2015 IL App (1st) 14-1649-U

THIRD DIVISION
July 22, 2015

No. 1-14-1649

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES MAHONEY, Plaintiff-Appellee, v. KARI BLUNDA, as Trustee of the Mahoney & Associates Trust, under Trust Agreement dated May 6, 1996, and THE MAHONEY & ASSOCIATES TRUST, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 41789 The Honorable Rodolfo Garcia, Judge presiding.
JUNE MAHONEY, Third-Party Plaintiff-Appellee, v. KARI BLUNDA, in her individual capacity and in her Capacity as Trustee of the Mahoney & Associates Trust, under Trust Agreement dated May 6, 1996, and THE MAHONEY & ASSOCIATES TRUST, CLINTON MAHONEY, and JAMES MAHONEY, Third-Party Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 41789 The Honorable Rodolfo Garcia, Judge presiding.

KARI BLUNDA, as Trustee of the Mahoney & Associates Trust, under Trust Agreement dated May 6, 1996, and THE MAHONEY & ASSOCIATES TRUST,	)	Appeal from the Circuit Court Cook County.
Counterplaintiffs-Appellants,	)	
237 EAST ONTARIO LLC,	)	
Third-Party Plaintiff-Appellant,	)	
v.	)	No. 11 CH 41789
JAMES MAHONEY, JUNE MAHONEY,	)	
Counterdefendants-Appellees,	)	
JOHN MAHONEY,	)	The Honorable Rodolfo Garcia,
Third-Party Defendant-Appellee.	)	Judge presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: This court lacked jurisdiction to consider the merits of this appeal.

¶ 2 Appellants Mahoney & Associates Trust (Trust) and its acting trustee, Clinton Mahoney, present what they contend is an interlocutory appeal under Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) of the circuit court's indirect civil contempt finding against the Trust and former trustee for failing to abide by an earlier agreed order to maintain funds in the Trust. Appellants appeal from the denial of a motion challenging that holding, which appellants now characterize as an unlawful prejudgment attachment. Appellees James and June Mahoney filed a motion contending Rule 307(a)(1) was an improper basis for appellate jurisdiction, as there was no injunction at issue, and this court took the motion with the case. Having fully reviewed the appellees' motion, the briefs, and record, and for the reasons to follow, we dismiss the appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 This case involves a complicated history of litigation revolving around a family dispute over money. It has led to a former husband suing his former wife; a child suing his parents; a grandmother suing her son, former daughter-in-law, and grandchild; and bankruptcy proceedings. Currently, there are four other appeals pending in this court involving the present case or relating to the parties in litigation (Nos. 1-14-0113, 1-15-0308, 1-15-0181, and 1-14-3198). In the 1990s, plaintiff James Mahoney was married to defendant Kari Blunda. They established the Trust (Trust). Various other business entities/trusts or individuals loaned the Trust money of some $2.4 million. James and Kari transferred the loaned trust money to the Trust-owned LLC, which then bought property at 237 E. Ontario (the former Museum of Contemporary Art building).

¶ 5 In 2000, James and Kari divorced. They had one son, Clinton, the sole beneficiary of the Trust. Legal disputes and litigation began in 2009. James resigned as cotrustee in 2010, leaving Kari as sole trustee. The entity that owned 237 E. Ontario filed for bankruptcy, and as a result, the building was sold in September 2012 for $7 million. This sale garnered the Trust $4.3 million. James sued Kari and the Trust in chancery claiming he was owed a percentage of those sale proceeds on his initial loan to the Trust.[1]

¶ 6 James filed a temporary restraining order for the purposes of preserving his claimed funds. In October 2012, at the hearing on his claim, James expressed that due to the litigation he was afraid the Trust money would be dissipated. After extensive argument by both parties, the court continued the matter because the parties had agreed off record that they would try to determine a "reasonable path" for "resolution."

[1] Apparently, Clinton sued his father and mother claiming that they breached their fiduciary duty as cotrustees by not selling 237 E. Ontario sooner for more money.

¶ 7 On November 2, 2012, the parties entered an agreed order, which stated the Trust would maintain "assets in excess of Plaintiff's claim for $1,774,428," unless they decided to amend the agreement or unless defendants otherwise notified James and provided him with an opportunity to object. The court entered and continued James' previous motion for a temporary restraining order. James's mother June then filed a motion for leave to intervene and file a third-party complaint, as well as a temporary restraining order. She also claimed she was owed some $600,000 from an earlier loan. June sued James, Kari, and the Trust for that reason, as well as Clinton for tortiously interfering with the claimed payment, which was supposed to issue upon sale of the property. Similar to the November 2 agreed order, the parties entered into an agreed order on November 19, which stated the Trust would maintain "assets in excess of Plaintiff's and June Mahoney's combined claims for $2,074,428," unless they decided to amend the agreement or unless defendants otherwise notified June and James and provided them with an opportunity to object. The court ruled that June's motion for a temporary restraining order was "withdrawn without prejudice." Accordingly, no temporary restraining order or injunction was entered.

