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FIFTH DIVISION
June 17, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAMENA GABRIEL,)	Appeal from the
)	Circuit Court of
Counterplaintiff/Appellee,)	Cook County.
)	
v.)	No. 10 CH 34199
)	
GABI GABRIEL,)	
)	
Counterdefendant/Appellant,)	
)	
(Rajeena Gabriel, Linda Marogil, and Rita Isaac,)	The Honorable
)	Peter Flynn,
Plaintiffs).)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes concurred in the judgment.
Justice Gordon dissented.

ORDER

¶1 *HELD:* The circuit court had jurisdiction to consider the declaratory judgment where the counterclaim satisfied the requisite elements of a declaratory judgment. The court did not impermissibly issue an advisory opinion.

¶2 Counterdefendant, Gabi Gabriel, appeals the circuit court's order granting summary judgment in favor of counterplaintiff, Ramena Gabriel, on her counterclaim requesting a declaration that the signature on a power of attorney that purported to be hers was a forgery. Gabi contends Ramena's counterclaim did not present a justiciable controversy and, therefore, the circuit court erred in rendering an improper, advisory opinion. Gabi additionally contends the circuit court abused its discretion in denying his motion to dismiss based on *forum non conveniens*. Based on the following, we affirm.

¶3 **FACTS**

¶4 In August 1991, Dirywash Abdul Ahad Ishu Gabriel died in Baghdad, Iraq, leaving behind property located in Baghdad, Iraq to his family, namely, his widow, Rajeena Gabriel, his daughters, Linda Marogil, Rita Isaac, and Ramena,¹ and his son, Gabi. In December 2008, the property was sold. Rajeena, Linda, and Rita filed a complaint in the Cook County Circuit Court against Gabi seeking, *inter alia*, an accounting of the rents he received prior to the sale of the property and an accounting of the proceeds and costs incurred in conjunction with the sale of the property. In their complaint, Rajeena, Linda, and Rita additionally claimed that Gabi's sale of the property relied on a 2007 absolute general power of attorney document purportedly signed and notarized in Illinois, containing a forged signature of Ramena. In an amended complaint filed in October 2010, Ramena was added as a necessary party.

¶5 On February 14, 2011, Gabi filed a motion to dismiss the amended complaint based on *forum non conveniens*. In his motion, Gabi referenced an attached statement related to the sale of the property prepared by Faiz Asaad, the Iraqi attorney who conducted the property sale. The statement was written in Arabic and translated into English. It provided that "[t]he shares of

¹ Ramena's name also appears spelled as Rameena in the record; however, for purposes of clarity, we will reference the spelling used in the appellate briefs.

heirs of the property *** inherited from decest of Mr. Diryawish Abdul Ahad Ishu Gabriel to the legal heirs according to Iraqi Law and according to property deed. Shares are divided by the probate and by the Court of Personal Properties In Karrada number 150, according to Shariah Law, Kissam Shaarii, on this day November 9, 2004 and as follows: *** The property is divided into 40 shares.” The translated statement further provided that Rajeena was entitled to 5 shares, Gabi was entitled to 14 shares, and each of the daughters, Linda, Rita, and Ramena, were entitled to 7 shares. Each of the shares was determined to be worth \$25,000 based on the property sale price of \$1 million. The translated statement explained that the Iraqi court assessed the expenses incurred by Gabi and ultimately concluded that Rajeena was entitled to \$113,750, Gabi was entitled to \$318,500, and each of the three daughters was entitled to \$159,250. In his motion to dismiss based on *forum non conveniens*, Gabi argued that Illinois was not the proper forum for determining the accounting claims in the amended complaint because the resolution of the claims involved Iraqi property and required interpretation of Iraqi law, along with the testimony of Iraqi witnesses.

¶6 Then, in April 2011, Ramena answered the amended complaint and filed a counterclaim for declaratory judgment, seeking a declaration that her signature on the 2007 power of attorney was unauthorized and a forgery and that the power of attorney was void and invalid as a matter of law. Ramena later filed a third amended counterclaim. In response, Gabi filed an answer in which he refused to answer whether the signature on the 2007 power of attorney was Ramena’s signature or whether the signature appearing on the document was a forgery. Gabi then filed an amended motion to dismiss based on *forum non conveniens*, incorporating Ramena’s counterclaim into his previously filed motion requesting dismissal of Rajeena, Linda, and Rita’s amended accounting complaint. On March 20, 2014, the circuit court entered an order denying

Gabi's motion to dismiss based on *forum non conveniens* as to Ramena's counterclaim, but entered and continued the motion without prejudice as to the amended complaint.

