

2015 IL App (2d) 140491-U  
No. 2-14-0491  
Order filed June 1, 2015

**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  
SECOND DISTRICT

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<i>In re</i> ESTATE OF PAUL J. GODINEZ,	)	Appeal from the Circuit Court
Deceased.	)	of Kane County.
	)	
	)	No. 07-P-600
	)	
(Shogren Performance Marine, LLC,	)	
Petitioner-Appellee and Cross-Appellant and	)	
Nova Data Comm, Petitioner-Appellee v.	)	Honorable
Elizabeth Verzani, Respondent-Appellant	)	James R. Murphy,
and Cross-Appellee).	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appeal and cross-appeal dismissed for lack of jurisdiction. (1) Supreme Court Rule 304(b)(1) provided no basis for appellate jurisdiction where trial court order did not “finally” determine the right or status of a party or resolve all matters on a particular issue, nor was the notice of appeal timely filed; (2) Supreme Court Rule 307(a)(1) also provided no basis for appellate jurisdiction, as the notice of appeal was not timely filed.

¶ 2 Respondent, Elizabeth Verzani, appeals from the trial court’s orders granting partial summary judgment in favor of petitioners, Shogren Performance Marine, LLC and Nova Data Comm, denying her motion for summary judgment, and denying her subsequent motion to reconsider. Shogren cross-appeals from the same grant of partial summary judgment in its favor.

¶ 3 This appeal arises out of the claims of various parties for the proceeds of life insurance policies on the life of Paul Godinez, who died in May, 2007. Adrianna Sormani, Godinez's first wife, filed a declaratory action regarding the proceeds of American General Insurance Company (AIG) policy number 82453. AIG had previously deposited \$1,001,680 with the circuit court clerk of Lake County pursuant to a decree of interpleader. Verzani, who was Godinez's second wife and surviving spouse and had been appointed as administrator of Godinez's estate, filed an appearance in the action on her own behalf; however, she did not file an appearance on behalf of the estate. A settlement regarding the proceeds was reached, and Verzani received \$317,815.33 of the proceeds. The settlement agreement made no mention of the estate.

¶ 4 The probate case was transferred to Kane County. Verzani filed a final accounting of the estate, showing no receipts and a cash shortfall of \$48,000. Verzani was eventually removed as administrator of the estate and replaced by independent administrator Steven Newell. A citation to discover assets as to Verzani led to a temporary restraining order barring the transfer of any funds out of Verzani's bank accounts other than her checking account and, on December 1, 2011, a freeze on all of her non-checking account assets at West Suburban Bank. The trial court also allowed the claims of Shogren (approximately \$229,000) and Nova Data Comm (approximately \$300,000) against the estate. In June 2012, Newell filed a three-count petition to recover estate assets, alleging breach of fiduciary duty and conversion against Verzani. Newell also sought punitive damages. Shogren was substituted for Newell as petitioner in October 2012, and Nova Data Comm joined the petition. Newell was discharged from the case in January 2013. The freeze on Verzani's bank account was limited to \$320,000, and all other amounts were released to her on February 7, 2013.

¶ 5 Shogren filed a motion for summary judgment on its claims of breach of fiduciary duty and conversion, and Verzani filed a cross-motion for summary judgment. On November 25, 2013, the trial court granted summary judgment in favor of Shogren as to breach of fiduciary duty, finding that Verzani “had fiduciary duties” and that “she breached those fiduciary duties to the estate.” The court denied judgment as to Shogren’s conversion claim and denied Verzani’s motion. The court imposed a constructive trust on \$317,815.33 in Verzani’s bank account “subject to further ruling on the extent of the ‘Res’ of the Trust” and declared Verzani “to be a constructive trustee as to that fund in her possession but subject to proofs or further ruling on law as to what the res is.” The court noted that that it had granted “only a partial summary judgment” and that “the question of damages or the question of the extent of the constructive trust still remains.” The court also granted Shogren leave to file “an amended complaint or petition that alleges the constructive trust in order to conform the pleadings with the proofs under this summary judgment.” The court denied Verzani’s request for findings pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010), stating that “the Appellate Court needs to hear what the res of the constructive trust is going to be, how much before they want to rule on the constructive trust because I think that is an element of constructive trust that needs to be there.” The court continued the case for briefing on the issue of the res and for Shogren to file an amended citation.