¶ 8 Several years later, James and June filed an amended joint emergency motion for rule to show cause, seeking to hold Kari and the Trust in indirect civil contempt of court. James and June claimed Kari and the Trust had not abided by the November 2 and 19 orders ("Agreed Orders"). In support, they attached and cited a letter by Kari's attorney, dated February 14, 2014, stating that since the entry of the Agreed Orders, the Trust had allowed transfers to be made from its accounts for such things as taxes, attorneys fees and third-party investment loans.

¶ 9 In response, in February 2014, the trial court held that all Trust assets were frozen and no transactions or transfers of any kind could be made without leave of court. The court stated the Agreed Orders still stood but that the value of the Trust assets were then subject to question.

¶ 10 On February 21, Kari resigned as trustee. Clinton then became the successor trustee. On March 4, the court issued a rule to show cause against Kari (as former trustee) and the Trust as to why they should not be held in contempt for violating the Agreed Orders. An evidentiary hearing was held on April 23 with the parties and/or parties' counsel present. Kari testified that she believed the agreement governing the Trust permitted her to make loans out of the Trust. In spite of the Agreed Orders, she made loans, payments, and disbursements from the Trust. As of March 31 that year, the Trust held about $86,500. Kari nonetheless claimed the Trust held sufficient *assets*, although the details of her testimony did not necessarily support this assertion.

¶ 11 Then, on April 25, the court entered an order finding the terms of the Agreed Orders were clear and enforceable. The court noted the purpose of the Agreed Orders was to "preserve a limited amount of the funds" or $2,074,428 obtained by the Trust from the cash proceeds of the real estate sale (237 E. Ontario) until James' and June's claims were adjudicated. This purpose was clear in light of the pleadings and injunctive motions pending just prior to the Agreed Orders. The court held Kari and the Trust had violated the terms of the Agreed Orders by failing to maintain and preserve assets in excess of the stated amount and failing to provide advance written notice to James' and June's counsel regarding the amendment to the Agreed Orders.

¶ 12 The court held Kari and the Trust willfully disobeyed the Agreed Orders, which remained in effect, and this warranted a finding of indirect civil contempt. Not only had their behavior impaired James' and June's rights/interests, it had impaired the court in the administration of justice. The court ordered the Trust to deposit $2,074,428 cash into a court-administered escrow within 14 days, froze all Trust assets, and ordered Kari and the Trust to pay at a future date reasonable attorneys fees for enforcement of the Agreed Orders. No penalty attached to the contempt finding.

¶ 13 On May 9, Clinton, acting as trustee, and the Trust filed a motion "to dissolve injunctive orders," challenging the April 25 order along with others. On May 19, the trial court denied that motion.[2]

¶ 14 On May 28, Clinton and the Trust filed an interlocutory appeal under Supreme Court Rule 307(a) (eff. Feb. 26, 2010), principally challenging the court's May 19 and April 25 orders, among others (November 2, 2012; November 19, 2012; February 19, 2014; March 4, 2014). As stated, we ordered appellees' subsequent motion to dismiss for lack of jurisdiction taken with the case.

¶ 15 ANALYSIS

¶ 16 Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) provides "[a]n appeal may be taken to the Appellate Court from an interlocutory order of court *** granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." The purpose of Rule 307(a)(1) is to provide for the interlocutory review of a court's exercise of its equitable power to grant injunctive relief and to prevent abuses of power that could result in irreparable harm. *In re Marriage of Johnston*, 206 Ill. App. 3d 262, 264 (1990). Here, Clinton and the Trust appeal from the court's order denying their motion to dissolve what they claimed was an injunction, apparently entered on April 25 (the contempt order) and also November 12 and 19 (the Agreed Orders). For the reasons to follow, we find none of these underlying orders constituted an injunction. As a result, there was no injunction to "dissolve."

¶ 17 To determine what constitutes an appealable injunctive order under Rule 307(a)(1), we look to the substance of the action, not its form. *In re A Minor*, 127 Ill. 2d 247, 260 (1989). Tests and definitions regarding which orders are interlocutory or appealable must be considered

[2] The motion to dissolve the injunctive order in the record does not bear a stamp of the circuit court, but we presume it was properly filed since the trial court ultimately denied the motion.

in light of the facts and relief sought in each case. *In re Marriage of* Meyer, 197 Ill. App. 3d 975, 978 (1990). An injunction has been defined as a "prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act *** which he is threatening or attempting to commit," or, more simply, as a "judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing." *Id*. at 261, quoting Black's Law Dictionary 705 (5th ed. 1983). The supreme court has similarly described an injunction as "a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights." *Id*.; see also *People v. Kelly*, 397 Ill. App. 3d 232, 266 (2009) ("injunction," in Rule 307(a), is a prohibitive, equitable remedy that forbids a party from doing some act that he or she is threatening or attempting to commit).

