

## 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).

2016 IL App (4th) 150716-U

NO. 4-15-0716

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                      |   |                  |
|--------------------------------------|---|------------------|
| STATE FARM INSURANCE COMPANY,        | ) | Appeal from      |
| Plaintiff-Appellee,                  | ) | Circuit Court of |
| v.                                   | ) | Sangamon County  |
| LEWIS ANGELI and BARBARA ANGELI, De- | ) | No. 13MR794      |
| ceased,                              | ) |                  |
| Defendants-Appellants.               | ) | Honorable        |
|                                      | ) | John P. Schmidt, |
|                                      | ) | Judge Presiding. |

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JUSTICE STEIGMANN delivered the judgment of the court.

Justices Appleton and Pope concurred in the judgment.

## ORDER

¶ 1 *Held:* The appellate court dismissed the appeal for lack of jurisdiction because defendant failed to file a timely notice of appeal following the trial court's granting of plaintiff's motion for summary judgment. The granting of summary judgment was a final order as to all parties despite naming only one of the two originally named defendants. The other named defendant was dead at the time the action was commenced and, therefore, was never a party to the action.

¶ 2 In June 2010, defendant, Lewis Angeli, had a car accident. In September 2013, State Farm Insurance Company filed a complaint for declaratory judgment against Lewis and his mother, Barbara Angeli, who was the named insured on an insurance policy covering the vehicle Lewis was driving during the accident. In its complaint, State Farm sought a declaration that Lewis and Barbara had failed to make a timely claim under the policy. Unbeknownst to State Farm at the time it filed its complaint, Barbara had died in June 2013.

¶ 3 In January 2014, State Farm filed a motion for summary judgment naming only Lewis, having by then learned of Barbara's death. Later that month, the trial court granted State

**FILED**

August 9, 2016

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

Farm's motion. Lewis did nothing until September 2014, when he filed a motion under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), requesting that the court make its order granting summary judgment "final and appealable." The court denied that motion.

¶ 4 In May 2015, "Barbara" filed a motion under section 2-1008 of the Code of Civil Procedure (735 ILCS 5/2-1008 (West 2014)) to appoint a special representative to defend Barbara in "the present action." On August 12, 2015, the court denied that motion. This appeal followed. We dismiss the appeal for lack of jurisdiction.

¶ 5 I. BACKGROUND

¶ 6 We limit our discussion to only those facts necessary to reach our decision.

¶ 7 Barbara and Louis (not to be confused with Lewis) Angeli had an automotive insurance policy with State Farm that covered a 1998 Chevrolet pickup truck. The policy included uninsured motor vehicle coverage (UIM coverage), which provided that "[u]nder the uninsured motor vehicle coverages, any arbitration or suit against us will be barred unless commenced within two years after the date of the accident." The UIM coverage provided further that, with respect to bodily injury, an "insured" included any "relatives" of Barbara and Louis. On June 2, 2010, Barbara and Louis' son, Lewis (the parties' filings alternatively describe Lewis as Barbara and Louis' son and grandson), was driving the insured truck when he collided with an uninsured motorist.

¶ 8 In September 2013, State Farm filed a complaint for declaratory judgment, naming Lewis and Barbara as defendants. However, Barbara had died in June 2013. The complaint sought a declaration that Lewis and Barbara failed to request arbitration for UIM coverage within two years of Lewis' accident, as required by the policy. In December 2013, Lewis filed an answer to State Farm's complaint.

¶ 9 In January 2014, State Farm filed a motion for summary judgment (735 ILCS 5/2-1105(b) (West 2014)) against Lewis only. (A footnote on the first page of that motion explained that when State Farm filed its complaint for declaratory judgment, State Farm was unaware that Barbara had died.) In February 2014, Lewis filed a motion for summary judgment, arguing that he had notified State Farm by correspondence of his plan to pursue arbitration. Lewis argued further that the correspondence was sufficient to satisfy the requirement of the UIM policy that arbitration be "commenced" within two years of the accident. Later that month, the trial court granted State Farm's motion for summary judgment.

¶ 10 In September 2014, Lewis filed a motion under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) requesting that the trial court's order granting State Farm's motion for summary judgment "be made final and appealable." Lewis argued that the court's order was not a final judgment against all parties because Barbara was never served with State Farm's complaint. Later that month, State Farm filed a reply, averring that, because Barbara was dead at the time State Farm filed its complaint, the complaint was a legal nullity as to her. In February 2015, the trial court denied Lewis' Rule 304(a) motion.

