2015 IL App (1st) 133310-U
No. 1-13-3310
Order filed May 13, 2015

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

H.J. RUSSELL & COMPANY, as property manager for CHICAGO HOUSING AUTHORITY, Plaintiff-Appellant/Cross-Appellee, v. TAMMY JOINER, Defendant-Appellee/Cross-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 09 M1 350587 The Honorable Leonard Murray, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: In action under the Forcible Entry and Detainer Act, where the court's order left the ultimate rights of the parties to possession undetermined and dependent on whether the tenant observed or violated the terms of her lease during a six-month probationary period and notice of appeal filed before the probationary period had run, appeal dismissed for want of jurisdiction.

¶ 2 BACKGROUND

¶ 3 The only claim in this action under the Forcible Entry and Detainer Act (Act), 735 ILCS 5/9-101, *et. seq.* (West 2012), seeks possession of the apartment defendant Tammy Joiner leased as part of the Chicago Housing Authority's subsidized housing program. In 2007, Joiner, with her two young children, leased the second floor apartment at 314 Whipple, Apt. B. That September,

she requested CHA relocate her to a first floor apartment because walking up the stairs to her second floor apartment exacerbated her chronic, debilitating pain. On July 16, 2009, Joiner was arrested for possession of cannabis after she voluntarily allowed Chicago police officers to search her apartment. Joiner used cannabis as a means to alleviate the severe chronic pain she suffered because of numerous health issues—childhood bone cancer, a gunshot wound, a dislocated hip and osteoarthritis. The State did not pursue charges after Joiner's arrest. In August 2009, CHA granted Joiner's two-year old request and relocated her to a first floor apartment, 2311 W. Warren, Apt. A, also part of the subsidized housing program. Joiner signed a new lease.

¶ 4 On November 5, 2009, plaintiff, H.J. Russell & Co. (Property Manager), acting on behalf of the CHA, filed a forcible entry and detainer action seeking possession of Joiner's subsidized apartment based on her breach of the lease. The parties filed cross-motions for summary judgment.

¶ 5 Four years later, the court granted summary judgment in favor of the Property Manager, finding Joiner breached her lease by possessing an illegal drug on the premises. The court, however, found it significant that Joiner had voluntarily submitted to a series of drug tests and none were positive. The court concluded eviction was not an appropriate remedy given the circumstances and, therefore, left the rights of the parties to possession undetermined. The court, instead, placed Joiner on six-months' probation, allowing her to remain in the apartment as long as there was no recurrence of illegal drug use during that time (the September 2013 order). Five months before the probationary period ended, the Property Manager appealed the trial court's decision to place Joiner on probation rather than enter an immediate order of possession in its favor. Joiner filed a motion to dismiss, which a preliminary panel of this court hearing motions denied.

¶ 6 The motion panel's ruling does not prevent us from revisiting the question of jurisdiction. *In re Marriage of Waddick,* 373 Ill. App. 3d 703, 705 (2007) ("Although the motion panel denied the motion to dismiss, this panel has an independent duty to determine whether we have jurisdiction and to dismiss an appeal if we do not.").

¶ 7 We dismiss this appeal for want of jurisdiction. A trial court order must be final before we have jurisdiction to review it. The September 2013 order depended on a possible future event—whether Joiner complied with the terms of her lease during the six-month probationary period—for its outcome and, therefore, did not terminate the parties' dispute. Accordingly, the order was not a final order and the Property Manager, therefore, filed its notice of appeal prematurely.

¶ 8 ANALYSIS

¶ 9 The Trial Court Order Was Not Final

¶ 10 As an appellate court, we are without jurisdiction to review an order that is not final. *Flores v. Dugan,* 91 Ill. 2d 108, 112 (1982) (except certain interlocutory orders specifically provided for in the Illinois Supreme Court Rules, judgment must be final to be appealable). To be final, an order must ascertain, and absolutely and finally fix, the rights of the parties based on the issues presented. *Id.* The order must terminate the litigation so that implementing the judgment is the only step remaining. *Id.* at 114.

