2017 IL App (1st) 160941-U

FIRST DIVISION
November 20, 2017

No. 1-16-0941

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re Marriage of,	)	Appeal from the
KATHRYN CRIVOLIO	)	Circuit Court of
Petitioner-Appellee,	)	Cook County
	)	
v.	)	No. 10 D 9560
	)	
MARK McCOMBS,	)	The Honorable
	)	Mark J. Lopez,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 The circuit court entered an order during the course of postdissolution of marriage proceedings prohibiting respondent Mark McCombs from filing further pleadings without prior leave of court. The circuit court's order purports to be a "final and appealable order," and respondent has appealed. Petitioner has not filed an appellee's brief, and we ordered the case taken on the record and respondent's brief. We find that we lack jurisdiction to consider the merits of respondent's appeal. The circuit court's order is neither a final judgment nor a

permanent injunction because it does not adjudicate any claims set forth in any pleading, and is neither a final nor appealable order under Supreme Court Rule 301 (eff. Feb. 1, 1994) or Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Furthermore, the circuit court's order is administrative in nature and derives from the circuit court's inherent authority to control its own docket, and is therefore not an appealable interlocutory injunction under Supreme Court Rule 307(a)(1) (eff. Jan. 1, 2016). Therefore, we dismiss respondent's appeal.

¶ 3 BACKGROUND

¶ 4 Respondent's statement of facts fails to comply with Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) because it fails to set forth the necessary facts "fairly without argument or comment." However, we have gleaned sufficient facts from the circuit court's orders and the record to conclude that we lack jurisdiction to consider the merits of respondent's appeal. Therefore, we recite only those facts necessary to understand our disposition.

¶ 5 On September 29, 2010, Kathryn Crivolio filed a petition for dissolution of marriage from Mark McCombs. The parties have four children together. A judgment of dissolution of marriage was entered on October 5, 2012. At all times relevant to the issue before us, Kathryn was represented by counsel in the circuit court, and Mark represented himself *pro se* and continues to do so on appeal.[1] Throughout the litigation, both parties have filed numerous petitions against one another requesting various forms of relief. Between October 9, 2014, and December 3, 2015, Mark filed numerous petitions, including several petitions for rule to show cause against Kathryn, as well as petitions for (1) an order of protection, (2) subpoenas, (3) sanctions, (4) relief related to a trust for their child, (5) parenting time, and (6) discovery.

¶ 6 On December 10, 2015, the circuit court, on its own motion, entered the following order: "A permanent injunction is issued against respondent, prohibiting respondent from filing any

[1]Mark was licensed to practice law in Illinois until 2012, when he was disbarred on consent.

pleadings in this matter without first seeking leave of court first [*sic*] to do so. This injunction shall remain in full force [and] effect until further order of court regarding the same." On December 23, 2015, Mark filed in the circuit court a "Petition for Leave to File Notice of Interlocutory Appeal" from the December 10, 2015, order, in which Mark asserted that he had a right to appeal under Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). The circuit court took the motion under advisement.

¶ 7 On March 4, 2016, the circuit court entered a written order granting Mark's motion for leave to file an interlocutory appeal. The circuit court's order does not identify the supreme court rule under which Mark's motion was being granted. The circuit court stated in its written order that it entered the December 10, 2015, order "to restrict or prevent Mark's filing [of] harassing or vexatious litigation against his ex-wife," and identified 19 filings by Mark between October 9, 2014, and December 3, 2015. The circuit court found that Mark was "using his legal training and experience to harass his ex-wife with multiple filings," and that it had "a duty to maintain order in its courtroom and move cases along as efficiently as possible." The circuit court noted that it had not prohibited Mark from filing any pleadings, and that the purpose of its order was "to allow the court to make an informed decision after reviewing each proposed pleading to determine if it is harassing or vexatious in substance or in sheer volume to prevent Mark from abusing the court system for any improper purpose." The circuit court "amended" its December 10, 2015, order to include the findings contained in the March 4, 2016, order, and found that the December 10, 2015, order was "final and appealable."

¶ 8 Mark filed a notice of appeal on April 1, 2016, which identified the December 10, 2015, and the March 4, 2016, orders.

