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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF MICHAEL SIUREK,	)	Appeal from the Circuit Court of Du Page County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 09-D-144
	)	
M. COLLEEN RYAN,	)	Honorable
	)	Timothy J. McJoynt,
Respondent-Appellee.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because petitioner appealed the judgment on his claim for declaratory relief while other postdissolution claims were pending and without a Rule 304(a) finding, the appeal was premature, and we dismissed it pursuant to *Knoerr*.

¶ 2 Petitioner, Michael Siurek, appeals from an order of the circuit court of Du Page County denying his postdissolution motion for declaratory relief. Because the order did not dispose of all pending claims, and no finding was entered pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), we lack jurisdiction and dismiss this appeal.

¶ 3 I. BACKGROUND

¶ 4 Petitioner filed a petition seeking to dissolve his marriage to respondent, M. Colleen Ryan. On January 13, 2011, the trial court entered a judgment of dissolution. As part of that judgment, the court awarded respondent a home in Naperville. In doing so, the court ordered that, if respondent were to sell the home “within 36 months of the judgment,” and she were not to net \$800,000 in proceeds, then petitioner was to pay her the difference between what she did net and \$800,000. The judgment further stated that that provision was to “expire 36 months from the date of the decree.”

¶ 5 On February 14, 2011, both parties filed postjudgment motions. On July 1, 2011, the trial court entered an amended judgment. The July 1 judgment reiterated verbatim the provisions in the January 13, 2011, judgment regarding the sale of the home.

¶ 6 On January 22, 2014, respondent sold the home. In doing so, she netted less than \$300,000. On March 7, 2014, respondent filed a two-count petition for a rule to show cause. In count I she asserted that, because the sale occurred within 36 months of the July 1, 2011, judgment, petitioner should be found in contempt for not paying her the difference between what she netted and \$800,000. She further asserted that the net proceeds were reduced, in part, because of various expenses that she incurred as a result of preparing the home for sale. In count II, she sought payments from petitioner related to certain of his business ventures.

¶ 7 On April 9, 2014, petitioner filed a motion to dismiss count I of the petition and a motion for declaratory judgment pursuant to section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2014)). In the motion to dismiss, he contended that he was not obligated to pay respondent the difference between the net proceeds and \$800,000, because the sale did not occur within 36 months of the January 13, 2011, judgment. He also maintained that the expenses related to the sale were respondent’s sole responsibility. In his motion for declaratory judgment,

petitioner again contended that he was not obligated to make up the difference between the net proceeds and \$800,000, because the sale was more than 36 months after January 13, 2011.

¶ 8 Also on April 9, 2014, petitioner filed a response to the petition for a rule to show cause. In that response, petitioner objected to the claims in count II. He reserved his right to respond to count I until after the trial court ruled on his motion to dismiss and his motion for declaratory judgment.

¶ 9 On October 28, 2014, the trial court ruled that the 36-month period did not begin to run until the judgment became final. It found that the judgment did not become final until July 1, 2011. Therefore, the court ruled that the sale of the home occurred within the applicable 36-month period and denied petitioner's motion for declaratory judgment.

¶ 10 On November 24, 2014, respondent filed a two-count, amended petition for a rule to show cause that essentially sought similar relief as that in her original petition. On November 25, 2014, petitioner filed a notice of appeal from the October 28, 2014, order denying his motion for declaratory relief.

¶ 11 On November 26, 2014, petitioner filed in the trial court a motion for certification under Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010) and a motion for a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). On January 13, 2015, the trial court denied both of petitioner's motions. In denying the Rule 304(a) motion, the court explained that all claims in the case were not "done." It elaborated that "[t]he list of post decree pleadings keeps piling up in this case. There [are] still open pleadings from 2013." The court added that the postdecree pleadings "are to some extent all intertwined with regards to various provisions of the marital settlement agreement, not the least of which is [the] sale of [the] home." Finally, the

court ruled that it did not “think it is a final and appealable order. I think there are a number of things that still have to be resolved in the trial court before this is ready for the Appellate Court.”

¶ 12 On February 6, 2015, respondent filed in this court a motion to dismiss the appeal for lack of jurisdiction. In doing so, respondent contended, in part, that the October 28, 2014, order was not final, because it did not terminate the entire litigation. Alternatively, respondent asserted that the order did not dispose of all the claims and therefore was unappealable without a Rule 304(a) finding. Petitioner responded that an order disposing of a postdissolution motion for declaratory judgment is final and appealable without a Rule 304(a) finding. A panel of this court denied respondent’s motion to dismiss. In her appellate brief, respondent reiterates her contention that we lack jurisdiction.

¶ 13

## II. ANALYSIS

¶ 14 Although petitioner cites to Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008) as jurisdictional authority for his appeal, that rule applies only when “every right, liability or matter raised” in an action has been resolved. See *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990). When a final order disposes of fewer than all of the parties or the claims in an action, then Rule 304(a) applies. *Marsh*, 138 Ill. 2d at 464-65. Under Rule 304(a), a final order as to fewer than all of the parties or claims is appealable “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); see *Marsh*, 138 Ill. 2d at 464-65.

¶ 15 In this case, assuming that the October 28, 2014, order was final as to the motion for declaratory judgment, it was nonetheless not appealable without a Rule 304(a) finding. That is so because there were other postdissolution claims pending. The trial court expressly referred to the many claims that were yet to be decided. Thus, a Rule 304(a) finding was necessary to

invoke this court's jurisdiction. See *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 744 (2007) (a postdissolution claim is considered part of the dissolution proceeding, as opposed to a new action, and therefore is subject to Rule 304(a)).

¶ 16 Petitioner attempts to circumvent that conclusion by contending that a motion for declaratory relief is appealable irrespective of Rule 304(a). That contention, however, is foreclosed by our recent decision in *In re Marriage of Heinrich*, 2014 IL App (2d) 121333. In that case, we held that, even though the order disposing of the motion for declaratory judgment was final, an appeal required Rule 304(a) finding, because another claim remained pending. *Heinrich*, 2014 IL App (2d) 121333, ¶¶ 28-36. In this case, because there were claims remaining, an appeal of the disposition of the motion for declaratory judgment required a finding under Rule 304(a).

¶ 17 In his response to the motion to dismiss the appeal, petitioner tried to distinguish *Heinrich* by noting that the trial court in *Heinrich* disposed of the motion for declaratory relief before the decree was entered. See *Heinrich*, 2014 IL App (2d) 121333, ¶ 36. That argument lacks merit. Nothing in *Heinrich* can be read to limit its holding to predecree dispositions of motions seeking declaratory relief. Indeed, such a reading of *Heinrich* would be inconsistent with the plain language of Rule 304(a) and our holding in *Duggan*.

¶ 18 Where the record shows that the pendency of a claim has made an appeal premature, we generally follow the procedure set out in *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042,1050 (2007). Should all pending claims have been resolved and the time for filing a notice of appeal expired, petitioner may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits.

¶ 19

### III. CONCLUSION

¶ 20 For the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 21 Appeal dismissed.