

2016 IL App (2d) 150301-U
No. 2-15-0301
Order filed August 24, 2016

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
SECOND DISTRICT

<i>In re</i> MARRIAGE OF DENNIS BORDYN,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
and)	No. 13-D-1112
)	
JUDITH BORDYN,)	
)	
Respondent-Appellee,)	
)	Honorable
(Waterfall Victoria Master Fund, Ltd.,)	Neal W. Cerne,
Third-Party Respondent).)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appeal from the judgment of dissolution of marriage was dismissed for lack of jurisdiction; petitioner’s motion to consolidate was denied, and sanctions were warranted against petitioner for filing a frivolous and misleading motion.
- ¶ 2 Petitioner, Dennis Bordyn, appeals *pro se* from the judgment dissolving his marriage to respondent, Judith Bordyn. He contends that the trial court erred in (1) failing to strike Judith’s notice of intent to claim dissipation of assets; (2) allowing Judith to correct a scrivener’s error in

the notice of intent; (3) finding that Dennis dissipated assets; (4) allocating the marital property between the parties; and (5) failing to grant Dennis's petition for interim attorney fees.

¶ 3 Dennis also filed a motion for sanctions against Judith pursuant to Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994), which we ordered taken with the case. In that motion, Dennis seeks to strike Judith's appellee brief. Additionally, during the pendency of this appeal, Dennis filed a motion to consolidate this appeal with a mortgage foreclosure case that is pending in the circuit court of Du Page County. Judith and third-party respondent, Waterfall Victoria Master Fund, Ltd. (Waterfall Victoria), both filed objections to the motion to consolidate, in which they also sought the imposition of sanctions against Dennis under Illinois Supreme Court Rule 375. Park Federal Savings Bank filed the mortgage foreclosure case (15-CH-1288) on July 20, 2015, nearly four months after the notice of appeal was filed in the present dissolution appeal. Waterfall Victoria is the successor-in-interest to Park Federal Savings Bank, and it filed its appearance in this appeal to respond to the motion to consolidate.

¶ 4 For the following reasons, we (1) dismiss the appeal for lack of jurisdiction; (2) decline to rule on or otherwise address Dennis's motion for sanctions, because the matter therein is moot; and (3) deny Dennis's motion to consolidate and impose sanctions against him for filing a frivolous and misleading motion.

¶ 5 I. BACKGROUND

¶ 6 The following facts pertain to the dissolution of marriage action between Dennis and Judith. Additional facts pertaining to the motion for sanctions and motion to consolidate will be addressed in the analysis section, where appropriate.

¶ 7 Dennis and Judith were married on February 23, 1985, in Naperville, Illinois. They had one son together, who is now emancipated. Dennis is a licensed attorney and Judith worked as a

sales representative for various medical supply and laboratory equipment companies. Dennis filed a petition for dissolution of marriage on May 29, 2013.

¶ 8 On March 28, 2014, Judith filed four notices of intent to claim that Dennis dissipated various marital assets. On May 29, 2014, Dennis filed his motions to strike Judith's notices of intent.

¶ 9 On May 30, 2014, Dennis filed a petition for interim attorney fees. Shortly thereafter, on June 6, 2014, Judith filed a petition for rule to show cause for indirect civil contempt due to Dennis's failure to comply with a court order dated May 7, 2014, regarding pre-trial discovery compliance. In an order dated June 9, 2014, the court continued both Dennis's petition for interim attorney fees and Judith's petition for rule to show cause to the first date of trial on June 26, 2014. The June 9, 2014, order also denied Dennis's motions to strike the notices of intent to claim dissipation of assets.

¶ 10 The trial began on June 26, 2014, and proceeded on several days over the course of four months. The court entered its written judgment on November 6, 2014. The court made certain findings regarding the parties' financial lives and whether Dennis dissipated marital assets. It also allocated the marital assets between the parties. As part of the allocation, the court awarded Dennis the marital home. The court did not address or dispose of either Dennis's petition for interim attorney fees or Judith's petition for rule to show cause. No other orders in the record addressed either petition.

¶ 11 On December 8, 2014, Judith filed a motion to reconsider, addressing the court's classification of marital assets. Also on December 8, 2014, Dennis filed a motion to reconsider, in which he noted, *inter alia*, that the court "declined to rule" on the petition for interim attorney

fees. The court denied both motions to reconsider on February 24, 2015. Dennis then filed the present appeal.