¶ 18 The orders under review cannot be lifted out of the context in which they arose. Here, the parties reached an agreement as to the funds that should be deposited in the Trust account during the pendency of litigation. On November 12 and 19, 2012, the circuit court approved these agreements, making them the "Agreed Orders." The record does not disclose that the orders were injunctions for the purposes of Rule 307, as there can be no real "party complainant" when the parties are actually in accord with one another. See, *e.g.*, *Hamilton v. Williams*, 237 Ill. App. 3d 765, 777-79 (1992) (order implementing arbitration procedure previously agreed to by parties was not immediately appealable under 307, as it lacked trait of compulsion); *Village of Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 41-42 (1985) (corporation's entry of agreed order to clean pond area could not be characterized as an injunction); see also *In re*

Haber, 99 Ill. App. 3d 306, 309 (1981) (agreed order is a recordation of the agreement between the parties and is not a judicial determination of parties' rights and is generally not subject to review); *but see Bundy v. Church League of America*, 125 Ill. App. 3d 800, 803, 805 (1984) (allowing appeal under Rule 307(a)(1) from trial court's *sua sponte* dissolution of "agreed injunctive order"); *In re Marriage of de Rosa*, 115 Ill. App. 3d 774, 777-78 (1983) (injunction where parties entered into agreed order mutually enjoining them from disposing of marital assets; court had appellate jurisdiction over subsequent order modifying injunction). The record in fact demonstrates that the parties and trial court intended to avoid the imposition of an injunction by entering the Agreed Orders. In addition, there was no formal hearing on an injunction, and the trial court did not style the orders as such. Not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing. *In re A Minor*, 127 Ill. 2d at 261-62. As a result, we conclude the April 25, 2014, order merely enforced the 2012 Agreed Orders and held Kari and the Trust in contempt for failing to abide by the promise they had earlier made. See *Village of Lakemoor*, 136 Ill. App. 3d at 41-42 (trial court had authority to find corporation in contempt for failing to abide by agreed order).

¶ 19 Moreover, orders properly characterized as "ministerial" or "administrative" are not subject to interlocutory appeal as of right because they only regulate the procedural aspects of the case before the court. *Raymond W. Pontarelli Trust v. Pontarelli*, 2015 IL App (1st) 133138, ¶ 21. The Agreed Orders and the April 25 order enforcing the Agreed Orders regulated the procedural details of the litigation. See *id*.; see also *Johnston*, 206 Ill. App. 3d at 264. Nor can we say that the record discloses irreparable harm would result from the enforcement of orders to which the parties had earlier agreed. See *id*. It is the court's prerogative to ensure that trusts continue to operate during litigation. *Pontarelli*, 2015 IL App (1st) 133138, ¶ 25. The present

scenario is not appreciably different from when a court orders money to be held in escrow. Such orders are likewise not appealable under Rule 307, as they are merely interim orders, designed to preserve a fund until rights to it can be established; they are not orders establishing such rights. *Philip Morris*, 198 Ill. 2d 87, 102 (2001); see also *In re Marriage of Tetzlaff*, 304 Ill. App. 3d 1030, 1038-39 (1999) (order requiring parties to place interim attorney fee award into escrow was not injunctive under Rule 307).

¶ 20 Given that there was no injunction here, we cannot credit the appellants' characterization of their May 19 motion as one seeking to "dissolve the injunction." Rather, we find this was a motion seeking to challenge the Agreed Orders. This cause is therefore not amenable to interlocutory appeal under Rule 307(a)(1), and the appellants do not argue any other basis for this court's jurisdiction, nor has our research uncovered any such basis supported by the record. See Ill. S. Ct. R. 341(h)(4) (eff. Feb. 6, 2013) (briefs must explain the basis for this court's jurisdiction).

¶ 21 CONCLUSION

¶ 22 We do not have jurisdiction to consider the April 25 or May 19, 2014, orders under Rule 307. As a result, we likewise do not have jurisdiction to consider any of the preceding orders appellants identify, as they are far beyond the scope of Rule 307. See Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010) (unless an exception applies, appeals under Rule 307 must be filed within 30 days of the interlocutory order); *TIG Ins. Co. v. Canel*, 389 Ill. App. 3d 366, 372 (2009) (Rule 307 does not permit general review of all court orders up to date of the order that is appealed).

¶ 23 We dismiss the appeal for lack of jurisdiction.

¶ 24 Dismissed.