

No. 1-16-2081

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
FIRST JUDICIAL DISTRICT

ARSHAD UMRANI, an individual, MUNWAR JATOI, an individual, and the SINDHI ASSOCIATION OF NORTH AMERICA, a New York nonprofit,)	Appeal from the
)	Circuit Court of
)	Cook County
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	
SINDHI ASSOCIATION OF NORTH AMERICA, a New York nonprofit, JAMIL DAUDI, an individual, AIJAZ KOLACHI, an individual, NOOR-U-NISA GHANGHRO, an individual, IRSHAD KAZI, an individual, ZULFIQAR SHAIKH, an individual, AIJAZ MEMON, an individual, SAFDAR PANHWAR, an individual, MANSOOR SAMOO, an individual, KHALID CHANA, an individual, AWAIS LAGHARI, an individual, DR. KHALIL MEMON, an individual, AIJAZ H. TURK, an individual, and VALEED SHAIKH, an individual,)	No. 14 CH 18874
)	
)	
Defendants-Appellees.)	Honorable
)	Sophia H. Hall,
)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissing this matter on appeal from a nonfinal order of the circuit court of Cook County for lack of appellate jurisdiction.

¶ 2 Plaintiffs Arshad Umrani (Umrani), Munwar Jatoi (Jatoi), and the Sindhi Association of North America (SANA) (collectively plaintiffs) appeal an order of the circuit court of Cook County granting a motion to dismiss for lack of personal jurisdiction filed on behalf of SANA, Jamil Daudi (Daudi), Noor-u-nisa Ghanghro (Ghanghro), Irshad Kazi (Kazi), Aijaz Kolachi (Kolachi), and Aijaz Memon (Aijaz). On appeal, plaintiffs raise numerous arguments challenging the circuit court's ruling. We, however, decline to entertain those arguments as we dismiss the matter for lack of appellate jurisdiction.

¶ 3 **BACKGROUND**

¶ 4 This matter involves alleged efforts by certain SANA officeholders to maintain power within SANA by interfering with the Association's election and attempting to circumvent the bylaws, both during and after a SANA convention in Chicago. The operative complaint alleged that SANA executive council members (Daudi, Ghanghro, Kazi, Aijaz, and Khalil Memon (Memon)) and other SANA officeholders (Kolachi, Safdar Panhwar (Panhwar), Mansoor Samoo (Samoo), Khalid Chana (Chana), Zulfiqar Shaikh (Shaikh), Awaris Laghari (Laghari), Aijaz Turk (Turk), and Valeed Shaikh (Valeed))¹ breached their duties of care, loyalty, and obedience, committed fraud, and spoiled evidence. While plaintiffs alleged in portions of their complaint that all of the defendants engaged in the same misconduct, they also alleged specific conduct by individual defendants. In their complaint, plaintiffs also distinguished between acts committed

¹ We acknowledge that while the operative complaint states that each defendant except Turk, Valeed, and Shaikh are members of the executive council, plaintiffs' opening brief makes the distinctions listed above.

by defendants who were members of the executive council and acts committed by all defendants. Defendants reside in various areas throughout the United States and Canada; only Memon is a resident of Cook County. Furthermore, Panhwar, Laghari, and Shaikh were never served, but counsel filed an appearance on behalf of Shaikh.

¶ 5 Pertinent to this appeal, defendants were not represented collectively by one counsel. Frank Avila (Avila) first filed an appearance on behalf of SANA and Memon, and later filed responsive pleadings on behalf of SANA, Memon, Valeed, Turk, Kolachi, Chana, and Samoo (the Avila defendants).² Andrew Finko (Finko) filed an appearance on behalf of Daudi, Ghanghro, Kazi, and Aijaz (the Finko defendants). Finko was later replaced by Adler Murphy & McQuillen, LLC (Adler), which also filed an appearance on behalf of Kolachi, Shaikh, and SANA (collectively the Adler defendants).

¶ 6 The Finko defendants were the first to file a motion to dismiss the operative complaint for lack of personal jurisdiction pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 (West 2014). Avila was then granted leave to file a motion to dismiss for lack of personal jurisdiction on behalf of SANA and Memon only, as he was not yet representing the remaining Avila defendants. Thereafter, the Avila defendants all filed a motion for leave to join the pending motions to dismiss, which the circuit court entered and continued. The Avila defendants failed to obtain a ruling on their motion and therefore failed to obtain leave to join the motions to dismiss. During briefing on the motions, Adler filed an appearance on behalf of the Finko defendants, as well as Kolachi, Shaikh, and SANA, and renewed the motion to dismiss

² Avila was granted leave to file appearances on behalf of additional defendants who had been served, but no additional appearances by Avila exist in the record and the order did not identify those additional defendants.

filed by Finko.³ The parties ultimately filed eight motions, responses, replies, sur-responses, and sur-replies before the circuit court regarding the issue of personal jurisdiction.