¶ 12

II. ANALYSIS

¶ 13 We are presented with three distinct matters in the present appeal. First, we will address Dennis's appeal from the trial court's judgment dissolving his marriage to Judith. We will then address Dennis's motion for sanctions against Judith. Finally, we will consider Dennis's motion to consolidate and the objections filed by both Judith and Waterfall Victoria, in which they both request sanctions.

¶ 14

A. Dissolution Appeal

¶ 15 Dennis attempts to appeal the trial court's judgment of dissolution entered on November 6, 2014, as well as the June 9, 2014, order that denied his motion to strike Judith's first notice of intent to claim dissipation of assets.

¶ 16 Although neither party questions our jurisdiction, we have an independent duty to consider our jurisdiction and to dismiss an appeal if jurisdiction is wanting. *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999 (2003). For the reasons that follow, we conclude that we do not have jurisdiction.

¶ 17 Dennis claims that we have jurisdiction pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Supreme Court Rule 304(a) provides that, if multiple claims are involved in a proceeding, an appeal may be taken from a final judgment as to one or more but fewer than all of the claims only if the trial court makes an explicit written finding that there is no just reason to delay either enforcement or appeal, or both. Here, neither the November 6, 2014, judgment of dissolution of marriage nor the February 24, 2012, order denying Dennis's motion to reconsider contain Rule 304(a) language. Similarly, the June 9, 2014, order that Dennis also attempts to

appeal fails to contain Rule 304(a) language. Therefore, we cannot possibly have jurisdiction pursuant to Rule 304(a).

¶ 18 Our independent review of the record leads us to conclude that the judgment of dissolution of marriage was not a final order. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). A judgment is final if it determines the litigation on the merits so that, if affirmed, only the execution of the judgment remains. See *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 12. When an order resolves fewer than all of the claims, the order is not final and appealable. *Susman*, 2012 IL App (1st) 112068, ¶ 12.

¶ 19 A petition for dissolution of marriage, however, advances only a single claim. *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). The other issues involved within the proceeding, such as property disposition and support, are not separate claims; rather, they are interrelated issues that are merely ancillary to the single claim. *Leopando*, 96 Ill. 2d at 119. Additionally, “the request for attorney fees in a dissolution action that has not yet been resolved is not an independent action and must be considered to be part of the overall divorce proceeding.” *In re Marriage of King*, 336 Ill. App. 3d 83, 88 (2002); see also *In re Marriage of Tomei*, 253 Ill. App. 3d 663, 666 (1993) (“This court has determined that attorney fees are directly related to the central dispute in a dissolution of marriage case and thus are not incidental.”). Consequently, until all of the ancillary issues are resolved, a petition for dissolution of marriage is not final for purposes of appeal. *Leopando*, 96 Ill. 2d at 119, 120.

¶ 20 Here, the record does not reflect that the trial court ruled on Dennis’s petition for interim attorney fees. Because this ancillary issue remained unresolved, the petition for dissolution of marriage was not a final judgment. Hence, Dennis’s notice of appeal was premature. See also *Tyler v. Tyler*, 230 Ill. App. 3d 1009, 1012 (1992) (“To allow an appeal from this judgment of

dissolution while the question of attorney fees remains pending in the trial court would run afoul of the policy to ‘encourage the court to decide all matters incident to the dissolution in a single judgment[.]’ ”).

¶ 21 Moreover, the judgment of dissolution of marriage was not a final and appealable order, because Judith’s petition for rule to show cause remained unresolved. Parties in a dissolution proceeding “have no right to appeal from a judgment final as to all other claims when a petition for a contempt finding remains unresolved, in the absence of Rule 304(a) language.” *In re Marriage of Carrillo*, 372 Ill. App. 3d 803, 813 (2007); see also *In re Marriage of Gutman*, 232 Ill. 2d 145, 153 (2008) (The “justification for treating contempt petitions as separate proceedings for purposes of appeal is not present when there has been no ruling and sanction imposed.”). As mentioned above, no orders contain Rule 304(a) language.