¶ 11 In May 2015, "Barbara" filed a motion to appoint a special representative to represent her pursuant to section 2-1008 of the Code of Civil Procedure (735 ILCS 5/2-1008 (West 2014)). (The motion was signed by Lewis' attorney.) In it, Barbara purportedly argued that State Farm had failed to comply with section 13-209(c) of the Code (735 ILCS 5/13-209(c) (West 2014)) by failing to (1) serve either Barbara or her estate with notice of State Farm's complaint for declaratory judgment or (2) move to appoint a special representative for Barbara. The motion also asserted that no petition for letters of office had been filed to create an estate for Barbara. Later that month, State Farm filed a motion to strike Barbara's motion to appoint a special repre-

sentative and for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013), claiming that Barbara's motion was frivolous. In August 2015, the trial court denied Barbara's motion to appoint a special representative.

¶ 12 In September 2015, Lewis and "the Estate of Barbara Angeli" filed a notice of appeal. The notice of appeal stated that it was brought "pursuant to Supreme Court Rule 303." The notice claimed that it was appealing the following orders: (1) the court's February 2014 order granting State Farm's motion for summary judgment; (2) the court's February 2015 order denying Lewis' motion pursuant to Rule 304(a); and (3) the court's August 2015 order denying Barbara's motion to appoint a special representative.

¶ 13 II. ANALYSIS

¶ 14 Defendant Lewis Angeli raises the following arguments: (1) the trial court erred by granting State Farm's motion for summary judgment because correspondence between the parties indicated that Lewis made a timely request for arbitration; (2) the court abused its discretion by denying Lewis' request that the court enter a finding pursuant to Rule 304(a); and (3) the court abused its discretion by denying Barbara's request to appoint a special representative. State Farm disagrees with defendant on all three grounds. In addition, State Farm argues that the trial court should have imposed sanctions under Rule 137.

¶ 15 The appellant brief names Lewis and Barbara as appellants. (Although the notice of appeal named "the Estate of Barbara Angeli" as a party, the appellant brief contains no mention of Barbara's estate, and no evidence in the record shows that a probate estate was ever commenced in Barbara's name.) Defendant claims that this court has jurisdiction to hear the appeal under Rule 303(a), which allows an appeal from the final judgment in a civil case. Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). The final judgment that Lewis claims to be appealing is the trial

court's August 2015 order denying Barbara's motion to appoint a special representative. In his brief, Lewis asks us to reverse not only the trial court's decision on Barbara's motion to appoint a special representative, but also its February 2014 order granting State Farm's motion for summary judgment and its February 2015 order denying Lewis' motion for a Rule 304(a) finding.

¶ 16 State Farm, in its brief, does not address our jurisdiction. Nevertheless, we consider the jurisdictional issue because a reviewing court has a duty to consider *sua sponte* its jurisdiction and to dismiss an appeal if the court lacks jurisdiction. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52, 930 N.E.2d 895, 915 (2010).

¶ 17 In September 2013, State Farm filed its complaint for declaratory judgment against both Lewis and Barbara, apparently unaware that Barbara had died in June 2013. "Under the common law of Illinois, a dead person is a nonexistent entity and cannot be a party to a suit." *Relf v. Shatayeva*, 2013 IL 114925, ¶ 22, 998 N.E.2d 18. Therefore, Barbara was never a party to this action, and Lewis was the sole defendant. As a result, the trial court's February 2014 order granting State Farm's motion for summary judgment as to Lewis was a final judgment as to all parties and claims. As such, that order was appealable under Rule 303(a), not Rule 304(a).

¶ 18 Under Rule 303(a), to appeal the court's February 2014 order, Lewis was required to file a notice of appeal within 30 days after the entry of that order, given that no timely posttrial motion was filed. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). Lewis failed to do so. The trial court therefore lost jurisdiction over this action 30 days after the entry of the court's February 2014 order. See *People v. Bailey*, 2014 IL 115459, ¶ 8, 4 N.E.3d 474 ("Under our usual rules, a trial court loses jurisdiction to hear a cause at the end of the 30-day window following the entry of a final judgment."). "[O]nce the trial court loses jurisdiction, any subsequent orders entered, including a notice of appeal which would vest jurisdiction with our court, are not viable." *Man-*

*ning v. City of Chicago*, 407 Ill. App. 3d 849, 852, 944 N.E.2d 876, 879 (2011). The September 2015 notice of appeal was therefore not viable. Without a properly filed notice of appeal, we lack jurisdiction and must dismiss the appeal. *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8, 21 N.E.3d 433.

¶ 19

### III. CONCLUSION

¶ 20

For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

¶ 21

Appeal dismissed.