¶ 9 ANALYSIS

¶ 10 On appeal, Mark contends that the circuit court "abused its discretion when it mandatorily enjoined Mark on its own motion, without the presentation of evidence, without an opportunity to present or examine witnesses and without a hearing." Mark's jurisdictional statement asserts that we have jurisdiction over his appeal pursuant to Supreme Court Rule 301.

¶ 11 We have an independent duty to ascertain our jurisdiction. Pursuant to the Illinois constitution, our jurisdiction is limited to appeals from final judgments. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301. Absent a supreme court rule, we lack jurisdiction to review judgments, orders, or decrees that are not final. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22 (citing *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9). A "final judgment" for the purposes of appeal is one that fixes absolutely and finally the rights of the parties in a lawsuit, and determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Indiana Insurance Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22; see also *In re Detention of Hardin*, 238 Ill. 2d 33, 42-43 (2010).

¶ 12 First, we find that we have no jurisdiction under Rule 301 because the circuit court's December 10, 2015, order is plainly not a final judgment: it does not fix the rights of the parties or determine any portion of the litigation on the merits. The circuit court's order merely prohibits Mark from filing further pleadings without leave of court in order to restrict Mark's "harassing or vexatious litigation." The circuit court's use of the term "permanent injunction" does not alter our analysis or convert the circuit court's order to a final judgment. A permanent injunction is not limited in duration, alters the status quo, and concludes the rights of the parties. *Santella v. Kolton*, 393 Ill. App. 3d 889, 903 (2009). Permanent injunctions are final orders and are only appealable under Rule 301 or Rule 304(a), if those rules are otherwise applicable. *Id.* Here, the

circuit court's order does not amount to a permanent injunction because it does not fix or conclude any rights of the parties, has no effect outside the context of the litigation, and, by definition, cannot extend beyond the conclusion of the action. Furthermore, the circuit court expressly reserved the right to modify its order, suggesting that the prohibition was not actually permanent, but instead was temporary. These factors lead us to conclude that the circuit court's order is more akin to an interlocutory injunction than a permanent injunction. We find that the circuit court's December 10, 2015, order as modified by the March 6, 2016, order is neither a final judgment nor a permanent injunction, and is therefore not appealable under Rule 301. The lack of a final judgment also precludes any finding that we have jurisdiction pursuant to Rule 304(a).[2]

¶ 13 Nor do we have jurisdiction under Rule 307(a)(1) (eff. Jan. 1, 2016) which allows for an appeal from injunctions that are interlocutory, not permanent, in nature. *Santella*, 393 Ill. App. 3d at 903. An interlocutory injunction, such as a preliminary injunction or temporary restraining order, does not alter or conclude the rights of the parties, is limited in duration, and does not extend beyond the conclusion of the action. *Id.* "While the term 'injunction' is to be broadly construed and actions of the circuit court having the force and effect of injunctions are appealable even if called something else, not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing." *Short Brothers Construction, Inc. v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960 (2005) (citing *In re A Minor*, 127 Ill. 2d 247, 260-62 (1989)). "Orders of the circuit court that regulate only the procedural details of the litigation before the court, which thus can be properly characterized as merely 'ministerial' or 'administrative,' cannot be the subject of an interlocutory appeal." *Id.* This includes orders

[2]Rule 304(a) is further inapplicable because the circuit court's order failed to make the required "express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a).

related to the circuit court's inherent authority to control its own docket that do not affect the rights of the parties apart from the litigation. *Id.*

¶ 14 Here, the circuit court's order regulates the litigation by limiting Mark's ability to file additional pleadings intended to "abus[e] the court system for an improper purpose." This is an administrative order intended to regulate the procedural details of the litigation, and is squarely within the circuit court's inherent authority to control its own docket. Mark is not precluded from actually taking any particular action—the circuit court instead has taken measures to ensure the orderly and efficient resolution of the litigation by first requiring Mark to obtain leave of court to proceed with an intended filing. And as the circuit court stated in its March 6, 2016, order, Mark has not been prohibited from filing any pleadings. We conclude that the circuit court's order prohibiting Mark from filing further pleadings without leave of court is not an appealable injunction under Rule 307(a)(1).

¶ 15 CONCLUSION

¶ 16 We must dismiss this appeal for lack jurisdiction because the circuit court's order prohibiting respondent from filing further pleadings without leave of court is not a final and appealable order under Rule 301, nor is it an appealable injunction under Rule 307(a)(1).

¶ 17 Appeal dismissed.