¶ 22 Dennis can presumably file a timely notice of appeal upon the resolution of the pending petitions in this matter. *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007). If the pending petitions have been resolved and the time to file a new notice of appeal has expired, Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) allows Dennis to establish the effectiveness of this appeal by filing a petition for rehearing and supplementing the record, thus establishing our jurisdiction to address the merits. *Knoerr*, 377 Ill. App. 3d at 1050.

¶ 23 B. Dennis’s Motion for Sanctions

¶ 24 Dennis also filed a motion for sanctions pursuant to Illinois Supreme Court Rule 375, which we ordered to be taken with the case. We are mindful that we have jurisdiction to decide the question of sanctions even though we have dismissed the appeal. See *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 993 (1992). Nevertheless, we decline to address or otherwise rule on Dennis’s motion, as the matter presented therein is moot. Specifically, Dennis seeks to strike Judith’s

appellee brief, and he explicitly states that he does not seek court costs or attorney fees. Because we have dismissed the appeal for lack of jurisdiction, we cannot offer Dennis any of the relief that he seeks.

¶ 25 C. Dennis's Motion to Consolidate

¶ 26 While the present appeal was pending, Dennis filed a *pro se* motion to consolidate this dissolution appeal with a mortgage foreclosure case that is pending in the circuit court of Du Page County. Judith and Waterfall Victoria both filed objections to the motion, in which they also sought the imposition of sanctions against Dennis pursuant to Illinois Supreme Court Rule 375. We deny the motion to consolidate and find sanctions are warranted against Dennis.

¶ 27 The marital home, which was awarded to Dennis in the dissolution action, was later subject of a foreclosure action brought in the circuit court of Du Page County. The circuit court entered a judgment of foreclosure on May 5, 2016. Dennis's motion to reconsider the judgment of foreclosure was denied on July 14, 2016. That order, drafted by Dennis, also explicitly denied his request for a finding pursuant to Illinois Supreme Court Rule 304(a) that there was no just reason to delay enforcement or appeal of the order. On July 20, 2016, the trial court denied Dennis's motion to stay the judicial sale pursuant to the judgment of foreclosure pending "consolidation and/or appeal[.]"

¶ 28 On July 22, 2016, Dennis filed in the present appeal a *pro se* motion to consolidate the two cases pursuant to section 2-1006 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1006 (West 2014)). He argues that the present dissolution appeal should be consolidated with the pending mortgage foreclosure case, because the interests of all parties in the marital home are "common" to both actions. Dennis also asks that this court (1) grant him leave to file a notice of appeal in the mortgage foreclosure case; (2) extend the deadline for filing a notice of appeal in

the mortgage foreclosure case until it is consolidated with the present appeal; and (3) stay the enforcement of the “final judgment” rendered in the mortgage foreclosure case.

¶ 29 Section 2-1006 of the Code provides that actions “pending in the *same court*” may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a party’s substantial rights. 735 ILCS 5/2-1006 (West 2014) (emphasis added). Here, the cases that Dennis seeks to consolidate are not pending in the same court, in violation of the plain language of section 2-1006 of the Code. A brief review of the 1970 Illinois Constitution, Article VI, makes this crystal clear: Section 1 refers to a “Supreme Court, Appellate Court, and Circuit Courts.” Moreover, Section 6 delineates the separate jurisdiction of appellate courts to hear appeals from final judgments of circuit courts. Ill. Const. 1970, art. VI, § 6; see also *Horn v. Rincker*, 84 Ill. 2d 139, 147-148 (1981) (Trial courts do not have authority to consolidate cases pending in different circuit courts).

¶ 30 Moreover, we do not have jurisdiction over the pending mortgage foreclosure case. The May 5, 2016, judgment of foreclosure was not a final and appealable order. See *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 260 (2008) (a judgment ordering the foreclosure of a mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution of funds, unless the judgment contains Rule 304(a) language). The record before us does not reflect that the court in the pending foreclosure case has entered an order approving the sale and directing the distribution of proceeds; the court also explicitly denied Dennis’s request for a Rule 304(a) finding.

¶ 31 In their objections, both Judith and Waterfall Victoria ask for the imposition of sanctions against Dennis under Illinois Supreme Court Rule 375. Judith argues that she incurred

reasonable attorney fees in responding to the motion to consolidate. Waterfall Victoria does not specifically identify the sanctions it seeks under Rule 375.

