

No. 1-15-2334

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| ADMINACASE LLC LCS, CLOUD VIEW LLC PAYER,) | Appeal from the |
| CLOUDVIEW LLC14150209134050290000, CLOUD) | Circuit Court |
| VIEW LLC 1406021212020005, LLC 101341070010000,) | Cook County. |
|) | |
| Plaintiffs-Appellees,) | |
| v.) | No. 14 CH 10691 |
|) | |
| KETEVAN INGOROKVA,) | |
|) | |
| Defendant-Appellant.) | |
|) | |
| (Joseph Stanley Varan, Matthew E. Gurvey, Law Offices) | |
| of Matthew E. Gurvey, P.C., Rebecca Varan, Con Praedia) | |
| LLC, and Sub Praedia LLC,) | Honorable |
|) | Kathleen M. Pantle, |
| Defendants).) | Judge Presiding. |

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Absent Supreme Court Rule 304(a) finding, this court lacks jurisdiction to consider appeal of a voluntary dismissal of one defendant while the action remained pending for remaining parties.
- ¶ 2 Defendant Ketevan Ingorova appeals the trial court's granting of plaintiffs' motion to voluntarily dismiss her without prejudice pursuant to section 2-1009 of the Code of Civil

Procedure (735 ILCS 5/2-1009 (West 2014)). Defendant argues that (1) the trial court's order is void because the court failed to consider defendant's previously filed motion for substitution of judge; (2) the trial court erred in failing to consider defendant's previously filed motion to quash service; (3) plaintiffs failed to give required notice of motion for voluntary dismissal; (4) plaintiffs failed to pay costs in the order for voluntary dismissal; and (5) defendant would be prejudiced when plaintiffs refile their case against defendant.

¶ 3 In June 2014, plaintiffs Adminacase LLC and Cloud View LLC filed a complaint against defendants Ketevan Ingorova, Joseph Stanley Varan, Matthew E. Gurvey, Law Offices of Matthew E. Gurvey, P.C., Rebecca Varan, Con Praedia LLC, and Sub Praedia LLC, arising from the "intentional and unjustified interference with Plaintiffs' contractual relationships with their clients for the performance of prepaid legal services and group legal service plans." Plaintiff alleged that beginning in May 2014, defendants have contacted plaintiffs' customers and made "false and/or defamatory statements in an effort to convince those customers to end their contractual relationship with Plaintiffs and, instead, bring their business to entities affiliated with [defendant] Joseph Stanley Varan." The complaint asserted four counts, tortious interference with contractual relationship, civil conspiracy, aiding and abetting, and defamation *per se*. The first three counts were against all defendants and the fourth count was only alleged against Varan.

¶ 4 Defendant filed her appearance *pro se* on June 29, 2015. On the same date, defendant filed a motion for substitution of judge, and a motion to quash service of process. On July 7, 2015, plaintiffs filed a motion to voluntarily dismiss defendant without prejudice with leave to refile within one year. At a hearing that same day, the trial court granted plaintiffs' motion to voluntarily dismiss defendant without objection. The case remained pending against the

remaining defendants. Also that day, the court entered an order for the parties to brief the issue of whether the trial court should have considered defendant's motion for substitution before granting plaintiffs' voluntary dismissal motion. Defendant filed her notice of appeal the following day on July 8.

¶ 5 At the next court date on July 21, 2015, the trial court noted defendant's notice of appeal and that the court no longer had the authority to consider the dismissal order. The court then granted defendant's motion for substitution of judge. Plaintiffs filed a motion to reconsider this order. On the August 11, 2015, the trial court conducted a hearing on the motion to reconsider, which the court granted because the only person bringing the motion was defendant, who had been nonsuited at the time of the granting and this appeal had been filed.

¶ 6 This appeal followed.

¶ 7 Before considering the merits of defendant's appeal, we must first consider our jurisdiction. "A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). "Subject to certain exceptions, an appeal can be taken in a case only after the circuit court has resolved all claims against all parties." *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 556 (2009). "Put another way, appellate jurisdiction generally exists only to review final orders." *Id.* "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof." *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)).

¶ 8 Defendant asserts that this court had jurisdiction under Supreme Court Rule 301 (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)), which provides for appeals of every final judgment as of right. However, plaintiffs contend that Supreme Court Rule 304(a) is applicable in this case. Although plaintiffs fail to cite any authority in their brief on appeal, they are correct that Rule 304(a) applies under these circumstances.

¶ 9 Supreme Court Rule 304(a) provides, in relevant 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." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 10 "Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved." *Gutman*, 232 Ill. 2d at 151. The supreme court "has defined a 'claim' as 'any right, liability or matter raised in an action.'" *Id.* (quoting *Marsh v. Evangelical Covenant Church of*

Hinsdale, 138 Ill. 2d 458, 465 (1990)). "The rule was meant 'to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy.' " *Id.* (quoting *Marsh*, 138 Ill. 2d at 465).

¶ 11 It is uncontested that defendant did not request Rule 304(a) language to be included in the dismissal order. Defendant maintains that Rule 304(a) language was not necessary because the dismissal order was final. However, she does not address the fact that Rule 304(a) arises in cases in which a final order was entered to less than all of the parties, as it was in this case. While her cited authority is correct that a voluntary dismissal order is final and appealable under Rule 301 (see *Kahle v. John Deere Co.*, 104 Ill. 2d 302, 306-07 (1984)), that application is limited by the plain language of Rule 304(a). The cases cited by defendant involved voluntary dismissals of the entire case against all defendants, which is not the case here and are distinguishable for that reason. See *Kahle*, 104 Ill. 2d at 304; *Lewis v. Collinsville Unit 10 School District*, 311 Ill. App. 3d 1021, 1023 (2000); *Saddle Signs v. Adrian*, 272 Ill. App. 3d 132, 134 (1995).

¶ 12 "On its face Rule 304(a) requires the trial court to make an '*express written finding* that there is no just reason for delaying either enforcement or appeal or both.' *** The courts of this state are uniform in strictly enforcing this requirement." (Emphasis in original.) *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 345 (2001) (quoting Ill. S. Ct. R. 304(a)). Since defendant failed to request a Rule 304(a) finding that her voluntary dismissal was immediately appealable, this court lacks jurisdiction to consider her appeal.

¶ 13 We dismiss this appeal, concluding the trial court's July 7, 2015, order was not final for purposes of appeal, and this court does not have jurisdiction.

¶ 14 Appeal dismissed.