¶ 11 To be considered a final order, the order cannot be dependent on a future event for its ultimate outcome. *Valdovinos v. Luna-Manalac Med. Ctr., Ltd.*, 307 Ill. App. 3d 528, 539 (1999). Specifically, in a Forcible Entry and Detainer Act case, if the question of possession has been deferred until a future date, the order is not final. *See Mid-Northern Mgmt., Inc., v. Heinzeroth*, 234 Ill. App. 3d 240, 245 (1992) (holding order allowing tenant 30 days to comply

with lease, after which order of possession would be vacated, was not a final, appealable order because possession was undetermined).

¶ 12 The Property Manager argues the September 2013 order was final and appealable on the basis that (i) the trial court settled the matters raised by the parties in their pleadings and there was nothing left for the trial court to decide; (ii) the trial court did not continue the case to a future date, reserve jurisdiction, or leave a motion or claim pending; and (iii) a determination of whether Joiner violated her probation would be a prospective determination not related to the rights already determined by the court.

¶ 13 Joiner, meanwhile, responds that the order was not final because it did not fix the parties' rights. At the time of the Property Manager's appeal, the trial court had not determined who would be awarded possession. During the probationary period, it was unknown whether Joiner would refrain from drug-related criminal activity and, therefore, impossible to determine possession, an open issue, until the probationary period ended.

¶ 14 The parties are correct that in a Forcible Entry and Detainer Act case the sole issue is possession. *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 90 (1993). This issue, however, was left undetermined by the trial court, as there was no way of knowing whether Joiner would comply with the terms of her lease during the probationary period. Accordingly, more than simply implementing the judgment remained before the trial court. *Flores*, 91 Ill. 2d at 112. Until March 26, 2014, the Property Manager could have returned to the trial court and called on it to determine whether Joiner violated her probation, and not until the probationary period ended could a final order of possession be entered.

¶ 15 Furthermore, an order that resolves the issue of liability, but does not definitively determine the remedy, is not a final and appealable order. *See Lindsey v. Chicago Park Dist.*, 134

Ill. App. 3d 744, 747 (1985) (holding order determining liability, but not damages, was not final and appealable). Here, the trial court determined a lease violation occurred entitling the Property Manager to summary judgment, but also that an immediate order of possession was inappropriate. By leaving the issue of possession open for six-months, the trial court had not determined the remedy when the Property Manager filed this appeal. Hence, the September 2013 order was not final and appealable.

¶ 16 Furthermore, even if a nonfinal order later becomes final, a court still lacks jurisdiction if the appeal was made while the order was not final. *Noland v. Steiner*, 213 Ill. App. 3d 611, 616 (1991). If a party prematurely files a notice of appeal, the trial court retains jurisdiction over the case. *Id.* at 616.

¶ 17 The September 2013 order did not determine the right of possession, but instead, made the right dependent on whether Joiner complied with the lease during the probationary period. Possession remained undetermined by the court's order until the expiration of the probationary period—March 26, 2014. Therefore, when the Property Manager filed its notice of appeal on October 18, 2013, the notice failed to confer jurisdiction on this court. The trial court still had jurisdiction over its September 2013 order, which was not final and, thus, not appealable.

¶ 18 Order is not Appealable Simply Because Property Manager Alleges it is Void

¶ 19 The Property Manager contends the September 2013 order exceeded the court's authority under the Act and is therefore void and appealable. The Property Manager maintains the trial court was required to enter an order of possession after granting summary judgment in its favor.

¶ 20 The Forcible Entry and Detainer Act states,

> "If it appears on the trial that the plaintiff entitled to the possession of the whole of the premises claimed, judgment for the possession thereof and for costs *shall*

> be entered in favor of the plaintiff." (Emphasis added.) 735 ILCS 5/9-110 (West 2012).