¶7 On May 12, 2014, with leave of court, Ramena filed a fourth amended counterclaim, the subject of which underlies the instant appeal. In her fourth amended counterclaim, Ramena sought a declaration that: (1) the signature on the 2007 power of attorney that purported to be hers was a forgery and unauthorized in every respect; (2) Gabi was the party responsible for the forgery; and (3) the 2007 power of attorney was void and invalid as a matter of law as to her signature. To her fourth amended counterclaim, Ramena attached a declaration by Numan Shakir Numan, an Iraqi attorney, which had been translated from Arabic to English. In the declaration, Numan stated that, in order for Ramena to pursue a civil case in Iraq to overturn the sale of the subject property based on a forged power of attorney, Ramena first was required to obtain a final judgment from a competent court in the United States invalidating the forged power of attorney. Numan reasoned that the alleged forgery was executed in the United States before a U.S. notary; therefore, an Iraqi court would not rule on the specific question of whether the power of attorney "signed, executed, and purportedly notarized in the United States," was a forgery.

¶8 In his answer to the fourth amended counterclaim, Gabi stated that he lacked knowledge regarding whether the signature on the 2007 power of attorney purporting to be Ramena's signature was, in fact, hers or whether it was a forgery. Gabi stated that he also lacked knowledge as to whether Ramena authorized any other individual to sign the power of attorney on her behalf. Gabi denied signing Ramena's name on the document or directing that her name be signed on the document by someone other than Ramena. Gabi further denied having knowledge that Ramena refused to sign the 2007 power of attorney. Gabi admitted that "[a]

genuine controversy exist[ed] between the parties hereto as to whether the signature purporting to be Ramena's on the Absolute Power of Attorney [was] valid and authentic, and whether Gabi signed Ramena's name on the Absolute General Power of Attorney, or directed that Ramena's name be signed by someone other than Ramena." Gabi, however, denied that the matter was justiciable or properly before the court. Gabi additionally asserted, as an affirmative defense, lack of jurisdiction because the matter was hypothetical where no case was pending in Iraq challenging the sale of the subject property.

¶9 Thereafter, Ramena filed a motion for summary judgment, attaching thereto a number of affidavits and documents. In her own declaration, Ramena attested that she and Linda lived in Illinois at the time in question, while Rajeena and Rita lived in California and Gabi lived in Saudi Arabia. In her declaration, Ramena stated that, in 2007, Gabi advised her that he believed the family should sell the subject property. Ramena, however, informed Gabi that she disagreed. Ramena's sisters and mother additionally advised Ramena that the family should sell the subject property. Ramena, however, also informed her sisters and mother that she did not wish to sell. Then, in the summer of 2007, Ramena's sisters and mother told her that Gabi was in the United States and brought with him a power of attorney he wanted her to sign. The family attempted to persuade Ramena to sign the power of attorney in order to authorize Gabi to sell the subject property. According to her declaration, Ramena told her sisters and mother that she refused to sign the power of attorney. Ramena attested that she did not speak with Gabi while he was in the United States during the summer of 2007. Ramena further attested that, in October 2007, she conversed with the family's Iraqi attorney Faiz (or Fayeze) Aziz over the telephone. At that time, Ramena made it clear to Aziz that she did not wish to sell the subject property. Ramena attested in her declaration that she first discovered from Linda that the subject property had been sold on

January 4, 2009. On March 20, 2009, during a conversation with Aziz, Ramena learned that a 2007 power of attorney contained her signature and that of her sisters and mother. Ramena later viewed the 2007 power of attorney and observed that the signature on the document was not her signature. Ramena denied ever having seen the document prior to that time. Ramena further denied having been in Chicago on December 31, 2007, the date appearing on the 2007 power of attorney bearing the notary public stamp.

