

Nos. 1-15-2506 & 15-2675 Cons.

**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

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
MARVIN COKLOW,	)	
	)	Nos. 14 MC 1600109 &
Respondent/Defendant-Appellant,	)	13 D 9211 Cons.
	)	
v.	)	
	)	
VIRGINIA COKLOW,	)	
	)	Honorable
Petitioner-Appellee.	)	Lisa Murphy
	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.  
Justices Lampkin and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The notice of appeal appealing the indirect civil contempt order was untimely; and (2) the order denying respondent's substitution of judge petition was not a final and appealable judgment.

¶ 2 This is a consolidated appeal brought under Illinois Supreme Court Rule 304 (eff. Feb. 26, 2010) involving a dissolution of marriage proceeding and an indirect criminal contempt proceeding. This action does not involve any minor children and was not decided by a jury. For the reasons that follow, we dismiss the appeal for lack of appellate jurisdiction.

¶ 3 **BACKGROUND**

¶ 4 Petitioner, Virginia Coklow, and respondent, Marvin Coklow, were married on September 4, 2011. Two years later, petitioner filed a petition for dissolution of marriage and an emergency ex-parte petition for a temporary restraining order (TRO) on October 16, 2013. Judge William Boyd granted the TRO and ordered that:

"[R]espondent, his agents, servants, employees, assignees, and all other persons in participation with them are hereby restrained and enjoined from withdrawing, spending, disposing of, destroying, removing, encumbering, transferring, damaging, or hypothecating any and all assets in his possession or control except for the necessities of life."

The TRO also ordered that respondent's accounts at Chase Bank, N.A. (Chase) be frozen until the trial court ordered otherwise. Respondent was served with the TRO on October 26, 2013.

¶ 5 After the trial court granted the TRO, petitioner issued subpoenas to Chase requesting information regarding respondent's finances. On January 2014 petitioner received documents from Chase indicating respondent had withdrawn a total \$97,000.00 from his account through a series of transactions prior to petitioner filing her petition for dissolution of marriage. On January 28, 2014, the trial court ordered respondent to tender an accounting of the withdrawn funds by February 4, 2014. Respondent failed to meet the trial court's deadline, and on February 5, 2014, petitioner filed a petition for a finding of indirect civil contempt.

¶ 6 On March 7, 2014, the trial court found respondent in indirect civil contempt of court, and he was remanded into the custody of the Cook County Department of Corrections until he

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complied with the January 28, 2014, order. Three days later, respondent tendered a handwritten accounting to petitioner's counsel indicating that the withdrawn monies were moved to a lock box, had been nearly exhausted and the Chase account had been closed. The trial court found the accounting unacceptable and remanded respondent back into custody.

¶ 7 On March 13, 2014, respondent tendered a second accounting which demonstrated that he owned another bank account at Citibank. According to the accounting, respondent had spent \$92,000.00 from October 7, 2013, through February 1, 2014, on various non-essential items, services and memberships. Prior to Chase's compliance with the subpoenas, respondent represented to the trial court, in various filings, that he had no means to financially support himself nor pay for legal representation. On March 14, 2014, the trial court ordered respondent's immediate release from custody.

¶ 8 On May 27, 2014, petitioner presented her petition for adjudication of indirect criminal contempt and was granted leave to obtain a criminal case number that same day. Judge Boyd appointed The Law Offices of Jonathan Merel, P.C., as special prosecutor for the criminal contempt proceeding and transferred the case to Judge Gregory Ahern Jr. to adjudicate the criminal portion of the case.<sup>1</sup> On June 16, 2015, respondent filed a petition for change of venue alleging that Judge Ahern was prejudiced against him. On September 9, 2015, Judge Lisa Murphy conducted a hearing on respondent's motion for substitution of judge, which she denied.<sup>2</sup> On September 11, 2015, respondent filed a notice of appeal appealing the denial of his petition, and on September 16, 2015, respondent filed a second notice of appeal appealing the March 7, 2014, order finding him in indirect civil contempt.

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<sup>1</sup> Jonathan Merel, P.C., is the law firm representing petitioner.

<sup>2</sup> Respondent's petition for change of venue was initially transferred from Judge Ahern to Judge Dickler. Subsequently, the petition was transferred to Judge Murphy because the substance of the petition was essentially a motion for substitution of judge.

¶ 9

ANALYSIS

¶ 10 At the outset, we note that petitioner did not file an appellee's brief in this case. However, since the record is fairly simple and the case can be decided without an appellee's brief, we will review the case on the appellant's brief alone. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). This case raises the issue of whether this court has appellate jurisdiction over this matter. Although neither party raises the issue, we have an ongoing, independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction is lacking. *State Farm Mutual Automobile Insurance Co. v. Hayek*, 349 Ill. App. 3d 890, 892 (2004).

