

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF LARISA	)	Appeal from the Circuit Court
D. SCHLICHTING,	)	of Boone County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 10-D-38
	)	
BRUCE E. SCHLICHTING,	)	Honorable
	)	Brendan A. Maher,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Presiding Justice Burke and Justice Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Because a motion filed prior to the appealed-from order remained pending and because a ruling on the pending motion could change the scope of the appeal, the instant appeal is premature.
- ¶ 2 The trial court entered a judgment of dissolution of marriage for Larisa D. and Bruce E. Schlichting. The court deemed Larisa’s membership interest in Rockton Rock, LLC, to be marital property. It awarded Bruce, a non-member, all of Larisa’s membership interest, but it ordered him to pay Larisa \$19,500 in exchange. Larisa appeals, arguing that the trial court abused its discretion because the award required her to violate the LLC’s operating agreement. This court stayed enforcement of the trial court’s judgment pending appeal. For the reasons that follow, however, we

hold that the instant appeal is premature because a claim for reimbursement remains pending in the trial court. Jurisdiction remains with the trial court. Appeal dismissed.

¶ 3

## I. BACKGROUND

¶ 4

### A. Judgment of Dissolution and Memorandum of Decision

¶ 5 On April 1, 2011, the trial court entered a judgment of dissolution, ending the parties' 10-year marriage. The parties had no children, and the case mainly concerned property division. Of particular interest was the LLC, which owned and operated a quarry.

¶ 6 The trial court determined that the LLC was marital property. Larisa held a 20% membership interest in the LLC, and Bruce was not a member. The LLC's operating agreement prohibited Bruce, or any person, membership absent the unanimous written consent of the other members:

“16.1 A Member will not assign, sell, transfer, pledge, or otherwise encumber its Membership Interest, or any portion of its Membership Interest[,] without the unanimous prior written consent of the other Members.”

¶ 7 The LLC had been discussed at trial, but very little evidence was presented concerning its value. The LLC's manager, Robert Schlichting, stated incidentally that he “felt” the company was worth approximately \$400,000. The scarcity of valuation evidence is due to the parties' interpretation of the two-part valuation formula and buy-out procedure contained in sections 16.6 and 16.4 of the LLC's operating agreement, which, in their view, rendered pointless the introduction of valuation evidence prior to the court's judgment of dissolution.

¶ 8 Section 16.6 stated in part:

“16.6 In the event of a Member's divorce (if applicable), the same buyout procedure set forth in Section 16.4 shall apply, except that the value shall be the greater of said

determination [by the LLC's accountant] or that amount determined by the final non-appealable decision in the divorce [by the court]. In the event the final non-appealable decision [by the court] concerning value is higher than the value calculated in Section 16.4 [by the LLC's accountant], *the divorcing Member shall execute a promissory note payable to the [LLC] for the difference in valuation, which note shall be due and payable within ninety (90) days of said order.*"

(Emphasis added.)

¶ 9 Section 16.4 stated in part:

"16.4 In the event that a Member dies, declares bankruptcy, or receives a court declaration of incompetence, he or she shall receive the fair value of his or her membership interest as of the effective date of his or her resignation *as may be determined by the accounting firm regularly employed by [the LLC]*, utilizing the customary practices and principles associated with the operation and valuation of [the LLC's] assets and liabilities to the date of resignation." (Emphasis added.)

¶ 10 Therefore, in Larisa's view, there was no need to present valuation evidence because, upon execution of the judgment of dissolution, that value would be "determined by the accounting firm regularly employed by [the LLC]."

¶ 11 In Bruce's view, there was no need to present valuation evidence because, even if he were able to convince the court that the LLC was worth more than the amount submitted by the LLC's accountant, he and Larisa would need to pay the LLC the difference in valuation. As Bruce argued at the trial:

“It’s all in the [operating agreement], though. There’s going to be a fair value that’s provided by \*\*\* whoever they designate as the accountant. \*\*\* So the point is that if we went through all the exercise of a valuation and all that cost \*\*\*, which would have been thousands of dollars, and we said it was something other than [the amount determined by the accountant], \*\*\* [t]he court would just find the value, and if it came in higher then that would have been an obligation of *the parties*<sup>1</sup> to now write a note back to the LLC and pay it \*\*\*, so it’s really a poison.” (Emphasis added.)