¶10 To her summary judgment motion, Ramena also attached a declaration by Rita. In her declaration, Rita confirmed that Ramena continuously disagreed with selling the subject property during conversations in 2007. Rita attested that, in July 2007, Gabi visited her and her mother in California, bringing with him an unsigned power of attorney. During Gabi's visit, Rita and Rajeena signed the power of attorney. At the time, neither Linda's nor Ramena's signatures appeared on the document.

¶11 According to Rajeena's declaration, which was also attached to the motion, she and Rita signed the power of attorney in each other's presence during Gabi's California visit in 2007. At the time, neither Linda's nor Ramena's signatures appeared on the document. Then, during the summer of 2008, Rajeena received a phone call from Gabi informing her that there was a prospective buyer for the subject property. When Rajeena inquired into the lack of Ramena's signature on the power of attorney, Gabi stated that "he would deal with it so that we could sell the property quickly."

¶12 Linda additionally provided a declaration. In her declaration, Linda also confirmed that Ramena continuously voiced her refusal to sell the subject property. According to Linda's declaration, Gabi stated he needed authority from his mother and sisters in order to sell the subject property. Linda attested that she attempted to convince Ramena to change her mind

without success. Then, in the summer of 2007, Gabi traveled to Moline, Illinois, where Linda lived with Ramena. Linda attested that she signed the power of attorney when Ramena was not present. According to Linda's declaration, she never gave the power of attorney to Ramena, never witnessed Ramena sign the document, and never witnessed Ramena in possession of the document. During and after Gabi's visit in the summer of 2007, Linda discussed with Gabi Ramena's refusal to sign the power of attorney. Linda attested that Gabi responded he would "take care of [Ramena's] signature."

¶13 In Gabi's deposition, he testified that he executed a sub-power of attorney authorizing attorney Aziz to conduct the sale of the subject property in Gabi's absence. The sub-power of attorney relied on the 2007 power of attorney that purportedly authorized Gabi to sell the property. Gabi further testified that he was not present when the 2007 power of attorney was signed, but that he had no evidence to contradict Ramena's claim.

¶14 Ultimately, on July 8, 2015, the circuit court granted Ramena's motion for summary judgment. In so doing, the circuit court entered an order declaring that the signature on the 2007 power of attorney was not the signature of Ramena and Ramena did not then or thereafter authorize any other person to affix her signature to the document. As a result, the circuit court found that "any person who used the Document to effect the transaction at issue in this dispute, while knowing the circumstances *** acted in a manner calculated to mislead." The court concluded that Ramena's purported signature on the 2007 power of attorney was a forgery. The July 8, 2015, order contained language stating that pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), there was no just reason to delay enforcement of, or appeal from, the order.

¶15 This appeal followed.

¶16

ANALYSIS

¶17

I. Jurisdiction

¶18 Gabi contends that the circuit court lacked jurisdiction to enter its July 8, 2015, order because Ramena's fourth amended counterclaim failed to present a justiciable controversy.

¶19 Subject matter jurisdiction provides a court with the power to hear and determine a case of the general class to which the proceeding in question belongs. *Bellville Toyota v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). The Illinois Constitution provides that the court's jurisdiction extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9. Therefore, in order to invoke a court's subject matter jurisdiction, the complaint at issue must present a justiciable matter. *Bellville Toyota*, 199 Ill. 2d at 334. In general, "[a] 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Id.* The question of whether the circuit court had subject matter jurisdiction over the underlying case presents a question of law that we review *de novo*. *McCormick v. Robertson*, 2014 IL App (4th) 140208, ¶ 15.

¶20 Here, in order to determine whether the circuit court had subject matter jurisdiction, we must review the relevant complaint, which in this case was Ramena's counterclaim. Gabi argues that Ramena's counterclaim was not a proper declaratory judgment action where there was no actual controversy regarding the authenticity of Ramena's signature on the 2007 power of attorney. More specifically, Gabi notes that Rajeeena, Linda, and Rita all provided in their verified amended complaint and in their declarations that Ramena did not sign the 2007 power of attorney. In addition, Gabi highlights that his answers throughout the proceeding either denied having any knowledge regarding the authenticity of Ramena's signature or, as in his deposition,

that he had no evidence to contradict Ramena's claim that the signature appearing on the 2007 power of attorney was not her signature. In contrast, Ramena argues that she presented a justiciable matter where her counterclaim provided an actual controversy based on Gabi's use of the forged 2007 power of attorney to effectuate the land sale.

