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2015 IL App (3d) 140688-U

Order filed December 16, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

LEE DOYLE, Executor of the Estate of)	Appeal from the Circuit Court
Marylu Doyle, Deceased,)	of the 10th Judicial Circuit,
)	Marshall County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	
)	
KENNETH E. DOYLE,)	Appeal No. 3-14-0688
)	Circuit No. 13-L-11
Defendant-Appellant,)	
)	
and)	
)	
ERICSON ACRES TRUST, dated July 24,)	
2008 as Amended, wherein LEE DOYLE is)	
Trustee,)	Honorable
)	Thomas A. Keith
Garnishee-Appellee.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Cause dismissed for lack of jurisdiction where order appealed from was not final order. Trial court granted judgment on the pleadings on principal amount only in breach of contract claim and reserved matter of interest, which remained pending at time of appeal.

¶ 2 Plaintiff Lee Doyle, executor of the estate of his mother, Marylu Doyle, brought a breach of contract action against his brother, defendant Kenneth Doyle, alleging Kenneth breached an oral contract to repay a \$120,000 loan made from Marylu in 1994. The trial court granted Lee judgment on the pleadings on the breach of contract as to the principal amount and reserved the issue of interest. Kenneth filed a motion to vacate the judgment and Lee filed a motion to dismiss and strike the motion to vacate. The trial court granted Lee's motion and denied Kenneth's motion. Kenneth appealed.

¶ 3 **FACTS**

¶ 4 On November 4, 2013, plaintiff Lee Doyle, executor of the Estate of Marylu Doyle, brought this breach of contract action against defendant Kenneth Doyle, alleging Kenneth breached an oral contract to repay a \$120,000 loan made by Marylu to Kenneth in 1994. Kenneth sent a letter to the trial court "in response to the Summons." In the letter, Kenneth admitted that Marylu loaned him \$120,000, that there were no loan documents, and that no provisions were made for repayment. According to Kenneth, Marylu did not ask for interest because he was taking care of her business matters without other compensation and he was gifted the interest while his other siblings received other gifts from Marylu. He was never asked to pay interest on the loan, Marylu did not seek repayment, and there was no reference to the loan in Marylu's will or other trust documents. Lastly, Kenneth claimed he had no means to repay the loan at the current time, and if Lee pursued it, Kenneth would be forced to file bankruptcy. The trial court considered Kenneth's letter, a responsive pleading and required him to pay the filing fee. The letter was entered into the court file on January 2, 2014.

¶ 5 Lee filed a motion for judgment on the pleadings, which the trial court granted on January 22, 2014. It entered judgment against Kenneth in the principal amount of \$120,000 and

reserved ruling on the matter of interest. The order granted Kenneth until February 28, 2014, to respond to Lee's request for interest. Kenneth filed a "response" on February 13, 2014, answering the allegations in Lee's breach of contract complaint.

¶ 6 On February 18, 2014, the trial court entered an order and memorandum of judgment on the breach of contract and again reserved the interest issue. The trial court included Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) language in the order, providing that there was no just reason for delaying either enforcement or appeal. On June 5, 2014, Lee moved to intervene as trustee for the Ericson Acres Trust. Also on June 5, 2014, Kenneth filed a section 2-1401 petition to vacate the judgment, asserting the statute of limitations barred Lee's breach of contract action. Lee and the Ericson Acres Trust filed a joint motion to dismiss and strike the motion to vacate. On August 12, 2014, the trial court granted Lee's motion and denied Kenneth's motion. The trial court found that the statute of limitations was not an appropriate affirmative defense and that Kenneth's motion was insufficient. Kenneth appealed.

¶ 7 ANALYSIS

¶ 8 Kenneth raises three issues on appeal: whether the trial court erred when it granted Lee's motion for judgment on the pleadings, when it denied Kenneth's section 2-1401 petition, and when it granted Lee's motion to dismiss and vacate. We do not reach the merits of these issues, however, because we find we lack jurisdiction over this appeal.

¶ 9 The appellate court's jurisdiction is limited to the review of appeals from final judgments, subject to various exceptions. *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 307 Ill. App. 3d 528, 537 (1999). For the purposes of an appeal, a judgment is final if it determines the action, or some definite part of it, on the merits so that the only thing left remaining is for the trial court to execute the judgment. *Valdovinos*, 307 Ill. App. 3d at 538. If multiple parties or multiple

claims for relief are involved in an action, 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. R. 304(a) (eff. Feb. 26, 2010). Rule 304(a) applies only to multiple claims, parties, or both. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 506 (2009). The addition of Rule 304(a) language does not make a nonfinal order final and appealable. *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 23. Whether we have jurisdiction is a question of law we review *de novo*. *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 821 (2010).

¶ 10 The trial court entered judgment on the pleadings as to principal only on January 22, 2014. The order provided that judgment was entered in the principal amount of \$120,000 and granted the parties time to file pleadings as to interest only. The trial court entered a second order granting judgment on the pleadings on February 18, 2014. This order again entered judgment as to principal only with postjudgment interest to accrue. It stated that the issue of prejudgment interest remained pending and included Rule 304(a) language that there was “no just reason for delaying either enforcement or appeal.”

¶ 11 We find the trial court’s order granting judgment on the pleading was interlocutory in nature and was not a final judgment. The complaint consisted of one claim of breach of contract and final judgment was not ready to be executed until the court determined both principal and interest. The order granting judgment on the pleadings to Lee on principal only was not a final order and the trial court’s inclusion of Rule 304(a) language did not make it final. Because the order was not final, there was nothing for Kenneth to attack with a section 2-1401 petition, the

denial of which was the basis of this appeal. Accordingly, we dismiss the appeal for lack of jurisdiction.

¶ 12 Appeal dismissed.