

2016 IL App (2d) 150774-U
No. 2-15-0774
Order filed July 6, 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)	Appeal from the Circuit Court
GREGORY KANE,)	of Du Page County
)	
Petitioner-Appellee,)	
)	
and)	No. 14-D-1199
)	
HEATHER KANE,)	
)	
Respondent-Appellee)	Honorable
)	Linda Davenport,
(Michael D. Canulli, Petitioner-Appellant).)	Judge, Presiding

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

- ¶ 1 *Held:* We dismissed the appeal for lack of jurisdiction because other matters remained pending when petitioner appealed from an order concerning attorney fees that contained no finding pursuant to Illinois Supreme Court Rule 304(a).
- ¶ 2 Michael D. Canulli, an attorney, appeals from an order (1) denying in part his petition for attorney fees against his former client, and (2) denying in whole his petition for contribution to attorney fees against his former client's ex-wife. We dismiss the appeal for lack of jurisdiction.

¶ 3 Gregory and Heather Kane were married in 1995 and have two minor children. In June 2014, Gregory filed a *pro se* petition for dissolution of marriage. He thereafter retained Canulli to represent him in his dissolution of marriage proceeding. Canulli filed his appearance on behalf of Gregory on July 23, 2014.

¶ 4 After some seven months of representation, Canulli filed an emergency motion to withdraw as Gregory's counsel on February 10, 2015, alleging an inability to communicate with his client and unpaid attorney fees in excess of \$45,000. On February 13, 2015, the trial court granted Canulli's request for leave to withdraw his appearance, and also granted him leave to file fee petitions.

¶ 5 After representing himself *pro se* for several few weeks, Gregory retained new counsel, who entered an appearance on April 23, 2015. Said counsel continues to represent Gregory in this appeal.

¶ 6 Within the dissolution action, on April 15, 2015, Canulli filed a petition for final attorney fees and costs against Gregory, his former client, pursuant to section 508(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(c)) (West 2014)), as well as a petition for contribution against Heather pursuant to section 503(j) of the Act (750 ILCS 5/503(j) (West 2014)). Through the date of filing, Canulli sought in both petitions unpaid attorney fees of \$48,000.93, in addition to the \$37,500 that he was already paid.

¶ 7 On May 1, 2015, the trial court entered a judgment for dissolution of marriage, which incorporated a marital settlement agreement and joint parenting agreement. Said judgment awarded the parties joint custody of the minor children, established a visitation schedule, and awarded Gregory maintenance in gross.

¶ 8 Subsequently, the trial court held an evidentiary hearing on both of Canulli's fee petitions on July 2, 2015. After the hearing, the trial court denied Canulli's request for contribution from Heather, but granted in part his fee petition against Gregory in the amount of \$12,500. The court's order did not contain an Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R 304(a) (eff. Jan. 1, 2015)) finding that there was no just reason for delaying either enforcement or appeal or both. Upon the entry of the July 2, 2015, order, all pending claims in the dissolution proceeding appeared resolved.

¶ 9 Approximately two weeks later, on July 15, 2015, Gregory's new counsel filed on his behalf a petition for rule to show cause against Heather. Therein, he alleged that Heather was not complying with certain provisions in the judgment for dissolution of marriage relating to visitation with the minor children and maintenance, among others.

¶ 10 The contempt petition came before the court on July 23, 2015, and on that date the court entered an order granting Heather 21 days to respond to the petition, and scheduled a future status date of August 20, 2015. The July 23, 2015, order is the last trial court order that appears in the record.

¶ 11 On July 31, 2015, while Gregory's contempt petition was still pending and unresolved, Canulli filed a notice of appeal relative to the court's July 2, 2015, order denying fee contribution from Heather and granting in part his request for fees from Gregory. In his brief filed with this court, Canulli asserts in his jurisdictional statement that the July 2, 2015, order he appeals is a final order entered by the trial court, and cites Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). We observe, however, that this rule governs appeals from final judgments in civil cases, and applies only after "every right, liability or matter raised" in the proceeding has been resolved. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990).

¶ 12 Though no party has raised the issue, we have an independent duty to verify our jurisdiction and to dismiss the appeal if we lack it. *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1043 (2007).

