

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).

FILED

December 1, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 140999-U

NO. 4-14-0999

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DARNELL SMITH,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ and NURSE KALER,)	No. 14L133
Defendants-Appellees.)	
and)	
DEBORAH FUQUA, TERRY ANDERSON, TARRY)	
WILLIAMS, RICK ORR, JEFFREY P. KORTE, RICK)	
D. ANDERSON, COUNSEL SCHUTTE, TARA)	
GOINS, SGT. THOMAS, SGT. PERRY, LT.)	
GREGORSON, SGT. GARRETT, and MICHELE)	
OLSON,)	
Defendants.)	Honorable
)	John P. Schmidt,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed the appeal, concluding it was without jurisdiction.

¶ 2 In May 2014, plaintiff, Darnell Smith, commenced a personal injury suit against defendants, S.A. Godinez, Nurse Kaler, 14 other individuals of the Western Correctional Center (Western), and correctional officers on the 3 p.m. to 11 p.m. shift in housing units 2-3-4 in 2013 at Western. In July 2014, Smith filed a motion requesting a default judgment against defendants

Godinez and Kaler for failure to file an appearance within 30 days of service. In August 2014, defendant Godinez filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)) and argued the case should be dismissed against him pursuant to section 2-615 and under section 2-619 of the Code (735 ILCS 5/2-615, 2-619.1 (West 2012)), which was granted. Defendant Kaler filed a motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), which was also granted. Smith appeals, arguing the trial court erred when it (1) refused to hear his pending motions, (2) granted defendant Kaler's motion to dismiss, and (3) granted defendant Godinez's combined motion to dismiss. We dismiss this appeal for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 On May 23, 2014, prior to filing his lawsuit, Smith served a 30-day summons on Mark Stephenson, the record custodian at Western, naming "Jeff Korte warden et. al Western Correctional Center." The Sangamon County circuit clerk did not issue the summons.

¶ 5 On May 30, 2014, Smith filed an application to sue as an indigent person and an affidavit naming 17 individuals and a group of employees of Western as defendants, seeking compensatory and punitive damages of \$875,000.

¶ 6 On June 10, 2014, the trial court granted Smith's application to proceed *in forma pauperis* and directed the clerk to issue a summons. Smith was directed to complete the summons with an address for each defendant where they could be served and then to send the summons to the Sangamon County circuit clerk's office to be issued.

¶ 7 On July 16, 2014, Smith filed a motion requesting a default judgment be entered against defendants Godinez and Kaler. Smith argued under Illinois Supreme Court Rule 181(a)

(eff. Jan 4, 2013), he was entitled to a default judgment against defendants Godinez and Kaler because they both failed to file an appearance by June 23, 2014, which was 30 days from the date he improperly served the 30-day summons on Mark Stephenson prior to the commencement of the lawsuit.

¶ 8 On July 22, 2014, defendant Godinez was served with a 30-day summons containing the Sangamon County circuit clerk's seal.

¶ 9 On August 1, 2014, Western was served with a 30-day summons containing the Sangamon County circuit clerk's seal, which was directed to a number of defendants, including Kaler.

¶ 10 On August 13, 2014, defendant Kaler filed an appearance and a motion to dismiss for failure to state a claim upon which relief can be granted under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). Kaler argued the motion to dismiss was proper because Smith failed to file an affidavit from a consulting professional outlining and supporting his malpractice claim as required by section 2-622 of the Code (735 ILCS 5/2-622 (West 2012)).

¶ 11 On August 21, 2014, defendant Godinez filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)) and argued the case should be dismissed under sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)). In support of the section 2-615 motion, Godinez stated he is only mentioned in the caption of the affidavit (serving as the complaint) and there are no facts stating any cognizable claim against him or allegations of his personal involvement or conduct. In support of the section 2-619 motion, Godinez stated he is immune as a state employee because the cause of action is in common law tort based on the nature of the damages.

¶ 12 On October 23, 2014, the trial court granted defendant Godinez's motion to dismiss, concluding Smith failed to state a claim against Godinez upon which relief could be granted and Godinez was entitled to sovereign immunity. The court also granted defendant Kaler's motion to dismiss for failure to state a claim upon which relief could be granted.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, Smith argues the trial court erred when it (1) refused to hear his pending motions, (2) granted defendant Kaler's motion to dismiss, and (3) granted defendant Godinez's combined motion to dismiss. Defendant Kaler argues the motion to dismiss was proper and the court did not abuse its discretion in refusing to enter a default judgment.

Defendant Godinez argues this court lacks jurisdiction over this appeal, and alternatively, the motions to dismiss were proper. We agree with defendant Godinez's first contention and conclude we lack jurisdiction over this appeal.

¶ 16 "A reviewing court must be certain of its jurisdiction prior to proceeding in a cause of action." *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159, 692 N.E.2d 306, 310 (1998). An order is final for purposes of appeal if it either (1) terminates the litigation between the parties on the merits or (2) disposes of the rights of the parties as to the entire controversy or a separate part thereof. *Id.* Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides, in pertinent part:

"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. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." (Emphasis added.)

¶ 17 On October 23, 2014, when the motions to dismiss were granted in respect to defendants Godínez and Kaler, 15 defendants remained named in the lawsuit with claims against them. Absent a Rule 304(a) finding, a final order disposing of fewer than all the claims is not appealable until all the claims have been resolved. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151, 902 N.E.2d 631, 634. The record fails to indicate the trial court made an express finding indicating there is no just reason for delaying either enforcement or appeal or both. Without this finding by the court, appeals should be unitary when there are multiple claims or parties. See *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 345, 757 N.E.2d 875, 880 (2001).

¶ 18 III. CONCLUSION

¶ 19 We dismiss this appeal, concluding the trial court's October 23, 2014, order was not final for purposes of appeal, and this court does not have jurisdiction.

¶ 20 Appeal dismissed.