¶ 21 The Property Manager argues that when a court proceeds under a statute in derogation of common law, as the Act does, and takes an action in excess of the authority granted by the statute, the action is void. *See In re Dontrell H.*, 382 Ill. App. 3d 612, 617 (2008) (holding that any action taken by court in excess of its jurisdiction granted by statute in derogation of common law is "void and may be attacked at any time").

¶ 22 We need not determine, however, whether the September 2013 order is void. That is not the issue; rather the issue is whether the order was final. Even if void, an order must be final to be appealable. See *Board of Trustees of Community College Dist. No. 508 v. Rosewell*, 262 Ill. App. 3d 938, 956 (1992) (quoting *Moffat Coal Co. v. Industrial Commission*, 397 Ill. 196 (1947).

> " 'A judgment, order or decree of a court that lacked jurisdiction or one that is void for any other reason will be reversed by this court whenever the same is brought before us by any means possible in the particular case; but we can find no provision in any statute and no judicial precedent indicating that a judgment, order or decree which is not final may be reviewed by this court merely because it is, or is alleged to be, null and void.' "

¶ 23 The September 2013 order does not become appealable solely on the Property Manager's allegations that the order is void. The order was not final and, therefore, the appeal was premature.

¶ 24 Rule 304(a) Language Does Not Make A Nonfinal Order Appealable

¶ 25 Additionally, as Joiner correctly contends, including the language, "This matter is final and appealable pursuant to S.C.R. 304(a)" does not render a nonfinal order appealable. See

Revolution Portfolio, LLC v. Beale, 332 Ill. App. 3d 595, 598-99 (2002) ("Rule 304(a) finding does not make a nonfinal order appealable; rather, a Rule 304(a) finding makes a final order appealable where there are multiple parties or claims in the same action."). The September 2013 order is not final and, therefore, the inclusion of Rule 304(a) language did not make it final or appealable.

¶ 26 The Property Manager Could Not Have Brought An Interlocutory Appeal

¶ 27 Lastly, the Property Manager argues it could have brought an interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), because the September 2013 order should be considered a stay of its own proceedings, equivalent to an appealable injunction. *Chicago City Bank & Trust Co. v. Drake Int'l*, 211 Ill. App. 3d 850, 855 (1991), *rev'd in part on other grounds*, 169 Ill. 2d 53 (1995) (order staying trial court's proceeding is appealable under Rule 307(a)(1)). According to the Property Manager, it is immaterial that its appeal was not designated as a "Notice of Interlocutory Appeal," because the appeal apprised the parties and the court as to the nature of its appeal. See *City of Elgin v. Country of Cook*, 257 Ill. App. 3d 186, 200 (1993) (stating appellate court has jurisdiction to hear appeal even if notice of appeal does not strictly comply with technical requirements, as long as no prejudice to appellee and notice sets forth judgment complained of and relief sought "so as to apprise the parties and the court of the nature of the appeal.").

¶ 28 While a stay of proceedings is equivalent to an injunction and, therefore, appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), the trial court did not stay the proceedings by placing Joiner on six-months' probation. *See Disciplined Investment Advisors, Inc. v. Schweihs*, 272 Ill. App. 3d 681, 691 (order staying proceeding is equivalent to injunction and immediately appealable). A stay of proceedings halts a portion of the proceeding and

preserves the status quo of the case until a future date. *Nken v. Holder*, 556 U.S. 418, 421 (2009); *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 68 (2007). The trial court's probation order did not require preservation of the status quo for the duration of the probationary period. The Property Manager, rather, could have brought evidence of a probation violation to the trial court's attention during the probationary period. If the Property Manager had done so, it could have requested the trial court grant an immediate order of possession. This court, therefore, does not have jurisdiction to under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

¶ 29 CONCLUSION

¶ 30 The Property Manager filed its appeal prematurely, several months before the trial court's September 2013 order became final and appealable. We, therefore, lack jurisdiction to hear the appeal and it must be dismissed.

¶ 31 Appeal dismissed.