¶21 A complaint for declaratory judgment must meet the requirements of section 2-701 of the Code of Civil Procedure (Code) (735 ILCS 5/2-701 (West 2010)). In order to have standing to bring an action for declaratory relief, there must be an "actual controversy" and the party seeking the declaration must be "interested in the controversy." 735 ILCS 5/2-701(a) (West 2010).

Whether there is an actual controversy "requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events." *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375 (1977). To be considered "interested in the controversy," "the party seeking relief must possess a personal claim, status, or right which is capable of being affected." *Id.* at 376. In other words, a declaratory judgment requires the following: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests. *Behringer v. Page*, 204 Ill. 2d 363, 372 (2003). "The central purpose of declaratory relief is to allow the court to address a controversy one step sooner than normal after a dispute has arisen, but before the plaintiff takes steps that would give rise to a claim for damages or relief." *Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 305 (2003).

¶22 In Ramena's fourth amended counterclaim for declaratory judgment, she requested that: (1) "the signature on that certain 2007 Absolute General Power of Attorney that purports to be the signature of Ramena Gabriel is a forgery and unauthorized in every respect;" (2) "that Gabi

Gabriel was a party responsible for the forgery of Ramena Gabriel's signature on the 2007 Absolute General Power of Attorney;" and (3) "that the 2007 Absolute General Power of Attorney is void and invalid as a matter of law as to Ramena Gabriel's signature." The fourth amended counterclaim further provided that the declaratory judgment was necessary as a prerequisite to allow her to challenge the sale of the subject property in Iraq.

¶23 Based on our review, we conclude that the circuit court did have jurisdiction to enter a declaratory judgment regarding the validity of the signature appearing as that of Ramena on the 2007 power of attorney. Keeping in mind the purpose of a declaratory judgment, such that it is a method to address a controversy one step earlier than when a normal complaint would be filed (*Illinois State Toll Highway Authority*, 336 Ill. App. 3d at 305), we find that Ramena's counterclaim satisfied the elements for a declaratory judgment. The controversy at issue was whether the signature that appeared on the 2007 power of attorney was that of, or authorized by, Ramena. Ramena, as the party that sought relief, had a "personal claim, status, or right which was capable of being affected" where her rights to a familial property were sold without her express authority based on the signature at issue on the 2007 power of attorney. See *Underground Contractors Ass'n*, 66 Ill. 2d at 376. Gabi had an opposing interest, in that he supported the authenticity of the 2007 power of attorney. We recognize Gabi never took the express position that the signature was that of Ramena; however, his failure to confirm that the signature was invalid stood in opposition to Ramena. Instead, Gabi repeatedly denied having knowledge regarding the signature. We note that Gabi misleadingly asserted in his brief that he was willing to stipulate that the signature on the 2007 power of attorney was not that of Ramena. The deposition testimony does not support Gabi's assertion. Accordingly, there was an actual controversy between Ramena and Gabi as to whether the 2007 power of attorney was authentic

in terms of Ramena's signature. We, therefore, find that the controversy in this case was not premature. See *id.* at 375.

¶24 Contrary to Gabi's argument, we do not believe the circuit court improperly rendered an advisory opinion as to the authenticity of Ramena's signature. Based on the record before the court, it had sufficient facts to conclude that the signature purporting to be that of Ramena on the 2007 power of attorney was not her signature. The circuit court further had sufficient facts to conclude that Ramena never authorized any person to sign the 2007 power of attorney on her behalf. Not only did Ramena state as much in her declaration, but Rajeena, Linda, and Rita all confirmed that Ramena did not want to sell the subject property and voiced that she refused to sign the 2007 power of attorney, adding that Ramena's signature did not appear on the document when they signed it. Ramena further attested that she never saw Gabi during his visit to the United States in the summer of 2007 and never viewed the power of attorney document in 2007. Moreover, in her pleadings, Ramena clearly expressed her intent to take action to invalidate the sale of the subject property in Iraq. "An expression of intent by one party to take legal action against another can be the basis of an actual controversy ripe for declaratory relief." *Roland Machinery Co. v. Reed*, 339 Ill. App. 3d 1093, 1099 (2003). The sale of the subject property was executed based on the authority provided by the 2007 power of attorney, which was invalid as to Ramena. Based on the declaration of Iraqi attorney Numan, as a prerequisite to filing the Iraqi lawsuit challenging the property sale, Ramena was required to first obtain a final United States judgment providing that the power of attorney was invalid because her signature had been forged. Ramena's expressed intent to pursue action in Iraq combined with the actual steps she took to learn what was necessary to file such an action and pursue the requisite relief in the circuit court demonstrate that the controversy was ripe for declaratory relief.