¶ 32 Illinois Supreme Court Rule 375(b) provides that an appellate court may sanction any party or the attorney of the party for filing a frivolous appeal or taking other frivolous actions in the reviewing court. An appeal or other action will be deemed frivolous if a reasonable prudent attorney would not in good faith have filed such an appeal or taken such action. Ill. S. Ct. R. 375, Committee Comments (adopted Aug. 1, 1989). “[A]ny action” pursued in the reviewing court is subject to sanctions if the conduct constitutes a violation of Illinois Supreme Court Rule 375. Ill. S. Ct. R. 375, Committee Comments (adopted Dec. 17, 1993) (emphasis added). Appropriate sanctions may include an order to pay damages, reasonable costs, and other expenses necessarily incurred, including reasonable attorney fees. Ill. S. Ct. R. 375(b). This court may also impose a penal fine if the party’s conduct constitutes a violation of the civil appeal rules. Ill. S. Ct. R. 375, Committee Comments (adopted Aug. 1, 1989).

¶ 33 We agree that sanctions are warranted for Dennis’s filing of the motion to consolidate. Although Dennis appears *pro se*, the supporting record to the motion to consolidate shows that he has been a licensed and practicing attorney in Illinois for 32 years, and has *specialized* in mortgage foreclosure defense for the past eight years.¹ As we explain below, Dennis misleads this court by withholding facts and failing to disclose or even acknowledge well-established law. Additionally, Dennis fails to comply with the civil appeals rules.

¶ 34 Dennis characterizes the May 5, 2016, judgment of foreclosure as a “final judgment.” That characterization, however, is a blatant misrepresentation. The judgment of foreclosure

¹ Dennis stated this information during a colloquy with the trial court at a hearing on May 5, 2016. The transcript was attached to Judith’s objection to the motion to consolidate.

explicitly stated that the trial court “retains jurisdiction for the purposes of enforcement of this Judgment and approval of sale.” Additionally, Dennis fails to acknowledge the well-established and oft-cited proposition of law that a judgment of foreclosure is not a final and appealable order until an order approving the sale is entered. See *Fankhauser*, 383 Ill. App. 3d at 260.

¶ 35 We are unable to attribute Dennis’s misrepresentation of the nature of the judgment to mere oversight. He realized that a judgment of foreclosure is not a final and appealable order, because he explicitly requested a Rule 304(a) finding from the trial court. Nevertheless, Dennis did not inform this court that he made such a request or that it was denied. Nor did he include the July 14, 2016, order as part of the supporting record for his motion, in violation of Illinois Supreme Court Rule 361(a) (eff. Jan. 1, 2015).

¶ 36 Based upon Dennis’s misrepresentation and withholding of pertinent facts, he has violated certain provisions of the Code of Professional Responsibility. Rules 3.3(a)(1) and 3.3(a)(2) of the Code of Professional Responsibility (eff. Jan.1, 2010) provide that an attorney shall not knowingly make a false statement of fact or law to a tribunal or fail to disclose to the tribunal legal authority in the jurisdiction known to be directly adverse to the attorney’s position. Dennis’s statement in his motion that the judgment of foreclosure was a “final judgment” was a blatantly false statement, as evidenced by Dennis’s explicit request for a Rule 304(a) finding. Dennis further represented that the order of July 14, 2016, denied his motion to reconsider, but he concealed that the same order also denied his request for a Rule 304(a) finding. Also, as mentioned, he failed to disclose the controlling legal authority that a judgment of foreclosure is not a final and appealable order. Hence, Dennis has violated Rule 3.3(a)(1) and Rule 3.3(a)(2) of the Code of Professional Responsibility.

¶ 37 Moreover, Dennis did not attempt to comply with the civil appeals rules. Instead of filing a notice of appeal in the foreclosure case, Dennis claims, without citation to authority, that we have jurisdiction over the foreclosure “by virtue” of the filing of the notice of appeal in the present dissolution appeal. Dennis’s representation is contrary to well-established rules concerning appellate jurisdiction. See, *e.g.*, Ill. S. Ct. R. 301; Ill. S. Ct. R. 303 (eff. Jan. 1, 2015); Ill. S. Ct. R. 304; Ill. S. Ct. R. 306 (eff. March 8, 2016); Ill. S. Ct. R. 307 (eff. Jan. 1, 2016); Ill. S. Ct. R. 308 (eff. Jan. 1, 2016); see also *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) (“The timely filing of a notice of appeal is both jurisdictional and mandatory.”). We cannot excuse such flouting of Illinois Supreme Court Rules by an experienced attorney.

