

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) 150932-U

NO. 4-15-0932

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 30, 2016

Carla Bender
4th District Appellate
Court, IL

THE ILLINOIS DEPARTMENT OF HUMAN SERVICES,)	Appeal from
)	Circuit Court of
Plaintiff-Appellee,)	Sangamon County
v.)	No. 15MR746
MARY ALICE STOUFFE,)	
Defendant-Appellant,)	
and)	Honorable
THE ILLINOIS CIVIL SERVICE COMMISSION,)	Rudolph M. Braud, Jr.,
Defendant.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court determined that it lacked jurisdiction to consider defendant's appeal.

¶ 2 In May 2015, defendant, Mary Alice Stouffe, filed a motion for indirect civil contempt against plaintiff, the Illinois Department of Human Services (Department), alleging that the Department willingly failed to comply with an order of the trial court. In September 2015, the court disagreed with Stouffe's characterization and declined to find the Department in contempt.

¶ 3 Stouffe appeals, arguing that the trial court's refusal to find the Department's actions contemptuous constituted a denial of injunctive relief, and therefore this court has jurisdiction to consider her claim under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

Stouffe argues further that the Department's new discharge proceedings were barred by *res judi-*

cata while the trial court's consideration of the initial discharge proceeding was pending. Because we conclude that we lack jurisdiction, we decline to consider Stouffe's claim and dismiss this appeal.

¶ 4

I. BACKGROUND

¶ 5 In November 2014, the Department initiated discharge proceedings against Stouffe, its employee, after discovering that she falsified overtime records on her state employee timesheets over the previous two years. The proceedings concluded with Stouffe's discharge.

¶ 6 In March 2015, Stouffe appealed her discharge to the Illinois Civil Service Commission (Commission). In April 2015, she filed a motion to dismiss the disciplinary charges, alleging that the Department failed to provide her with (1) the names of witnesses against her and (2) the dates of the allegedly falsified timesheets. Stouffe argued that she was entitled to this information at her November 2014 predisciplinary hearing under section 302.705(b) of Title 80 of the Illinois Administrative Code (80 Ill. Adm. Code 302.705(b) (1986)). Following a July 2015 hearing, an administrative law judge (ALJ) recommended that the Commission grant Stouffe's motion to dismiss disciplinary charges.

¶ 7 The Commission later adopted and affirmed the ALJ's recommendation to dismiss disciplinary charges against Stouffe because the Department failed to "comply with Section 302.705 of the Personnel Rules." Shortly thereafter, the Department appealed to the trial court. In August 2015, the Department filed a motion, requesting a stay of the Commission's order pending judicial review. A month later, the court denied the Department's motion to stay.

¶ 8 In November 2015, the Department—seeking to prevent Stouffe's return to work before the resolution of the court's administrative review—initiated new discharge proceedings against her. In response, Stouffe filed a motion for indirect civil contempt against the Depart-

ment, arguing that the new proceedings were in contempt of the court's September 2015 order denying the Department's motion to stay and ordering the Department to follow the Commission's decision.

¶ 9 Following a November 2015 hearing, the trial court denied Stouffe's motion for a finding of indirect civil contempt, stating that the Department's newly initiated discharge proceedings were not contemptuous acts in violation of the court's September 2015 order denying the motion to stay.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Stouffe argues that the trial court's refusal to find the Department's actions contemptuous constituted a denial of injunctive relief, and therefore this court has jurisdiction to consider her claim under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). Stouffe argues further that the Department's new discharge proceedings were barred by *res judicata* while the trial court's consideration of the initial discharge proceeding was pending. Because we conclude that we lack jurisdiction, we do not consider Stouffe's claim.

¶ 13 A. Standard of Review

¶ 14 This court reviews the trial court's contempt finding for an abuse of discretion. *Banister v. Partridge*, 2013 IL App (4th) 120916, ¶ 54, 984 N.E.2d 598. "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634, 841 N.E.2d 1065, 1082 (2006).

¶ 15 B. Stouffe's Claim and Jurisdiction

¶ 16 The Illinois Constitution provides parties a right to appeal only final orders to this

court, subject to exceptions established by our supreme court rules. Ill. Const. 1970, art. VI, § 6. Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010) explicitly provides that contempt findings that impose a penalty or fine may be appealed before a final judgment is entered. Stouffe cannot appeal under Rule 304(b)(5) because the trial court denied her motion for contempt. Instead, she claims that the court's finding of "no contempt" was effectively an order denying an injunction and is thus appealable under Rule 307(a)(1).

