

No. 1-12-2448

**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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SARAH E. CORWIN, n/k/a SARAH HASTINGS	)	Appeal from the
	)	Circuit Court
Petitioner,	)	of Cook County
	)	
v.	)	
	)	
SCOTT L. CORWIN,	)	
	)	
Respondent.	)	
	)	No. 02 D 331147
	)	
SCOTT L. CORWIN,	)	
	)	
Third-Party Petitioner-Appellee,	)	
	)	
v.	)	
	)	
JOHN HASTINGS,	)	
	)	Honorable
Third-Party Respondent for Discovery Purposes	)	Nancy J. Katz,
Only-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appeal is dismissed for lack of jurisdiction where the order appealed from lacked a written finding there is no reason to delay enforcement or appeal of the order.

¶ 2 John Hastings (John) appeals an order of the circuit court granting a motion presented by Scott Corwin (Scott) to name John as a third party for discovery purposes in postdissolution of marriage proceedings between Scott and his former wife, Sarah Hastings (Sarah). On appeal, John argues the circuit court: (1) lacked subject matter jurisdiction; (2) lacked personal jurisdiction over John; and (3) improperly joined John as a party under section 2-405 of the Code of Civil Procedure (735 ILCS 5/2-405 (West 2010)). For the following reasons, we conclude this court lacks jurisdiction and dismiss the appeal.

¶ 3 **BACKGROUND**

¶ 4 The record on appeal discloses the following facts. Scott and Sarah were married in 1999 and divorced in 2004. Sarah received residential custody of their daughter, Trinity. In 2006, Sarah married John, a Utah resident. She petitioned the court to remove Trinity to Utah, but subsequently withdrew the petition. The parties then entered into a proposed agreed order modifying their custody arrangement. The circuit court adopted the agreed order, which it entered on July 27, 2006. The order provided that Scott would have residential custody of Trinity while Sarah moved to Utah. The order also provided that residential custody of Trinity would switch to Sarah when Trinity reached the age of 12. Trinity was six years old at the time. Pursuant to the agreed order, neither party would provide the other with child support.

¶ 5 In 2008, Scott filed his first petition to set child support, arguing the costs of Trinity's care had increased. The circuit court declined to find a change in circumstances to justify a support modification.

¶ 6 In 2009, Scott filed another petition to set child support. On March 16, 2010, following a hearing, the trial court found that circumstances had changed to warrant a child support order. The court determined that Scott's income had decreased substantially from his loss of employment, while Sarah's travel expenses decreased because she was not visiting Tiffany as often. The court set child support at \$3,000 per month. Sarah appealed.

¶ 7 This court reversed and remanded. *Corwin v. Corwin*, 2012 IL App (1st) 102706-U. We ruled the trial court did not abuse its discretion in holding that a substantial change in circumstances occurred, where Scott's financial resources had declined significantly and the costs of Trinity's care had increased. *Id.* at ¶¶ 19-21. This court, however, "reject[ed] the assertion that fewer visits by Sarah can constitute a change of circumstances alone to support a modification in the child support order." *Id.* at ¶ 21.

¶ 8 This court then reviewed the circuit court's decision to set child support at \$3,000 monthly. We noted at the outset the rule for determining the financial resources of a noncustodial parent who has remarried is "in flux." *Id.* at ¶ 25. We found no case law, however, on the particular issue of whether, where the noncustodial parent earns no income, the income of the new spouse may be treated as if a portion is "income" of the noncustodial parent for purposes of setting child support. *Id.* at ¶ 27. Moreover, the record was not fully developed as to the funds truly available to Sarah from John. *Id.* This court concluded we would not extend the law to reach the circumstances presented and indicated the record did not support such an extension of the law. *Id.* at ¶ 29. Accordingly, we reduced the child support to \$1,000 per month *nunc pro*

*tunc* to March 16, 2010, and remanded the matter to the circuit court for a new hearing to set child support. *Id.* at ¶ 33.

