissing Counts III and IV without prejudice. The plaintiffs thereafter filed a second amended complaint, which repleaded the first two counts and added ten more. The new counts alleged that the defendants' plans violated the School Code (Counts III, IV, V, VI, VII, IX, X, XI) and the Civil Rights Act (Counts V, VIII, and XII). On May 25, 2012, the circuit court entered a memorandum opinion dismissing the plaintiffs' second amended complaint. That order dismissed counts III, IV, V, VII, IX, X, and XI with prejudice and counts VI, VIII, and XII without prejudice. The order also dismissed several plaintiffs for lack of standing with respect to counts VI, VIII, and XII.

¶ 4 In June 2012, the plaintiffs filed a "combined motion for leave to file a third amended complaint and for partial reconsideration" of the court's dismissal order. The proposed third amended complaint repleaded all previous counts but raised two new ones. The proposed Count I alleged that the defendants' announced closures violated the Civil Rights Act, and the proposed Count II alleged a class action based on the same theory. On June 28, 2012, following a hearing, the circuit court denied the plaintiffs' motion for reconsideration and denied the plaintiffs leave to file the proposed third amended complaint. Neither the June 28 order nor the May 25 order contained any language declaring themselves immediately appealable pursuant to Supreme Court Rule 304(a) (Ill. Sup. Ct. R. 304(a) (eff. February 26, 2010)). On July 27, the plaintiff's filed a notice of appeal of the "portions of the May 25, 2012 order granting the Defendants-Appellees' motion to dismiss Counts VI, IX, and XII of the Second Amended Complaint" as well as the June 28, 2012, order.

¶ 5 Although the parties agree that we have jurisdiction over this appeal, we have an independent duty to consider the issue and dismiss the appeal where our jurisdiction is lacking. *Palmolive Tower Condominiums v. Simon*, 409 Ill. App. 3d 539, 542, 949 N.E.2d 723 (2011). For that reason, after receiving the record on appeal, we ordered the parties to submit supplemental briefs to address a potential jurisdictional problem. We received supplemental briefs from both the plaintiffs and the defendants. After reviewing the supplemental briefs, we conclude that we do not have jurisdiction over this appeal.

¶ 6 "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey and Milligan*, 325 Ill. App. 3d 1152, 1153, 759 N.E.2d 110 (2001). In order to be considered final, an order must dispose of the rights of the parties, either upon the entire controversy or some definite and separate part of it. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676, 878 N.E.2d 141 (2007). "Normally an order striking or dismissing a complaint is not final and therefore not appealable unless its language indicates the litigation is terminated and the plaintiff will not be permitted to replead." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey and Milligan*, 325 Ill. App. 3d 1152, 1153, 759 N.E.2d 110 (2001). "Even if a plaintiff subsequently elects to stand on his or her complaint, an order striking or dismissing a complaint is not final until the trial court enters an order dismissing the suit." *Cole*, 325 Ill. App. 3d at 1153-54.

¶ 7 Here, the circuit court's May 2012 order dismissed some counts of the plaintiffs' complaint with prejudice, but it dismissed Counts VI, VIII, and XII without prejudice. Although the plaintiffs sought and were denied leave to file the proposed third amended complaint, the parties never

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obtained a final order dismissing Counts VI, VIII, and XII with prejudice. Thus, the dismissal as to those counts is not final, and it cannot be appealed.

¶ 8 In their supplemental brief, the plaintiffs argue that the circuit court's June 28, 2012, order constitutes a final order, because "[a] general dismissal with no right to amend and no request for leave to amend is final and appealable." *Knox v. Keene Corp.*, 210 Ill. App.3d 141, 145, 569 N.e.2d 201 (1991). However, the June 28 order was not a general dismissal order; it was an order denying the plaintiffs leave to file their proposed third amended complaint. The order did not purport to dismiss, with prejudice or otherwise, the three counts that had been dismissed without prejudice in May. Thus, the rule from *Knox* does not apply, and the June 28 order did not constitute a final and appealable order.

¶ 9 Notwithstanding the lack of a final order disposing of three of the counts of the second amended complaint without prejudice, the dismissal of the remaining counts could be appealable pursuant to Rule 304(a). Under that rule, "[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." Ill. Sup. Ct. R. 304(a) (eff. Feb. 26, 2010). If the circuit court had made such a finding with respect to its final dismissal of counts III, IV, V, VII, IX, X, and XI of the second amended complaint, we might have jurisdiction to review the dismissal of those counts. However, the circuit court made no such finding. Accordingly, because the parties obtained neither a final order with respect to counts VI, VIII, and XII of their second amended complaint nor an order allowing the separate appeal of the dismissal of the

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remaining counts, we lack an appealable order to trigger our jurisdiction.

¶ 10 For the foregoing reasons, we dismiss the appeal.

¶ 11 Dismissed.