¶ 12 On August 31, 2011, the trial court entered its memorandum of decision. In it, the court awarded 65% of the “potential cash distribution from equity interest in the LLC” to Larisa and 35% to Bruce. This division was in keeping with an approximate 65/35 split of the entire marital estate. The trial court stated that the current value of the LLC was unknown:

“The only evidence in the record with respect to the ‘fair market value’ of [the LLC] comes in the form of [LLC manager] Robert Schlichting’s testimony that his ‘feeling’ is that the company is worth ‘around \$400,000.00.’ According to the [LLC’s operating agreement,] its fair market value will be determined by its accountant, Karl Barnes, upon completion of the parties’ divorce.”

¶ 13 On September 21, 2011, the trial court entered an “order on remaining issues.” As to the LLC, the court again stated: “[Larisa] is awarded 65% of the cash distribution from the equity

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<sup>1</sup> We note that section 16.6 actually states that the divorcing *member*, which Bruce is not, shall pay back the LLC the difference in valuation. However, at oral argument, Bruce clarified that he would, nevertheless, be impacted because he considered the obligation to pay back the difference in valuation to be a marital debt.

interest in [the LLC]; [Bruce] is awarded 35% of the cash distribution from the equity interest in [the LLC].” Numerous motions and rulings followed the trial court’s order on remaining issues. For purposes of this appeal, they may be divided into two groups, those aimed at effectuating the 65/35 split and those aimed at seeking reimbursement of expenses.

¶ 14 B. Effectuating the 65/35 Split

¶ 15 On October 11, 2011, Larisa moved to reconsider and for clarification. As to the LLC, she noted that there had not yet been a valuation, the implication being that she was unsure how to proceed. She stated that her 20% share had been valued (not necessarily before the court) as low as \$15,000 and as high as \$80,000.

¶ 16 On October 21, 2011, Bruce moved to reconsider. As to the LLC, he asked that the court enter additional orders to effectuate the liquidation of Larisa’s membership interest, which the parties referred to as a cash distribution:

“The undisputed evidence is that the LLC is required to purchase the interest at fair market value. The issue becomes the enforcement of the Order and who should take the necessary steps to enforce the rights of the marital estate. Testimony was undisputed that Larisa wished to continue to hold her interest in [the LLC], whereas Bruce desired the interest be sold. [] Larisa does not have interest in forcing the sale of the interest according to the terms of the Operating Agreement.”

Although Bruce was not a member of the LLC, he requested that the trial court “enter an [o]rder requiring [him to] take all steps commercially necessary and reasonable to force the purchase of the shares [thereby allowing him to acquire a membership interest] according to the [o]perating

[a]greement and the marital estate should reimburse [him] for any legal fees or other professional fees he incurs in [so doing].”

¶ 17 On December 15, 2011, as the motions to reconsider that remained pending, the court ordered that “[Larisa] shall not liquidate, transfer, encumber[,] or otherwise dispose of any interest or contractual rights in [the LLC].” The court continued the matter as to the LLC.

¶ 18 On January 25, 2012, Larisa moved to set the value of the LLC. Larisa noted that Barnes had set the value of the LLC to be \$150,000, meaning Larisa’s cash distribution would be \$19,500 ( $\$150,000 \times 0.20 \times 0.65$ ), and Bruce’s cash distribution would be \$10,500 ( $\$150,000 \times 0.20 \times 0.35$ ). Larisa stated that she and Bruce were entitled to be paid out by the LLC in these amounts.

¶ 19 As part of the posttrial process, the parties deposed Barnes. Barnes explained the \$150,000 valuation. Barnes performed the valuation based on the “capitalization of earnings” method. This method is based on cash flows. It is a standard method, because “earnings inherently incorporate the assets and liabilities of a corporation.” However, the method may be thought of as limited, because it does not necessarily account for the value of the assets independent from the manner in which they are utilized by the business. For example, the LLC’s quarry may be worth more than is reflected in its present use to the business. The hypothetical offered was that there could be an undiscovered platinum mine underneath the quarry. Despite this limitation, Barnes preferred the capitalization-of-earnings method to any other, and he felt it fair for a 20% owner to be bought out for \$30,000.

