

2015 IL App (1st) 150639-U
No. 1-15-0639
October 20, 2015

SECOND DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF VALENTIN G.,)	Appeal from the Circuit Court
JORGE M., and DAYSY G.,)	Of Cook County.
)	
Minors-Respondents-Appellees,)	
)	No. 13 JA 113
v.)	13 JA 114
)	13 JA 115
(The People of the State of Illinois,)	
Petitioner-Appellee,)	The Honorable
v.)	Andrea Buford,
ADELAIDA C.,)	Judge Presiding.
Intervenor-Appellant).)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court denied appellant's petition to intervene, without adding language to make the order immediately appealable, and the appellant failed to file a timely notice of appeal, the appellate court lacked jurisdiction to review the denial of the petition for leave to intervene.

¶ 2 This case involves the custody of three minors. Adelaida C., grandmother of the three children, filed a notice of appeal in which she listed an order denying her petition for leave to intervene as the order appealed. We find that we lack jurisdiction to consider the appeal.

¶ 3 BACKGROUND

¶ 4 On July 8, 2014, Adelaida filed a petition for leave to intervene in this case concerning the custody of Valentin G., Jorge M. and Daysy G. The circuit court entered an order denying the petition on September 15, 2014. Adelaida filed a motion for reconsideration on December 8, 2014. In an order dated January 6, 2015, the circuit court denied the motion for reconsideration as untimely. Adelaida filed an amended notice of appeal on February 26, 2015. Although Adelaida claims she filed her initial notice of appeal on February 5, 2015, she did not include that notice of appeal in the record. The children ask us to dismiss Adelaida's appeal for want of jurisdiction.

¶ 5 ANALYSIS

¶ 6 An order denying a petition for leave to intervene finally disposes of the rights of the person seeking to intervene, and therefore the order qualifies as a final order with respect to that person. See *Koester v. Yellow Cab Co.*, 18 Ill. App. 3d 56, 61 (1974). However, panels of the appellate court have split over the question of whether the person seeking to intervene can appeal the denial immediately, when the circuit court has not included language under Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) to make the final order appealable. See *Northern Trust Co. v. Halas*, 257 Ill. App. 3d 565, 573 (1993) and cases cited therein.

¶ 7 The appellate court in several cases has held that the person denied leave to intervene can appeal the denial immediately, even without 304(a) language. *E.g.*, *Koester*, 18 Ill. App. 3d at 61; *Veterans Travel Club of Western Illinois University v. Illinois Commerce Comm'n*, 15 Ill. App. 3d 116, 119 (1973). The court in these cases treats the petition to intervene as a separate case and the denial of leave to intervene as a final judgment, ostensibly because the person denied leave to intervene never became a party to the underlying case. See Ill. S. Ct. R. 303 (eff. Jan. 1, 2015). In other cases, the appellate court has held that the denial of leave to intervene becomes appealable only if the trial court adds appropriate language to invoke appellate jurisdiction under Rule 304(a). See *Northern Trust*, 257 Ill. App. 3d at 574; *Village of Long Grove v. Austin Bank*, 234 Ill. App. 3d 376, 377-79 (1992). The court in these cases treats the person seeking intervention as a quasi-party, and the order denying leave to intervene as a final determination of the quasi-party's rights that did not resolve the rights of the other parties to the case. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Due to the split in authority, we consider our jurisdiction under both rules.

¶ 8 The circuit court's orders here do not include any Rule 304(a) language concerning appealability. Accordingly, if Rule 304(a) controls the appealability of the denial of a petition for leave to intervene, the notice of appeal does not confer jurisdiction on this court. See *Marcheschi v. P.I. Corp.*, 84 Ill.App.3d 873, 878 (1980); *Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. Harris Trust & Savings Bank*, 63 Ill.App.3d 1012, 1020 (1978).

¶ 9 If the order denying leave to intervene qualifies as an appealable order, then Adelaida needed to file either a postjudgment motion or a notice of appeal within 30 days of the order denying her petition for leave to intervene. Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015); *In re*

Application of County Treasurer, 214 Ill. 2d 253, 261 (2005). She did neither. The untimely motion for reconsideration did not extend the time for filing the notice of appeal. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). If Rule 303 controls, then, because Adelaida did not file her notice of appeal within 30 days of September 15, 2014, the date of the order denying her petition for leave to intervene, the notice of appeal does not confer jurisdiction on this court. See *Archer Daniels Midland*, 103 Ill. 2d at 539.

¶ 10 We further note that Adelaida did not even include in the record on appeal the notice of appeal she claimed that she filed on February 5, 2015. Thus, she has not shown that she filed any notice of appeal within 30 days of the order denying the motion for reconsideration. Even if Rule 303 controlled, and the motion for reconsideration revested jurisdiction in the circuit court, we would still lack jurisdiction to consider the appeal. See *Bean v. Norfolk & Western Ry. Co.*, 84 Ill. App. 3d 395, 400 (1980); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, we dismiss the appeal for lack of jurisdiction.

¶ 11 Appeal dismissed.