¶ 13 Well established is the notion that a petition for dissolution advances only a single action—dissolution of the parties’ marriage. *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 156 (2006). Matters such as child custody, maintenance, and property division are ancillary issues to the dissolution action. *Id.* The “single action” nature of a dissolution proceeding continues even after a judgment for dissolution is entered, as each post-dissolution petition is considered a new claim within a single dissolution proceeding. *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 744 (2007). We acknowledge, however, that a split of authority exists among the appellate districts. The First and Third Districts have held that each post-dissolution petition is generally considered a new action. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 35; *In re Marriage of A’Hearn*, 408 Ill. App. 3d 1091, 1097-98 (2011). Our district and the Fourth District, however, hold that each post-dissolution petition is a new claim within the same underlying dissolution action, such that an order that disposes of fewer than all pending claims is not appealable without a Rule 304(a) finding. *Duggan*, 376 Ill. App. 3d at 744; *Gaudio*, 368 Ill. App. 3d at 157-58. Suffice it to say that we will continue to follow the practice and reasoning of the Second and Fourth Districts.

¶ 14 A civil contempt petition raises a claim in the underlying dissolution action within the meaning of Rule 304(a) if the petition is pending or denied, and it remains a part of the dissolution action unless and until sanctions are imposed. *Knoerr*, 377 Ill. App. 3d at 1047. Only upon the imposition of sanctions will a contempt order be treated separately. *Id.*

¶ 15 As noted above, Gregory's contempt petition was pending when the notice of appeal was filed, as nothing in the record indicates that the petition was disposed of by the trial court. Thus, it is apparent that the contempt petition filed by Gregory on July 15, 2015, is a claim that remains pending within the underlying dissolution action. See *In re Marriage of Alyassir*, 335 Ill. App. 3d 998 (2003) (holding that absent a Rule 304(a) finding, a post-dissolution order increasing child support was not appealable while a civil contempt petition was pending). As such, appellant's reliance on Rule 303 as the basis for this court's jurisdiction is misplaced.

¶ 16 Where, as here, a party seeks to appeal an order while other claims remain pending in the action, Rule 304(a) applies. Rule 304(a) provides, in pertinent part, that "[i]f 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." Ill. S. Ct. R. 304(a) (eff. Jan. 1. 2015). The purpose of this rule is to preserve the trial court's ability to exercise discretion in managing piecemeal appeals, to promote judicial economy, and to remove the uncertainty that exists when a final judgment is entered on fewer than all of the matters in the controversy. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008); *Alyassir*, 335 Ill. App. 3d at 1001.

¶ 17 Here, despite the fact that the July 2, 2015, order appeared final when it was entered (in that all claims in the dissolution action, including Canulli's fee petitions, were then resolved), the subsequent filing of a post-dissolution contempt petition made it such that the order could not be appealed, absent a Rule 304(a) finding, until the contempt petition was resolved. See *Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (holding that the appellate court lacked jurisdiction where a notice of appeal was filed while a petition for rule to show cause was still pending in the trial

court). Indeed, the result would be the same even if the notice of appeal was filed prior to the contempt petition. See *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 340 (2001) (holding that a new claim filed within the original, otherwise final, action prevents an order from becoming automatically appealable—even if a notice of appeal was already filed).

¶ 18 As noted above, the order that Canulli seeks to appeal does not contain a Rule 304(a) finding, and the last order that appears in the record indicates that Gregory’s contempt petition is still pending. Thus, based on the record as presented to us, we lack jurisdiction to review the July 2, 2015 order, and must therefore dismiss the appeal.

¶ 19 Though we dismiss the appeal for want of jurisdiction, we observe that *Knoerr* may provide for possible reinstatement of the appeal. In *Knoerr*, we commented as follows:

“[W]e dismiss respondent’s appeal because on the present record, respondent’s notice of appeal is premature. We presume that respondent can timely file a notice of appeal upon the resolution of the pending petition for rule to show cause and any other pending claims in this matter. However, if pending claims have been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows respondent to establish the effectiveness of the present notice of appeal. In the latter event, respondent may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits.” *Knoerr*, 377 Ill. App. 3d at 1049-50.

¶ 20 Therefore, if the trial court has already disposed of the petition for rule to show cause and all other subsequently filed claims, if any, Canulli may file a petition for rehearing and to supplement the record with the appropriate orders to establish our jurisdiction over this appeal. As we lack jurisdiction, we need not address Canulli’s request for Illinois Supreme Court Rule

375 (Ill. S. Ct. R. 375 (eff. Feb. 1, 1994)) sanctions against Gregory Kane, or Heather Kane's request for Rule 375 sanctions against Canulli.

¶ 21 For the foregoing reasons, the appeal is dismissed.

¶ 22 Appeal dismissed.