

No. 1-13-1690

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

LARRY ORUTA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 11 L 8803
BOBBY E. WRIGHT COMPREHENSIVE)	
BEHAVIORAL HEALTH CENTER, INC.,)	
CONTINENTAL AIR TRANSPORT, INC.,)	
and BUDGET AVIS CAR RENTAL,)	Honorable
)	William D. Maddux,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held:* Case must be dismissed for lack of jurisdiction as plaintiff is appealing from a non-final and non-appealable order.

¶ 2 This case arises from *pro se* civil actions by plaintiff Larry Oruta against defendants Budget Avis Car Rental (Budget) and Chase Bank (Chase), against Sedgwick Claims Management Services, Inc. (Sedgwick), and against Bobby E. Wright Comprehensive

Behavioral Health Center, Inc. (B.E.W.), Continental Air Transport, Inc. (Continental), and the Illinois Workers' Compensation Commission (Commission). This case has been the subject of a prior appeal, which we dismissed for lack of jurisdiction as an appeal from an unappealable non-final order. *Oruta v. B.E.W.*, No. 1-12-3541 (2013) (unpublished order under Supreme Court Rule 23). Plaintiff appeals *pro se* from an order of the circuit court finding him in civil contempt and ordering him into the sheriff's custody for not obeying an earlier order to return \$80,000 improperly obtained by garnishment upon a nonexistent judgment, and a later order releasing him from the sheriff's custody.

¶ 3 We shall not endeavor to describe the earlier proceedings in detail, as our earlier order generally suffices for the task except as supplemented below. Plaintiff's claims against B.E.W. and Continental concern in relevant part workers' compensation claims upon which the Commission issued decisions on June 20, 2012.

¶ 4 In case 04WC30529, with B.E.W. as the employer-respondent, the Commission denied plaintiff benefits upon a finding that he failed to prove a causal connection between his present health and his work-related accident of September 3, 2003. On June 28, 2012, the court in the instant case (then pending against Budget, Chase, and Sedgwick) granted plaintiff leave to add B.E.W. as a defendant. On July 18, plaintiff obtained a summons in workers' compensation review, in case 04WC30529; however, while its caption names the Commission, B.E.W., and Continental as defendants, the list of parties to be summoned, and plaintiff's certificate of mailing, do not list the Commission as a served party. See 820 ILCS 305/19(f)(1) (West 2012) (judicial review of Commission decision must be commenced within 20 days of party's notice of decision). Plaintiff also filed a complaint naming the same defendants and seeking review of the

Commission's decision and purporting to raise claims of misrepresentation and fraud, negligence, emotional distress, and retaliatory discharge. The complaint alleged that the Commission's decision was erroneous but merely named the other claims without any further allegation.

¶ 5 In case 06WC4948, with Continental as the employer-respondent, the Commission granted plaintiff benefits of \$383.76 per week for 37.5 weeks of temporary total incapacity for work, plus certain specified medical expenses and interest, resulting from an accident on January 3, 2006. In September 2012, upon plaintiff's motion, the court transferred the workers' compensation case pursuant to its order of June 28, 2012. That same month, plaintiff obtained a summons in workers' compensation review, in cases 04WC30529 and 06WC4948, naming the Commission, B.E.W., and Continental as defendants; again, plaintiff's certificate of mailing did not include the Commission.

¶ 6 As noted in our prior order, the trial court found on December 4, 2012, that Budget was the only properly served and represented defendant and that plaintiff had no default or monetary judgment against any defendant, and the court ordered that default against B.E.W. was denied, that any previous order requiring the turnover of funds to plaintiff was vacated as plaintiff had not won any monetary judgment, and that plaintiff had until December 7, 2012, to return any funds erroneously released to him. Plaintiff appealed this order, which we found to be non-final as it did not terminate any litigation against any party.

¶ 7 On December 10, 2012, the court ordered that plaintiff appear on December 13 and show cause why he should not be held in civil contempt for not returning funds by December 7 as ordered on December 4. The order noted that plaintiff was notified in person on December 4 that failure to obey that day's order would result in a proceeding for civil contempt. On December

13, 2012, the court found plaintiff in contempt and ordered the sheriff to arrest and incarcerate him until he purged his contempt by returning \$80,000 to Fifth Third Bank. The order recited that plaintiff made misrepresentations that resulted in a judgment of \$80,000 against Continental and thus an \$80,000 garnishment and turnover order against Fifth Third Bank.

¶ 8 In December 2012, B.E.W. appeared, and in January 2013 filed a motion to dismiss claiming a limitations defense: that plaintiff did not sue B.E.W. for his 2003 discharge until 2012. On January 14, 2013, the court granted with prejudice both Budget's pending motion to dismiss on all claims and B.E.W.'s motion to dismiss on all claims. The court also set a status hearing "for any remaining issues to the extent there are any such issues." The order did not include a finding there is no just reason for delaying appeal. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 9 On April 4, 2013, the court found that plaintiff continued to be in civil contempt for not complying with the December 4 order and reiterated that he would remain in the sheriff's custody until he paid \$80,000. However, on April 24, 2013, the court ordered plaintiff's immediate release from the sheriff's custody.

¶ 10 Plaintiff filed the instant notice of appeal on May 20, 2013, seeking to appeal the orders of April 4 and 24, 2013.

¶ 11 Before considering the merits of plaintiff's contentions, or attempting to discern a rational contention from his *pro se* brief, we consider the issue of our jurisdiction. *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 33 (reviewing court has duty to consider its jurisdiction *sua sponte* and dismiss the appeal if it lacks jurisdiction). As a threshold matter, the case was not final as of May 20, 2013, as there was at that time no disposition of plaintiff's

claims against Continental or Sedgwick, nor against Chase to the extent that plaintiff's claims against Chase may be separable from his dismissed claims against Budget.

¶ 12 On May 20, plaintiff appealed the order of April 4 continuing his civil contempt and incarceration by the sheriff, and the order of April 24 releasing him from the sheriff's custody. An order imposing a penalty for civil contempt – such as placing a party in the sheriff's custody until he purges the contempt – is appealable. Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010). However, plaintiff did not timely appeal the order of April 4, as May 20 is well over 30 days after April 4. Ill. S. Ct. Rs. 303(a) (eff. June 4, 2008), 304(b). His appeal was timely taken from the order of April 24, but that order did not impose a penalty for civil contempt but indeed lifted or removed the penalty against plaintiff. We see no basis for our jurisdiction here and accordingly dismiss this cause.

¶ 13 Dismissed for lack of jurisdiction.