

Nos. 1-13-2429 & 1-13-2500  
Consolidated

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MILAN A. HREBENAK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 2012 L 11728
	)	
MARIAN MCAFEE,	)	Honorable
	)	Joan E. Powell,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Delort and Cunningham concurred in the judgment.

**ORDER**

**Held:** This court does not have jurisdiction to adjudicate this appeal because the circuit court did not enter a final appealable order. We therefore dismiss this appeal for lack of jurisdiction.

¶ 1 Plaintiff, Milan A. Hrebenak, filed a breach of contract action against defendant, Marian McAfee, alleging that he loaned defendant approximately \$28,000 at an interest rate of 18%. Defendant admitted to receiving the loan, but denied owing plaintiff the 18% in interest. The

parties filed cross-motions for summary judgment. On July 31, 2013, the circuit court denied defendant's motion for summary judgment, but entered partial summary judgment in plaintiff's favor as to the principal amount of the loan, *i.e.*, the approximately \$28,000 that defendant admitted to receiving. The circuit court continued the matter until September 17, 2013, for status on discovery. Despite the September hearing date, defendant, on August 2, 2013, filed a notice of appeal of the circuit court's July 31, 2013.<sup>1</sup>

¶ 2 Before this court, defendant argues that the circuit court erred when it granted partial summary judgment in plaintiff's favor. Plaintiff, for his part, asks that this court affirm the judgment of the circuit court. Defendant appeared *pro se* before the circuit court, while plaintiff was represented by counsel. Before this court, however, both parties have appeared *pro se*. After reviewing the record in this matter, we hold that this court does not have jurisdiction because the circuit court's entry of partial summary judgment in plaintiff's favor is not a final and appealable order because matters remain unresolved before the circuit court. We therefore dismiss this appeal.

¶ 3 **BACKGROUND**

¶ 4 On October 15, 2012, plaintiff filed a one-count verified complaint against defendant for breach of contract. In his complaint, plaintiff alleged he entered into a written agreement with defendant whereby he agreed to loan defendant \$28,404.04. According to the terms of the agreement, defendant agreed to pay plaintiff a fee of \$5,113.45 within 24 months of the date of the loan, and to pay plaintiff 18% interest every six months. Plaintiff alleged defendant failed to pay the principal or interest on the loan. Accordingly, plaintiff asked the circuit court to

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<sup>1</sup> As discussed *infra*, the actual notice of appeal is not part of the record or attached to defendant's brief. Defendant did, however, file a copy of the notice of appeal before this court.

enter judgment in his favor in the amount of \$33,521.49, plus interest of 18%, and costs of the suit. Plaintiff attached to his complaint a copy of the alleged agreement and a copy of a check he signed and made out to defendant in the amount of \$28,408.04.

¶ 5 On December 6, 2012, plaintiff filed a motion for summary judgment arguing that he had successfully established all of the elements of a claim for breach of contract and that he was entitled to judgment as a matter of law. In response, defendant argued that plaintiff failed to show the existence of a valid and enforceable contract.

¶ 6 On June 5, 2013, defendant filed a motion to dismiss pursuant to both section 2-615 (735 ILCS 5/2-615 (West 2012)) and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2012) (Code)) seeking involuntary dismissal of plaintiff's complaint.<sup>2</sup>

¶ 7 On June 13, 2013, the circuit court struck defendant's motion to dismiss pursuant to both section 2-615 and 2-619 of the Code. The circuit court also noted in the order that the July 22, 2013, hearing on plaintiff's motion for summary judgment "stands."

¶ 8 On July 18, 2013, defendant filed another motion to dismiss pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West 2012). On that date, defendant also filed a cross-motion for summary judgment. Defendant attached her own affidavit to her cross-motion for summary judgment in which she admitted to receiving a loan from plaintiff in the amount of \$28,408.04. Defendant, however, argued that she never agreed to pay plaintiff an interest rate of 18%.

¶ 9 On July 19, 2013, the circuit court struck the July 22, 2013, hearing date on plaintiff's motion for summary judgment and continued the hearing until July 31, 2013.

¶ 10 On July 31, 2013,<sup>3</sup> the circuit court entered the following order:

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<sup>2</sup> Defendant did not label her motion as a combined motion to dismiss pursuant to section 2-619.1 of the Code. See 735 ILCS 5/2-619.1 (West 2012).