¶ 20 On February 15, 2012, in regard to the pending motions, the court entered an order stating that it “neither grant[ed] or den[ied]” Bruce’s requested relief concerning the LLC. Rather, it “specifically reserv[ed] issues relating to the liquidation of the [LLC] stock, including \*\*\* the

distribution of the proceeds of any such liquidation and/or the right of one party to ‘buy out’ the other party’s interest in the [LLC] [] by full payment to the selling party of the amount to which the selling party is entitled pursuant to the formula applied under the [o]perating [a]greement \*\*\*.”

¶ 21 On March 6, 2012, Bruce responded to Larisa’s motion to set value. Bruce stated that the value of the LLC was “significantly higher” than \$150,000. As such, he requested that the trial court allow him to buy out Larisa’s interest in the LLC for \$19,500, and that Larisa be ordered to “transfer all right, title[,] and interest in [her share of the LLC], including and without limitation, an irrevocable power of attorney to pursue any and all rights [she] has had in the past, has currently[,] or will acquire in the future as a result of her ownership interest in [the LLC.]” In Bruce’s view, acquiring membership interest would enable him to pursue a greater payout based on a valuation closer to the \$400,000 mentioned at trial.

¶ 22 On March 16, 2012, at the hearing on the pending matters, Larisa responded to Bruce’s request to buy her membership interest for \$19,500. Larisa did not believe that the court had authority to dispose of the interest in that manner, stating:

“The LLC is under its own operating agreement, which prohibits any transfers without approval by the other members of the LLC. \*\*\* It is my understanding \*\*\* that the other members of the LLC have said they don’t want Bruce to be part of the LLC, and, therefore, don’t approve of transferring [Larisa’s] rights to [Bruce].”

While Larisa did not believe the operating agreement allowed for Bruce to buy her share, she did believe that she could buy Bruce’s “share.” She was *already* a member; the other members of the LLC did not need to approve her membership. Larisa proposed that she, rather than the LLC, would

provide Bruce with a \$10,500 payment. This would allow her to remain a member and retain her 20% ownership in the LLC.

¶ 23 Regarding its authority to grant Bruce’s request to buy Larisa’s membership interests for \$19,500, the trial court stated:

“[T]o address the \*\*\* issue of whether I have \*\*\* authority to do it, people assign \*\*\* rights to other people all the time. \*\*\* In divorce court[,] I get to assign \*\*\* people’s interest in things. \*\*\* And those rights presumably include the right to litigate, the ability to say we don’t think the valuation was done correctly. We think that, you know, we’re contesting valuation. And we’re now, by way of assignment in the dissolution case, we get to stand in her shoes and argue whatever she would have under this.”

¶ 24 On March 20, 2012, the trial court entered what it thought would be its final order regarding the LLC. In it, the court noted that Larisa’s requests were inconsistent; first she sought to have her membership interest liquidated and paid out, and, later, she sought to retain her membership interest and personally pay out Bruce. However, the court found that none of its prior orders contemplated either party holding a membership interest in the LLC. Therefore, the court’s order would, ultimately, be aimed at a cash distribution.

¶ 25 The court ordered that the cash distribution could be effectuated in one of two ways, to be chosen by Larisa. Each path would allow for Bruce to pursue his claim that the LLC was worth more than \$150,000. The first path toward cash distribution would require an intermediate step: Bruce’s ownership of membership interest. Bruce would pay Larisa \$19,500 cash in exchange for her a membership interest. The second path toward cash distribution would require Larisa to execute documents “permit[ting] and requir[ing] Bruce to take all steps commercially necessary and

reasonable to force the purchase of [a membership interest] according to the LLC's operating agreement.”