¶ 11 Pursuant to article VI, section 6 of the Illinois Constitution, this court's jurisdiction encompasses final judgments, orders, or decrees. Ill. Const. 1970, art. VI, § 6. This court, however, is without jurisdiction to review judgments, orders or decrees which are not final, except as provided by supreme court rule. *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 22 (citing *Almgren v. Rush Presbyterian St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994)). A judgment or order is final and appealable if it terminates the litigation between the parties on the merits, and sets, fixes, or disposes of the rights of the parties, whether upon the entire controversy or upon some definite and separate part thereof, so that if the judgment or order is affirmed, the trial court need only execute it. *Id.* at ¶ 23; *In re A.H.*, 207 Ill. 2d 590, 594 (2003). “The ultimate question to be decided in each case is whether the judgment fully and finally disposes of the rights of the parties to the cause so that no material controverted issue remains to be determined.” *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245, 249 (1983) (quoting *Cory Corp. v. Fitzgerald*, 403 Ill. 409, 415 (1949)).

¶ 12 Here, respondent has brought his appeal under Rule 304. However, respondent has not indicated which of the two subsections authorize his appeal. On review, we find this court lacks appellate jurisdiction under both subsections for the reasons that follow.

¶ 13 I. Supreme Court Rule 304(a)

¶ 14 Supreme Court Rule 304(a) provides that, in an action involving multiple claims for relief, “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.” Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). In other words, Rule 304(a) allows interlocutory appeals in cases when the trial court expressly certifies an issue for appellate review. *MidFirst Bank*, 2016 IL App (1st) 150465 at ¶ 25.

¶ 15 In this case, respondent appeals the trial court's order denying his petition for change of venue. Respondent has made no claim that a Rule 304(a) certification exists, and our review of the record discloses no such certification. Moreover, even if such certification did exist, the order from which respondent attempts to appeal was not final, and the trial court could not have entered a Rule 304(a) finding in this case. *Id.* The order denying respondent's petition did not terminate any litigation between the parties on the merits or dispose of the rights of the parties. Therefore, this court does not have appellate jurisdiction under Rule 304(a) to review the order denying respondents petition for change of venue.

¶ 16 II. Supreme Court Rule 304(b)

¶ 17 Next, we address respondent's appeal from the trial court's order finding him in indirect civil contempt of court. Reviewing courts have held that only contempt orders resulting in the imposition of fines or imprisonment are appealable without a Rule 304(a) finding. *In re*

*Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049 (2007). Supreme Court Rule 304(b) authorizes such appeals and provides:

“The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

- (1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.
- (2) A judgment or order entered in the administration of a receivership, rehabilitation, liquidation, or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a).
- (3) A judgment or order granting or denying any of the relief prayed in a petition under section 2–1401 of the Code of Civil Procedure.
- (4) A final judgment or order entered in a proceeding under section 2–1402 of the Code of Civil Procedure.
- (5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty.
- (6) A custody judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610) or section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16).”

Ill. S. Ct. Rule 304(b) (eff. Feb. 26, 2010).

¶ 18 Moreover, a party appealing a judgment or order appealable under Rule 304(b) must file their notice of appeal within the time limits proscribed by Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. Rule 304(b) (eff. Feb. 26, 2010). Under Rule 303(a)(1), a party must file an appeal no more than 30 days after the entry of the final order, unless a timely postjudgment motion directed at the judgment is filed. Ill. S. Ct. Rule 303(a)(1) (eff. Jan. 1, 2015). The Rule provides that the timely filing of a motion directed against the judgment defers the running of the 30 days, and a notice of appeal must be filed 30 days from the resolution of the last timely and

proper postjudgment motion. See *id*; see also *In re Estate of Russell*, 372 Ill. App. 3d 591, 594 (2007).

¶ 19 In this case, the trial court found respondent in indirect civil contempt of court on March 7, 2014, and the trial court remanded him into the custody of the Cook County Department of Corrections. Respondent did not file a timely postjudgment motion directed at the order; therefore, his appeal could only be timely if filed within 30 days following the March 7, 2014 order. See *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138 (2009). Respondent filed his notice of appeal more than a year later on September 16, 2015. When an appeal is untimely under a supreme court rule, the appellate court has “no discretion to take any action other than dismissing the appeal.” *People v. Lyles*, 217 Ill. 2d 210, 217 (2005); see also *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000) (ruling that only a timely notice of appeal confers jurisdiction on an appellate court). Therefore, we must dismiss this appeal because respondent's notice of appeal was untimely.

¶ 20

#### CONCLUSION

¶ 21 For the foregoing reasons, we dismiss the appeal for lack of appellate jurisdiction.

Dismissed.