"This matter coming to be heard on plaintiff's motion for summary judgment, due notice being given, counsel for plaintiff and *pro se* defendant present, after hearing oral argument, the court being fully advised in the premises, it is hereby ordered that:

Plaintiff is *granted partial summary judgment* as to the principal amount of \$28,408.04; *the remainder of plaintiff's motion for summary judgment is denied.*

It is further ordered that: 1) defendant's oral motion for a jury demand is denied as untimely; 2) defendant's motion to dismiss pursuant to 735 ILCS 5/2-619 is denied; and 3) defendant's cross-motion for summary judgment is denied.

*This matter is continued for status on discovery on September 17, 2013, at 10:00 a.m. in Room 2506.*" (Emphasis added.)

¶ 11 On August 2, 2013, defendant appealed the circuit court's July 31, 2013, order granting plaintiff partial summary judgment.<sup>4</sup> This court assigned the appeal the appellate case number

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<sup>3</sup> The record does not contain a transcript or certified bystanders report of the July 31, 2013 hearing.

<sup>4</sup> Defendant's August 2, 2013, notice of appeal is not included in the record before this court. She did, however, file a copy of the notice of appeal with this court. Additionally, defendant's September 13, 2013, request for the preparation of the record on appeal is in the record and indicates that she filed her appeal on August 2, 2013. We also note that defendant's opening brief before this court also does not contain a copy of the notice of appeal in an attached appendix. In fact, defendant's brief provides an independent reason for dismissal of this appeal as it does not contain an appendix in violation Illinois Supreme Court Rule 342. See Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005) ("The appellant's brief shall include, as an appendix, a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or

of 1-13-2429. For reasons that are not clear, defendant filed a second notice of appeal, which she later amended, from the same July 31, 2013, order of the circuit court. This court assigned defendant's second appeal the appellate case number 1-13-2500. On our own motion, this court consolidated case numbers 1-13-2429 and 1-13-2500.

¶ 12

#### JURISDICTION

¶ 13 Defendant argues that the circuit court erred when it entered partial summary judgment in plaintiff's favor and asks that we dismiss plaintiff's complaint with prejudice. Plaintiff asks that we affirm the judgment of the circuit court. Neither party challenges the jurisdiction of this court.

¶ 14 Although neither party challenged the jurisdiction of this court, we must consider our jurisdiction even though the issue was not raised by the parties. *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 24. Absent an Illinois supreme court rule allowing this court to hear certain types of appeals, this court only has jurisdiction to hear appeals from final judgments of the circuit court. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9 (citing Ill. Const. 1970, art. VI, § 6); see Illinois Supreme Court Rules 304, 306, 307, and 308. Ill. S. Ct. R. 304 (eff. Feb. 26, 2010); R. 306 (eff. July 1, 2014); R. 307 (eff. Feb. 26, 2010); R. 308 (eff. Jan. 1, 2015). "A final judgment has been defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). We must dismiss an appeal on our own motion if we do not have jurisdiction. *North Community Bank*, 2015 IL App (1st) 133672, ¶ 24.

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other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal.").

¶ 15 The denial of a motion for summary judgment is typically not a final order conferring jurisdiction on this court. *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 357 (1999). An exception to this rule exists where "the lower court grants one party's summary judgment motion *as to all issues* and denies the other party's summary judgment motion as to the same issues, the resulting order is final and appealable because it entirely disposes of the litigation." (Emphasis added.) *Id.* at 358; see also *In re Estate of Funk*, 221 Ill. 2d 30, 85 (2006).

¶ 16 After reviewing the record in this case, we conclude that this case must be dismissed due to our lack of jurisdiction. Although the parties filed cross-motions for summary judgment, the circuit court did not grant plaintiff's motion for summary judgment as to all of the issues. Rather, the circuit court denied plaintiff's motion in part and set a status date for September of 2013. Prior to the September status date, however, defendant filed her notice of appeal. The record does not disclose what happened at the September status date, or if the status hearing even took place. It is unclear why defendant appealed the circuit court's order prior to the status date in September. The circuit court's July 31, 2013, order therefore was not a final order because it did not dispose of all of the remaining issues. Furthermore, the circuit court's July 31, 2013, order did not indicate reliance on any Illinois Supreme Court Rule that would grant this court jurisdiction over an interlocutory appeal. See Illinois Supreme Court Rules 304, 306, 307, and 308. Ill. S. Ct. R. 304 (eff. Feb. 26, 2010); R. 306 (eff. July 1, 2014); R. 307 (eff. Feb. 26, 2010); R. 308 (eff. Jan. 1, 2015). Therefore, the circuit court's July 31, 2013, order is not a final appealable order giving this court jurisdiction. Accordingly, we dismiss the appeal for lack of jurisdiction.

¶ 17

#### CONCLUSION

¶ 18 Appeal dismissed.