¶ 26 On April 9, 2012, Larisa moved to reconsider, arguing that each proposed path toward cash distribution was problematic. The first path violated the LLC's operating agreement, because it allowed for Bruce to become a member without the other members' unanimous consent. Moreover, Larisa feared that the LLC would hold her liable for violating the terms of its operating agreement.

¶ 27 The second path potentially undermined the trial court's “65/35” distribution scheme, because, if Bruce were able to force the sale of a membership interest at a higher value, Larisa could be liable to the LLC for the difference, perhaps resulting in her failure to realize any value from her membership. Larisa noted that Bruce never submitted evidence challenging the \$150,000 valuation.

¶ 28 On September 11, 2012, the trial court issued its final order to effectuate the 65/35 split. In it, the court summarized the parties' positions to date:

“From April 2012 to the present, the parties, through their respective counsel, have made efforts to reach an agreement \*\*\*. \*\*\* Larisa has, through that process, made it clear that she does not want to litigate against the LLC with Bruce [in his attempt to maximize the value of the LLC]; instead, she wants to be paid the value of her membership interest in the LLC and be absolved of further potential liability that may arise in connection with any efforts Bruce may make to avoid the effect of Karl Barnes' valuation under the LLC's operating agreement.”

With the parties' wishes in mind, the court essentially ordered that the parties take the first path to cash distribution, which required the intermediate step of allowing Bruce to purchase membership interest. The order stated, *inter alia*, the following: (1) “based specifically on Larisa's express

request to be paid \$19,500 as and for the value of her share of the LLC \*\*\*, the court GRANTS Larisa’s ‘Motion to Set Value of Rockton Rock, LLC \*\*\*’ at the sum of [\$150,000]<sup>2</sup> and finds that she is entitled to \$19,500;” (2) Bruce shall pay Larisa \$19,500, effecting the cash distribution as to Larisa; (3) as to Bruce, “[u]pon payment to Larisa of \$19,500, Bruce is (to the extent this court is authorized to make such an award under the [dissolution statute]) awarded all of Larisa’s marital right, title[,] and interest in and to her membership/stock interest in the LLC, including all of her rights and responsibilities under the LLC’s operating agreement. This final order does not purport to award Bruce any greater or lesser rights than Larisa has or has had as a member of the LLC; rather, this final order \*\*\* only permits Bruce to ‘stand in Larisa’s place’ for purposes of negotiating with, or litigating against, the LLC;” and (4) Bruce will defend, indemnify, and hold Larisa harmless from any and all costs, expenses, or judgments incurred as a result of Bruce’s efforts to avoid the effect of Karl Barnes’ valuation of Larisa’s membership interest in the LLC, and to otherwise maximize the value of that interest. The trial court concluded that its order “disposes of the last pending post-judgment motion directed against the parties’ order on remaining issues. With the entry of this Final Order \*\*\*, the last issue this court reserved within the [September 21, 2011; February 15, 2012; and March 20, 2012 orders] has been resolved and decided, subject only to enforcement proceedings.” (Internal quotations and citations omitted.)

¶ 29 On October 10, 2012, Larisa filed her notice of appeal, and this court stayed enforcement of the trial court’s judgment pending the outcome.

¶ 30 C. Pending Motion for Reimbursement

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<sup>2</sup> The court actually stated \$30,000, referring to Larisa’s 20% share of the LLC.

¶ 31 Meanwhile, during the time that the court entered the aforementioned series of orders aimed at effectuating the 65/35 split of the LLC, Larisa had filed a motion requesting relief for shouldering the responsibility of preserving her interest in the LLC, which the court had deemed marital property.