¶ 17 In *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1025, 822 N.E.2d 941, 943 (2005), the appellate court explained that Rule 307(a)(1) permits appeals from the following four types of interlocutory orders: "(1) orders that deny (*i.e.*, refuse) injunctions; (2) orders that create (*i.e.*, grant) injunctions; (3) orders that change the effects of (*i.e.*, modify or dissolve) existing injunctions; and (4) orders that perpetuate the effects of (*i.e.*, refuse to modify or to dissolve) existing injunctions." Only the first category is potentially applicable to Stouffe's claim.

¶ 18 Whether an order is appealable as injunctive under Rule 307(a)(1) depends on "the substance of the action, not its form." *In re A Minor*, 127 Ill. 2d 247, 260, 537 N.E.2d 292, 297 (1989). The term "injunction" should be construed broadly. See *id.* at 260-61, 537 N.E.2d at 297-98 (citing cases). An order constitutes an appealable injunction if it requires a person " 'to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights.' " *Bloomington Urological Associates, SC v. Scaglia*, 292 Ill. App. 3d 793, 797, 686 N.E.2d 389, 392 (1997) (quoting *A Minor*, 127 Ill. 2d at 261, 537 N.E.2d at 298).

¶ 19 A judgment of contempt includes two components: (1) a finding that a party's conduct is contemptuous and (2) the imposition of a remedy for that contemptuous conduct. Illi-

nois jurisprudence has long recognized the distinction between findings of contempt and the consequential remedies that impose a burden, sanction, or fine. See *Lester v. Berkowitz*, 125 Ill. 307, 308, 17 N.E. 706, 706 (1888) ("Had the court attempted to enforce obedience to its order by the imposition of a fine in a sum of money, with an order for an execution, or by a definitive term of imprisonment, as for contempt of court, the judgment of the court imposing such fine or imprisonment would be final, and from which an appeal might be taken, or to which a writ of error would lie."); see also *Valencia v. Valencia*, 71 Ill. 2d 220, 228, 375 N.E.2d 98, 102 (1978) ("Generally, it is held that where no punishment has been imposed an order adjudicating one to be in contempt is not final and is not reviewable."). Even the structure of our supreme court rules, specifically the aforementioned Rule 304, reflects this distinction and consequently allows for an appeal from "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty." Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010).

¶ 20 In *In re Marriage of Gutman*, 232 Ill. 2d 145, 153, 902 N.E.2d 631, 635 (2008) the supreme court examined the nature of contempt and explained, "[u]ntil the entry of a contempt order imposing a sanction, a contempt petition provides no basis for obtaining immediate appellate jurisdiction over any part of the case under Rule 304(b)(5)." Although the supreme court's analysis in *Gutman* concerned appeals under Rule 304 and not Rule 307, the rationale behind that distinction applies to this case.

¶ 21 Considering the aforementioned two components, indirect civil contempt is distinguishable from examples of denied injunctive motions that are appealable under Rule 307(a)(1). The potential injunctive nature of a ruling concerning indirect civil contempt would come from the imposition of a remedy. The imposition of a fine or other penalty, not the finding of contempt itself, is what forces a party to "do a particular thing, or to refrain from doing a par-

ticular thing.' " *Bloomington Urological Associates*, 292 Ill. App. 3d at 797, 686 N.E.2d at 392 (quoting *A Minor*, 127 Ill. 2d at 261, 537 N.E.2d at 298). This remedial component of contempt is what " 'operate[s] as a restraint upon the party in the exercise of his real or supposed rights.' " *Id.*

¶ 22 In this case, the trial court considered Stouffe's motion and, weighing the purpose of its order denying the Department's motion to stay against the Department's actions initiating new proceedings, determined that the Department was not in contempt of its previous order. Because the court did not find the Department in contempt, it never had occasion to consider a remedy. As a result, no injunctive measures were denied.

¶ 23 III. CONCLUSION

¶ 24 Because we conclude that we do not have jurisdiction under Rule 307(a)(1), we dismiss Stouffe's appeal.

¶ 25 Dismissed.