¶ 6 On December 24, 2013, Verzani filed a motion for clarification and reconsideration, which the trial court denied on April 22, 2014. The constructive trust remained at \$318,000, and the case was continued to May 27 for determination of the res and Verzani’s answer to the amended petition. However, on May 22, Verzani filed her notice of appeal.

¶ 7

## II. ANALYSIS

¶ 8 In her notice of appeal, Verzani alleged as bases for her appeal two supreme court rules: 304(b)(1) (eff. Feb. 26, 2010) and 307(a)(1) (eff. Feb. 26, 2010). Shogren moved to dismiss these appeals for a lack of jurisdiction, and a panel of this court denied the motion. However, the denial of a motion to dismiss an appeal prior to briefing and argument is not final; it may be revised at any time before the disposition of the appeal. *Hwang v. Tyler*, 253 Ill. App. 3d 43, 45 (1993). This court has a duty to consider *sua sponte* its jurisdiction and to dismiss an appeal if we lack it. *Department of Health Care and Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 7. Upon further consideration, we conclude that we lack jurisdiction, and dismiss both Verzani’s appeal and Shogren’s cross-appeal.

¶ 9 A. Supreme Court Rule 304(b)(1)

¶ 10 Generally, “an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.” Ill. S.Ct. R. 304(a) (eff. Feb. 26, 2010). However, 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 without the finding required under subsection (a). Ill. S.Ct. R. 304(b)(1) (eff. Feb. 26, 2010). Not every order entered in an estate proceeding may be immediately appealed pursuant to Rule 304(b)(1); only final orders fit within its ambit. *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051(2005). It is not necessary that the order resolve all matters in the estate; however, it must resolve all matters on the particular issue. *Id.* To satisfy the finality requirement, an order must “finally” determine the right or status of a party (*In re Estate of Vogt*, 249 Ill. App. 3d 282, 285 (1993)) or it must resolve all matters on a particular issue. *Raymond W. Pontarelli Trust v. Pontarelli*, 2015 IL App (1st) 133138, ¶ 26.

¶ 11 Here, the trial court’s November 2013 grant of summary judgment on the issue of breach of fiduciary duty did not “finally” determine the right or status of any party, nor did it resolve all matters as to that issue. Verzani, as administrator of Godinez’s estate, owed a fiduciary duty to the estate as of the date of her appointment; this litigation did not create any new status as a fiduciary or impose any new fiduciary duty on her. Verzani had not had access to the insurance proceeds since 2011, as those funds had been frozen by order of the court. The trial court’s order did nothing but preserve the *status quo*, pending a final determination of the parties’ rights. Further, the order did not even address, let alone resolve, the amount of damages related to Verzani’s breach of fiduciary duty.

¶ 12 Even if the order granting partial summary judgment were a final order under Rule 304(b)(1), this court would still lack jurisdiction over this appeal. Orders that are within the scope of Rule 304(b)(1) *must* be appealed within 30 days of entry or be barred. *Stephen*, 361 Ill. App. 3d at 1051; *In re Estate of Devey*, 239 Ill. App. 3d 630, 633 (1993). Here, Verzani filed her notice of appeal almost six months after the court’s order granting partial summary judgment was entered.

¶ 13 B. Supreme Court Rule 307(a)(1)

¶ 14 Although Verzani did not raise Supreme Court Rule 307(a)(1) in either her response to Shogren’s motion to dismiss in this court or in her appellate brief, she did raise it in her notice of appeal. Therefore, we will briefly address it here.

¶ 15 “An 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 \*\*\*.” Ill. S.Ct. R. 307(a)(1) (eff. Feb. 26, 2010). Apart from two exceptions not applicable here, such an appeal must be perfected within 30 days from the entry of the interlocutory order. Ill. S.Ct. R.

307(a) (eff. Feb. 26, 2010). A motion to reconsider does not toll the 30-day rule. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1028 (2005). Assuming, *arguendo*, that the trial court's imposition of the constructive trust qualified as an injunction under Rule 307(a)(1), we still would have no jurisdiction over this appeal. Verzani's notice of appeal was untimely, as it was filed almost six months after the trial court's November 25, 2013 order.

¶ 16 For the same reasons, we also lack jurisdiction over Shogren's cross-appeal in this case.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we dismiss these appeals for lack of jurisdiction.

¶ 19 Appeal and cross-appeal dismissed.