¶ 38 Furthermore, Dennis’s failure to comply with the civil appeals rules extends to the additional relief he requests. Apparently realizing that the judgment of foreclosure was not a final order, he asks that we grant him leave to file a notice of appeal in the mortgage foreclosure case. To the extent that Dennis is petitioning this court for leave to appeal, he does not cite or even attempt to comply with Illinois Supreme Court Rule 306 (which governs interlocutory appeals by permission). Additionally, a judgment of foreclosure is not one of the enumerated interlocutory orders from which a party may file a petition for leave to appeal. See Ill. S. Ct. R. 306(a).²

¶ 39 Dennis also requests that we extend the deadline for filing a notice of appeal in the mortgage foreclosure case. Similar to his other requests, Dennis does not mention or attempt to

² We also note that a judgment of foreclosure is not an interlocutory order that may be appealed as of right pursuant to Illinois Supreme Court Rule 307.

comply with Illinois Supreme Court Rule 303(d) (eff. Jan. 1, 2015) (which governs motions for extensions of time to file a notice of appeal).

¶ 40 As to Dennis’s request that we stay the enforcement of the judgment of foreclosure, he does not cite or comply with Illinois Supreme Court Rule 305 (eff. July 1, 2004) (which governs the stay of judgments pending appeal). Dennis fails to provide a supporting record adequate for our review. See Ill. S. Ct. R. 305(d). Indeed, Dennis did not mention that he filed a motion in the trial court to stay enforcement of the judgment, as required by Rule 305(d). Instead, Waterfall Victoria provided the order that denied Dennis’s motion for a stay as an exhibit to its objection to the motion to consolidate. Dennis also failed to include any documentation to support his assertion that the value of the marital home is twice the gross balance of Waterfall Victoria’s mortgage, thereby justifying a waiver of his obligation to post a bond or other form of security under Rule 305(b). Furthermore, Dennis failed to provide us with legal authority that would allow this court to grant a request to stay the judgment of a pending trial court case within the context of a motion to consolidate in the appellate court. See *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 380 (1999) (“[T]he plaintiff in challenging the condition of a Supreme Court Rule 305(b) stay must file a motion in the appellate court under Supreme Court Rule 305(d).”).

¶ 41 We wish to note another concern that, on its own, would not cause an overwhelming sense of alarm but, added to the above-referenced conduct, is notable. Specifically, Dennis has attached an “affidavit” to his motion to consolidate that is neither certified nor notarized. It also contains only two sentences, in which Dennis claims that he could testify competently to the matters presented within the motion and that the facts stated therein “are true and correct.”

¶ 42 Accordingly, we conclude that no reasonable attorney would have filed the present motion to consolidate, as it was neither reasonably well-grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Most importantly, however, Dennis hid certain facts from this court and apparently failed to conduct even a cursory review or search of relevant law and Illinois Supreme Court Rules before filing this motion and requesting the relief therein.

¶ 43 Thus, we direct Judith and Waterfall Victoria to each submit, within five days of the filing of this order, a sworn affidavit that sets forth the reasonable costs, expenses, and reasonable attorney fees incurred in responding to Dennis's motion. Dennis shall then have five days to respond to the reasonableness of the amounts requested in the sworn affidavits submitted by Judith and Waterfall Victoria. After consideration of those submissions, we will issue a supplemental order assessing an appropriate sanction against Dennis.

¶ 44 Finally, upon completion of this matter, we will direct the clerk of the appellate court to send a copy of this order and a copy of Dennis's motion to consolidate to the Administrator of the ARDC.

¶ 45 **III. CONCLUSION**

¶ 46 For the aforementioned reasons, we dismiss the appeal for lack of jurisdiction, and we decline to rule on or address Dennis's motion for sanctions, because the matter therein is moot. We also deny Dennis's motion to consolidate and find sanctions against him are warranted pursuant to Illinois Supreme Court Rule 375.

¶ 47 Appeal dismissed. Motion to consolidate denied; sanctions appropriate to be imposed by supplemental order.