¶25 We further find that Gabi's argument regarding the circuit court's failure to expressly name the party responsible for the forgery is nonjurisdictional and is forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (in order to preserve an issue for review, the challenging party must raise an objection before the trial court and include the alleged error in a posttrial motion).

¶26 Simply stated, we conclude the circuit court had jurisdiction to consider Ramena's declaratory judgment action.

¶27 *II. Forum Non Conveniens*

¶28 Gabi additionally argues the circuit court erred in denying his motion to dismiss Ramena's counterclaim based on *forum non conveniens*.

¶29 We, however, find that this court lacks jurisdiction to consider the circuit court's dismissal order. The dismissal order was entered on March 20, 2014, and was limited to Rameda's counterclaim. Gabi's motion to dismiss the amended complaint based on *forum non conveniens* was entered and continued. The March 20, 2014, order, therefore, was not final and appealable as to all parties and all matters before the court. Moreover, the order did not contain Rule 304(a) language providing that there was no just reason to delay enforcement or appeal of that order. As such, the interlocutory order was not appealable.

¶30 *CONCLUSION*

¶31 We find the circuit court had jurisdiction to consider Ramena's counterclaim for declaratory relief. We affirm the circuit court's July 8, 2015, order granting summary judgment in favor of Ramena.

¶32 Affirmed.

¶33 JUSTICE GORDON, dissenting.

¶34 I agree with the majority that the circuit court had jurisdiction to consider Rameda's declaratory judgment action. However, I must respectfully dissent because I find no reason why the majority concludes that this court would not have jurisdiction to consider Gabi's *forum non conveniens* argument.

¶35 The majority's Rule 23 states: "The dismissal order was entered on March 20, 2014, and was limited to Rameda's counterclaim. Gabi's motion to dismiss the amended complaint based on *forum non conveniens* was entered and continued. The March 20, 2014, order, therefore, was not final and appealable as to all parties and all matters before the court." ¶ 29. However, this seems to confuse exactly what happened and what Gabi is requesting on appeal.

¶36 According to the Rule 23, "[o]n March 20, 2014, the circuit court entered an order denying Gabi's motion to dismiss based on *forum non conveniens* as to Ramena's counterclaim, but entered and continued the motion without prejudice as to the amended complaint." ¶ 6. On appeal, Gabi is arguing that the circuit court erred in denying the motion to dismiss *as to Ramena's counterclaim only*. There is no argument about the motion to dismiss the complaint as a whole, but only as to Ramena's counterclaim.

¶37 Generally, "[a]n appeal from a final judgment draws into issue all previous interlocutory orders that produced the final judgment." *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009); see also *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979) ("the appeal from a subsequent final judgment 'draws in question all prior non-final orders and rulings which produced the judgment' " (quoting *Elfman Motors, Inc. v. Chrysler Corp.*, 567 F.2d 1252, 1253 (3d Cir. 1977))). "Consequently, a court of review has jurisdiction to review an interlocutory

order that constitutes a procedural step in the progression leading to the entry of the final judgment from which an appeal has been taken.” *Knapp*, 392 Ill. App. 3d at 1023.

In the case at bar, the appellate court has jurisdiction under Supreme Court Rule 304(a) because the trial court granted summary judgment in Ramena’s favor on her counterclaim and included a finding that there was no just reason to delay enforcement of, or appeal from, the order.

Accordingly, there was a final judgment on the counterclaim. The denial of the motion to dismiss the counterclaim on the basis of *forum non conveniens* would have constituted a procedural step in the progression leading to the entry of the final judgment. Consequently, we would have jurisdiction to consider that order as well, and the appellant has the right to have this court’s opinion on the *forum non conveniens* issue.