¶ 32 Specifically, on August 8, 2012, Larisa filed a motion for reimbursement of expenses. The expenses pertained to capital contributions paid to the LLC in her capacity as a member of the LLC, minus end-of-year profits from the LLC. Larisa broke down the contributions by date, some of which were paid prior to the 2011 judgment of dissolution and some of which were paid after the judgment. In 2010, prior to the judgment, Larisa contributed \$24,200 and received no profit distributions. Because the contribution was made prior to the dissolution, she sought a 50% reimbursement from Bruce in the amount of \$12,100. In 2011, subsequent to the judgment (but before the memorandum of decision), Larisa contributed \$11,600 and received \$4,200 in profit distributions. (The \$11,600 contribution was made with express permission of the court as part of its April 1, 2011, judgment of dissolution. The court stated that the \$11,600 contribution was to be made at Larisa's "discretion.") Because the contribution was made subsequent to the dissolution, she sought a 35% reimbursement from Bruce in the amount of \$4,060 ( $\$11,600 \times 0.35$ ), minus 35% of the profit distribution in the amount of \$1,470 ( $\$4,200 \times .35$ ), for a total of \$2,590.

¶ 33 On August 22, 2012, the trial court set the motion for hearing. The scheduled date was September 19, 2012.

¶ 34 On August 29, 2012, Bruce filed a section 2-615 motion to dismiss Larisa's motion for reimbursement. 735 ILCS 5/2-615 (West 2010). Bruce argued that it was "impossible" for him to respond to the motion because Larisa cited no statutory provision in support of her motion for reimbursement. Additionally, each fact cited by Larisa occurred before the close of evidence in this

case. Bruce further argued that it was not clear whether Larisa's motion: (1) intended, but failed, to state a cause of action and was, therefore, subject to a section 2-615 dismissal; or (2) intended to seek enforcement of a judgment.

¶ 35 On September 11, 2012, as mentioned above, the trial court entered its final order to effectuate the 65/35 split, claiming to dispose of all post-judgment motions directed against the September 21, 2011, order on remaining issues. However, the court did not address Larisa's motion for reimbursement. (Again, that matter had been set for hearing the next week on September 19, 2012. For whatever reason, either due to the briefing schedule or otherwise, that date was postponed.)

¶ 36 On October 3, 2012, Larisa filed a response to the motion to dismiss. This time she cited a statutory provision in support of her motion for reimbursement, section 503(d)(1) of the dissolution statute, which states that, in dividing marital property, the court shall consider the contribution of each party to the preservation of the value of the property. 750 ILCS 5/503(d)(1) (West 2010). She did not answer Bruce's question as to whether, in her motion for reimbursement, she intended to file a cause of action or a motion for enforcement.

¶ 37 Larisa raised arguments similar to those raised in her initial motion. However, she clarified that the 2010 contributions had been paid out of the Alpine Asset Management Account, which the court subsequently deemed marital property.<sup>3</sup> She criticized as hypocritical Bruce's minimization

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<sup>3</sup> Larisa notes that, after the dissolution, the court awarded the Alpine account to her. However, we disagree with any inference that this means the 2010 contribution came from Larisa's personal funds. The 2010 contribution came from a marital account and was made to maintain an interest in an LLC (the value of which was also deemed marital property), all before the date of

of the importance and relevance of her request, noting that Bruce, too, had earlier asked for the court to account for the LLC's profits and losses during the 2011 year. As to Bruce's request, on February 15, 2012, the court held that it could not yet account for 2011 profits and losses as it did not yet have any evidence as to what they were. As to the 2010 contributions, it had instructed that, in order to maintain the balances achieved by the memorandum of decision (and to whatever extent Larisa had personally paid for the 2010 pre-dissolution contributions), Bruce must incur 50% of the burden. Likewise, Bruce would be entitled to 50% of the profits.<sup>4</sup>

¶ 38 On October 19, 2012, the trial court conducted a hearing on Larisa's motion for reimbursement. However, the court stated that it had no jurisdiction to decide the matter because, as of Larisa's October 10, 2012, notice of appeal, jurisdiction belonged with the appellate court.

¶ 39

## II. ANALYSIS

¶ 40 Larisa appeals the trial court's order as it pertains to the distribution of Larisa's interest in the LLC, which the court deemed marital property. Larisa complains that the court ordered her to violate the operating agreement's transfer restriction, which stated that a member could not transfer or sell any portion of his or her membership interest without the unanimous written consent of the other members (section 16.1). Larisa argues that the court-ordered sale was particularly unnecessary because the operating agreement, through its two-part valuation formula and buy-out procedure, already provided for the distribution of a member's interest upon divorce (sections 16.6 and 16.4). We clarify that the question before us is not whether the trial court itself was absolutely required to

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dissolution.

