

father executed final and irrevocable surrenders of their parental rights, and the court terminated their parental rights. The court set a permanency goal of adoption and appointed the guardianship administrator of the DCFS as J.T.'s guardian with power to consent to adoption.

¶ 5 The DCFS placed J.T. with the respondent, who is J.T.'s paternal grandmother. Subsequently, J.T. was removed from the respondent's home due to an alleged incident of domestic violence involving the respondent's father (J.T.'s great-grandfather), who resided in that same home at the time of the alleged incident but subsequently moved out. After J.T. was removed from the respondent's home, she was placed in a different home, where her sister already lived.

¶ 6 On March 14, 2013, J.T.'s court-appointed guardian *ad litem* (GAL) filed a "motion to prevent change of placement of minor child" requesting that the court enter an order preventing the DCFS from placing J.T. with the respondent or with the respondent's father. The GAL served an assistant State's Attorney and Lutheran Social Services of Illinois with a copy of the motion and with notice of a hearing on the motion. On March 21, 2013, the GAL and an assistant State's Attorney appeared at that hearing and both urged the court to grant the GAL's motion. The court granted the motion and entered a written order prohibiting J.T.'s placement with the respondent or with the respondent's father.

¶ 7 On March 27, 2013, the respondent filed a motion to intervene in the cause. On April 2, 2013, she filed a motion asking the court (1) to vacate the prohibitory order that was entered on March 21, 2013, and (2) to order that J.T. be placed with the respondent.

¶ 8 On April 18, 2013, the court held a hearing on the respondent's motions. Neither the State nor the GAL objected to the respondent's motion to intervene, and the court granted that motion. Both the State and the GAL objected to the motion to vacate the order entered on March 21, 2013. On that latter motion, the respondent presented testimony from three

witnesses, including herself. Neither the State nor the GAL presented evidence. The court partially granted and partially denied the motion to vacate the order entered on March 21, 2013. Specifically, the court (1) vacated that portion of the March 21, 2013, order that prohibited the placement of J.T. with the respondent, (2) left intact that portion of the order prohibiting placement with the respondent's father, and (3) refused to order that J.T. be placed with the respondent, explaining that it lacked the authority to order a particular placement. The court made clear that the hearing was not a custody hearing, and that decisions regarding J.T.'s placement would remain within the discretion of the DCFS. In response to a question from the assistant State's Attorney, the court stated that it did not think that the DCFS caseworker did anything wrong in handling the case.

¶ 9 On May 17, 2013, the respondent filed a notice of appeal. The notice of appeal specified that the respondent was appealing from the order entered on April 18, 2013, and that she was challenging that portion of the order that denied her motion for an order compelling J.T.'s placement with her.

¶ 10

ANALYSIS

¶ 11 Before this court, the respondent argues that (1) she was deprived of due process when she was not served with notice of the March 21, 2013, hearing on the GAL's motion for an order prohibiting the DCFS from placing J.T. with her, (2) the DCFS abused its discretion, and violated the respondent's rights as a foster parent, when it removed J.T. from the respondent's home, and (3) the circuit court's finding that the caseworker did nothing wrong is against the manifest weight of the evidence. The State addresses all these points but argues principally that this court lacks jurisdiction to hear this appeal because the order entered on April 18, 2013, is not a final and appealable order. The respondent insists that this court has jurisdiction pursuant to Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010). This court concludes that jurisdiction is lacking.

¶ 12 This court's jurisdiction to decide appeals comes from the Illinois Constitution and the rules of our supreme court. Section 6 of article VI of the Illinois Constitution states in pertinent part as follows: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located ***. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts." Ill. Const. 1970, art. VI, § 6. In other words, this court's jurisdiction encompasses judgments, orders or decrees that qualify as final, but this court "is without jurisdiction to review judgments, orders or decrees which are not final", except as provided by supreme court rule. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994).

¶ 13 A judgment or order is final and appealable if it terminates the litigation between the parties on the merits, and sets, fixes, or disposes of the rights of the parties, whether upon the entire controversy or upon some definite and separate part thereof, so that if the judgment or order is affirmed, the trial court need only execute it. *In re A.H.*, 207 Ill. 2d 590, 594 (2003) (the denial of a petition to terminate parental rights was not a final order for purposes of appeal "because it did not end the litigation of the parties on the issue of termination of parental rights and did not 'set or fix' the rights of the parties on either side of the controversy"); *In re Curtis B.*, 203 Ill. 2d 53, 59 (2002); *Kellerman v. Crowe*, 119 Ill. 2d 111, 115 (1987). " 'The ultimate question to be decided in each case is whether the judgment fully and finally disposes of the rights of the parties to the cause so that no material controverted issue remains to be determined.' " *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245, 249 (1983) (quoting *Cory Corp. v. Fitzgerald*, 403 Ill. 409, 415 (1949)).

¶ 14 The order from which the respondent appeals does not terminate the litigation between her and the State. It does not set, fix, or dispose of the respondent's rights. It does not resolve the entire controversy or any definite and separate part of the controversy. The

order merely frees the DCFS to consider placing J.T. with the respondent. It does not finally determine J.T.'s placement or the respondent's status in regard to J.T. The order anticipates that the DCFS in the future will decide on a placement for J.T. Such placement could be with the respondent or it could be with someone else. Eventually, adoption proceedings will commence and custody will need to be addressed and decided. The circuit court made clear on April 18, 2013, that the hearing on that date was not a custody hearing, and that the court was not deciding custody. The order appealed from is just an intermediate procedural step taken for J.T.'s protection and best interests. The order was entered in the midst of the parties' controversy, not at the termination of it.

¶ 15 The respondent insists that this court has jurisdiction over this appeal by virtue of Rule 304(b)(1). Rule 304 addresses appeals from final judgments that do not dispose of an entire proceeding. Subparagraph (b)(1) states that a judgment or order "entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party" is appealable, and it is appealable without any explicit finding by the circuit court that there is no just reason for delaying enforcement or appeal. Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010). The committee comments to Rule 304 state that subparagraph (b)(1) "applies to orders that are final in character although entered in comprehensive proceedings that include other matters. Examples are an order admitting or refusing to admit a will to probate, appointing or removing an executor, or allowing or disallowing a claim." Ill. S. Ct. R. 304, Committee Comments (adopted Feb. 26, 2010). "Committee comments to supreme court rules are not binding but they may be used to determine the application of a rule." *In re Estate of Burd*, 354 Ill. App. 3d 434, 437 (2004). The rule itself and the committee comment make clear that Rule 304(b)(1) applies only to final orders. See also *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005), wherein the court stated: "Only final orders fit within Rule 304(b)(1)." As explained *supra*, the order

from which the respondent here appeals is not a final order. Therefore, Rule 304(b)(1) cannot give this court subject matter jurisdiction to decide this appeal.

¶ 16 Because the order appealed from is not a final and appealable order, this court lacks subject matter jurisdiction to decide this matter and must dismiss this appeal.

¶ 17 Appeal dismissed.