¶ 9 In March 2011, while the prior appeal was pending before this court, Scott sought to join John as a party to the postdissolution proceedings. Scott subsequently renewed his request in a May 12, 2012, motion to add John as a third party. Sarah opposed the motion, arguing the circuit court lacked subject matter jurisdiction and personal jurisdiction over John. Sarah asserted that John had not appeared to contest Scott's efforts to add John as a party because the circuit court lacked jurisdiction and John was not properly served with the motions.

¶ 10 On July 16, 2012, following a hearing on the matter, the circuit court entered an order which, among other things, granted Scott's motion to add John as a third party. The order specifies John is named as a third-party defendant for discovery purposes only. On August 14, 2012, John filed a timely notice of appeal to this court.

¶ 11 DISCUSSION

¶ 12 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). In his jurisdictional statement, John purports to take this appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), which applies to a final judgment as to one or more but fewer than all of the claims. In such cases, Rule 304(a) requires "an express written finding" that there is no just reason for delaying enforcement or appeal of the order appealed from. Ill. S. Ct. R.

304(a) (eff. Feb. 26, 2010). If an order adjudicating fewer than all the claims does not state that there is no just reason for delaying appeal, this court has no jurisdiction over an appeal from that judgment, and it is proper for this court to dismiss the appeal on our own motion. *Matson v. Department of Human Rights*, 322 Ill. App. 3d 932, 940 (2001).

¶ 13 In this case, the July 16, 2012, order does not contain the express written finding required by Rule 304(a). Indeed, the order does not mention Rule 304(a), enforceability or appealability. Accordingly, this court lacks jurisdiction over this matter under Rule 304(a).

¶ 14 John cites two cases in his jurisdictional statement to claim "[j]oinder decisions such as this are appealable as of right." First, John relies upon *Carter v. Chicago & Illinois Midland Ry. Co.*, 119 Ill. 2d 296 (1988). In *Carter*, however, the Illinois Supreme Court ruled that if a court has not made a Rule 304(a) finding, the claim is immediately appealable only if the court unequivocally states in a severance order the claim has been severed and shall proceed separate from the other claims. *Id.* at 307-08. In this case, there is no severance order.

¶ 15 Second, John relies upon *Zurich Insurance Co. v. Baxter International, Inc.*, 275 Ill. App. 3d 30 (1995). This court had jurisdiction over two consolidated appeals in *Zurich Insurance Co.* pursuant to Illinois Supreme Court Rules 307(a)(1) (eff. Feb. 1, 1994) and 308 (eff. Feb. 1, 1994). *Id.* at 32. Rule 307(a)(1) permits appeals from orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 1, 1994). Rule 308 permits discretionary appeals from questions certified by the circuit court. Ill. S. Ct. R. 308 (eff. Feb. 1, 1994). This case does not involve an injunction or a certified question.

¶ 16 Lastly, we observe that much of John's argument on the merits asserts the circuit court's order is void for lack of jurisdiction. "Generally, a void order can be attacked at any time by a person affected by it." *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 15. "This legal proposition, however, by itself, does not act to confer appellate jurisdiction on a reviewing court if such jurisdiction is otherwise absent." *Id.* "Rather, the rule allows a party the ability to always raise the issue of whether an order is void in an appeal where appellate jurisdiction exists and the case is properly before the court of review." *Id.* This court "is not vested with authority to consider the merits of a case merely because the dispute involves an order or judgment that is, or is alleged to be, void." *People v. Flowers*, 208 Ill. 2d 291, 308 (2003) (citing *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 504 (1999)). As our supreme court explained:

" If a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void. The reason is obvious. Absent jurisdiction, an order directed at the void judgment would itself be void and of no effect." *Flowers*, 208 Ill. 2d at 308.

Thus, this court's "power attaches only upon compliance with the rules governing appeals." *Flowers*, 208 Ill. 2d at 308 (citing *JoJan Corp.*, 307 Ill. App. 3d at 504). Accordingly, the alleged voidness of the order appealed from does not, by itself, confer jurisdiction on this court.

¶ 17 In short, the order appealed from contains no Rule 304(a) finding and John failed to identify any other jurisdictional basis for this appeal. Thus, this court lacks jurisdiction over this appeal.

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¶ 18

CONCLUSION

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

¶ 20 Appeal dismissed.