<sup>4</sup> Again, based on Larisa's own representation, it does not appear to this court that she used personal funds to make the 2010 contributions.

abide by the terms of the operating agreement. Rather, the question is whether the court's manner of distribution, which required Larisa to violate the operating agreement, constituted an abuse of discretion. *In re Marriage of Banach*, 140 Ill. App. 3d 327, 331 (1986).

¶ 41 However, before we can reach the merits of the appeal, we must consider whether Larisa's pending motion for reimbursement deprives this court of jurisdiction. A reviewing court has a duty to consider *sua sponte* its jurisdiction and to dismiss an appeal if jurisdiction is wanting. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52 (2010); *In re Marriage of Link*, 362 Ill. App. 3d 191, 192 (2005). In order for the reviewing court to have subject matter jurisdiction, the appeal must generally be taken from a final order that either terminates litigation between the parties on the merits or disposes of the rights of the parties in regard to the entire controversy or some definite part thereof. *In re Marriage of Rossi*, 100 Ill. App. 3d 669, 672 (1981). An order terminates litigation on the merits if, when affirmed, the trial court has only to proceed with the execution of the order. *Id.* An order that leaves a cause still pending and undecided is not a final order. *Id.*

¶ 42 Here, assuming only for the purposes of the jurisdictional question that the trial court's September 11, 2012, final order were to be affirmed, the trial court would have more to do than simply proceed with the execution of the order. It would still, at a minimum, need to resolve the question of how to address the 2011 contributions Larisa made after the judgment of dissolution (*i.e.*, possibly out of her own funds).<sup>5</sup> Larisa paid for 100% of the contributions due to the LLC, but,

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<sup>5</sup> An argument could be made that Larisa's motion for reimbursement as to the 2010 contributions constituted a motion for enforcement because, on February 15, 2012, the court had instructed that, in order to maintain the balances achieved by the memorandum of decision (and to whatever extent Larisa had personally paid for the 2010 pre-dissolution contributions), Bruce must

at that time, Bruce was entitled to 35% the value of Larisa's share, and, therefore, arguably, bore 35% responsibility in maintaining that share. The trial court's ruling on the issue has the potential to change the scope of our appeal. Therefore, it affects the finality and appealability of the case.

¶ 43 If pending claims remain, the court may, in its discretion, issue a Rule 304(a) finding. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Rule 304(a) provides that, if multiple claims for relief are involved in an action, an appeal may be taken from a judgment as to one or more but fewer than all of the of the claims only if the trial court has made an express written finding that there is no reason for delaying either enforcement or appeal or both. *Id.* The court's Rule 304(a) finding must clearly evince an application of its discretion that the case be immediately appealable. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011) (not enough to simply state that the order is "final and appealable" without stating that the order is immediately appealable and that there is no just cause for delay).

¶ 44 Here, the trial did not make an express Rule 304(a) finding. Although it stated in its September 11, 2012, order that it resolved all post-judgment motions directed against the ruling on remaining issues and that it retained jurisdiction for enforcement only, it did not demonstrate the purposeful exercise of discretion envisioned by Rule 304(a). See *Simon*, 409 Ill. App. 3d at 544. The court did not acknowledge the pending motion for reimbursement in its recap of the motions leading up to its order. It did not say that the order was appealable, yet alone immediately appealable with no just cause for delay.

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incur 50% of the burden. Likewise, Bruce would be entitled to 50% of the profits. However, the trial court has not yet issued instruction as to Larisa's 2011 contributions.

¶ 45 Therefore, as jurisdiction remains with the trial court, we must dismiss the instant appeal as premature. The trial court must issue a final order resolving all pending matters or issue a Rule 304(a) finding.

¶ 46 **III. CONCLUSION**

¶ 47 For the aforementioned reasons, Larisa's appeal is premature. Jurisdiction remains with the trial court.

¶ 48 Appeal dismissed.