

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).

2014 IL App (4th) 130555-U

NO. 4-13-0555

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 4, 2014

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF)	Appeal from
GINGER HOHN SCHELL,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
and)	No. 08D311
PAUL RYAN SCHELL,)	
Respondent-Appellant.)	Honorable
)	Michael D. Clary,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed the appeal for lack of jurisdiction.

¶ 2 In September 2008, petitioner, Ginger Hohn Schell, filed a petition to dissolve her marriage with respondent, Paul Ryan Schell. In November 2008, the trial court entered a temporary order granting Paul supervised visitation of the children. In December 2012, Paul filed a motion to amend the visitation order. In June 2013, the court granted Ginger's motion for a directed finding on Paul's visitation motion.

¶ 3 On appeal, Paul argues the trial court erred in directing judgment in favor of Ginger. Because we conclude we have no jurisdiction to address Paul's claim of error, we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in September 1992 in South Carolina. Four children

were born to or adopted by the parties as a result of the marriage: Annie, born in 1994; Jessica, born in 1995; Katherine, born in 1998; and Benjamin, born in 2006.

¶ 6 In September 2008, Ginger filed a petition for dissolution of marriage. Ginger also filed a petition for temporary relief, asking the trial court to award her temporary custody of the minor children and to enter an order establishing temporary maintenance, child support, and supervised visitation. In November 2008, the court entered a temporary order granting Paul supervised visitation of the children. The court ordered Paul to obtain a psychological evaluation within 90 days to determine his stability in participating in visits with his children. The court also issued an interim order of protection.

¶ 7 In March 2009, the trial court entered a second temporary order extending the period for Paul to comply with the psychological evaluation requirement. Further temporary orders were similarly entered. In August 2010, a tenth temporary order extended the time period indefinitely for Paul to obtain a psychological evaluation. In January 2011, the court entered an order continuing the plenary order of protection and the supervised visitation order from November 2008.

¶ 8 In December 2011, Paul filed a motion to dismiss the protective order and for immediate visitation. In March 2012, Paul filed a motion to amend the protective order and for visitation. Paul sought a new order providing for visitation consistent with the recommendations included in the psychological evaluations and asking that the protective order be amended or dismissed.

¶ 9 In May 2012, the trial court entered a temporary order modifying the plenary order of protection. The court granted supervised visitation to Paul with a supervisor agreed to by the parties or picked by the court from a list of names provided by the parties. In November

2012, the court ordered visitation be supervised by Travis Denius and counseling by Gail Mills.

¶ 10 In December 2012, Paul filed a motion to suppress evidence, including the report of the guardian *ad litem* and statements of the children, and sought the removal of Mills as counselor. Paul also filed a motion for visitation, seeking to amend the prior visitation order to provide for "normalized visitation," including every other weekend, summer vacation, and school holidays. In February 2013, Paul filed a motion for substitution of judge, alleging he filed a complaint with the Illinois Judicial Inquiry Board against Judge Karen Wall. In May 2013, Paul filed similar motions for visitation, to suppress evidence, and to remove the counselor.

¶ 11 In June 2013, the trial court held a hearing on the motion for visitation. At the hearing, Ginger's counsel made a motion for a directed finding, arguing Paul failed to establish a substantial change in circumstances to justify a modification of the visitation order. After taking the matter under advisement, the court allowed the motion for a directed finding in a July 2, 2013, order. The court found Paul had failed to present evidence showing it was in the children's best interest that the previous court orders requiring supervised visitation be modified. The court ordered the parties to exchange the names of two individuals as potential supervisors of visitation. If the parties agreed on a supervisor, then the previous supervised visitation schedule would restart immediately. If not, the court would select a supervisor from the submitted names in July 2013.

¶ 12 On July 3, 2013, Paul filed a notice of appeal of the court's July 2, 2013, order. On July 12, 2013, the court issued a judgment and decree of dissolution of marriage as to grounds only and retained jurisdiction for the purpose of resolving all remaining issues.

¶ 13 II. ANALYSIS

¶ 14 Initially, Ginger argues this court has no jurisdiction to consider this appeal

because the July 2, 2013, order was not a final and appealable order. Paul does not dispute Ginger's argument in a reply brief, although in his opening brief he claims the appeal is appropriate under Illinois Supreme Court Rules 301, 303, and 304. We disagree.

¶ 15 Under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), "[e]very final judgment of a circuit court in a civil case is appealable as of right." Illinois Supreme Court Rule 303 (eff. June 4, 2008) sets forth the time period for filing a notice of appeal after the entry of a final judgment as well as the form and contents of the notice. " '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, 857 N.E.2d 332, 334 (2006) (quoting *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502, 687 N.E.2d 871, 874 (1997)). Absent a finding by the trial court pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), a final order disposing of fewer than all of the parties' claims is not an appealable order. *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1094, 947 N.E.2d 333, 336 (2011); see also Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010) (stating "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"). We note a custody judgment is appealable without the special findings required under Rule 304(a). See Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010).

¶ 16 "A petition for dissolution of marriage advances a single claim—a request for an order dissolving the parties' marriage." *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 35, 988 N.E.2d 1102 (citing *In re Marriage of Leopando*, 96 Ill. 2d 114, 119, 449 N.E.2d 137, 140 (1983)). "The issues that the court must decide during the course of a dissolution, such as child custody, property division, and maintenance, are considered ancillary issues within that one

dissolution claim." *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 735, 877 N.E.2d 1140, 1149 (2007). "Thus, until all of the ancillary issues are resolved, a petition for dissolution of marriage has not been fully adjudicated. [Citation.] 'Stated differently, generally only a judgment that does not reserve any issues for later determination is final and appealable.' [Citation.]" *Jensen*, 2013 IL App (4th) 120355, ¶ 35, 988 N.E.2d 1102; see also *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 936, 861 N.E.2d 354, 355 (2007) (stating "[o]rders resolving individual issues are not appealable (even with a finding purporting to confer appealability under Supreme Court Rule 304(a) (210 Ill. 2d R. 304(a)) until the court resolves the entire dissolution claim").

¶ 17 In the case *sub judice*, Ginger filed a petition for dissolution of marriage in September 2008. In December 2012, Paul filed a motion to amend the supervised visitation order. On July 2, 2013, the trial court entered a directed finding in favor of Ginger on the visitation motion. Here, the court's finding involved an ancillary issue in the dissolution proceeding. However, other issues remained unresolved. We note the court issued the dissolution judgment on grounds on July 12, 2013, but it expressly retained jurisdiction over the parties and over the subject matter for the purpose of resolving all remaining issues. Thus, as the court did not resolve the remaining issues, the court's July 2, 2013, order did not constitute a final appealable order. Moreover, as the order did not involve a change in custody, Rule 304(b)(6) does not apply. Accordingly, we lack jurisdiction to consider the merits of Paul's appeal.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we dismiss the appeal.

¶ 20 Appeal dismissed.