¶ 7 Adler subsequently requested leave to supplement Finko's motion to dismiss, but the circuit court, having a multitude of briefs before it, instead ordered Adler to file a new motion incorporating the previous arguments. The circuit court then set a briefing schedule on the motion, and continued the matter for a hearing. The circuit court also observed that Memon, a Cook County resident, was in a different situation than the nonresident defendants regarding the issue of personal jurisdiction. Thereafter, the Adler defendants filed a new motion to dismiss for lack of personal jurisdiction, naming as movants only the Adler defendants. The Adler defendants acknowledged in the motion that each of the movants resided outside of Illinois and discussed the law of personal jurisdiction over nonresident parties only. The Avila defendants did not move to join the motion, nor did they file a motion of their own.

¶ 8 No report of proceeding exists for the hearing on the motion to dismiss. The circuit court took the matter under advisement and later granted the Adler defendants' motion to dismiss for lack of personal jurisdiction in open court, with Adler and plaintiffs' counsel being present. Counsel for the Avila defendants was not in attendance for the circuit court's ruling. The circuit court observed that the motion did not address all of the defendants and directed the parties to specify in the draft order which defendants were to be included in the order. Counsel for the Adler defendants drafted the order but failed to incorporate the circuit court's requested language. Instead, the order states that "defendants' " motion to dismiss was granted and does not identify the defendants individually. This appeal followed.

¶ 9 On appeal, plaintiffs list as defendants-appellees each defendant named in the caption of

³ Adler declined to include Shaikh in the renewed motion and in subsequent motions because plaintiffs failed to serve him with process.

their complaint. Only the Adler defendants responded to this appeal and made clear in their brief that it is on behalf of the Adler defendants only.

¶ 10

ANALYSIS

¶ 11 Prior to addressing the issue of our jurisdiction, we acknowledge that plaintiffs' brief fails to comply with Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016) in numerous ways. Plaintiffs failed to include a statement of facts in violation of Rule 341(h)(6) and plaintiffs' arguments contain no citations to the record on appeal in violation of Rule 341(h)(7). Ill. S. Ct. R.

341(h)(6), (h)(7) (eff. Jan 1, 2016). Instead, plaintiffs cite to their separate appendix, which they failed to assemble in numerical order. While our discretion allows us to strike a brief for failure to comply with Rule 341 and dismiss the appeal, we nevertheless review this matter and discuss the issue of our jurisdiction. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77; *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶¶ 7, 9, 12.

¶ 12 The appellate court has an independent duty to consider its jurisdiction before proceeding to the merits of the case. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024-25 (2003). When jurisdiction is lacking, we must dismiss the appeal. *Id.* at 1025. Here, plaintiffs purport to appeal from the circuit court pursuant to Rule 301. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Rule 301 states, "every final judgment of a circuit court in a civil case is appealable as of right." *Id.* A final judgment is one which "disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). In other words, a final judgment "decides the controversy between the parties on the merits and fixes their rights, so that, if the judgment is affirmed, nothing remains for the trial court to do but to proceed with its execution." (Internal quotation marks omitted.) *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1044 (2000). An

order of the circuit court which leaves a cause pending and undecided is not a final order and any judgment that adjudicates the rights and liabilities of fewer than all of the parties is not immediately appealable. *Resurgence Financial, LLC v. Kelly*, 376 Ill. App. 3d 60, 62 (2007); *Shanklin v. Hutzler*, 277 Ill. App. 3d 94, 99 (1995). The appellate court is therefore without jurisdiction to review judgments or orders which are not final, subject to exceptions for appeals from interlocutory orders specified in the Supreme Court Rules, which are not applicable here. *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982).

¶ 13 The circuit court's ruling on the motion to dismiss was not a final judgment as it did not dispose of all of the defendants to the appeal. See *Shanklin*, 277 Ill. App. 3d at 99; *Zak v. Allson*, 252 Ill. App. 3d 963, 965 (1993). In this case, the Finko defendants, and subsequently the Adler defendants, which included the Finko defendants, filed numerous motions to dismiss regarding personal jurisdiction, and the Avila defendants failed to obtain leave to participate in the motions. Plaintiffs subsequently filed numerous responses to the motions. The circuit court ordered the Adler defendants to consolidate their arguments into a new motion to dismiss, followed by a response and a reply, which Avila did not move to join. The new motion to dismiss named only the Adler defendants as movants.

¶ 14 Nothing in the motion or in the record indicates that the motion was filed on behalf of any of the other defendants. In fact, Adler did not file appearances on behalf of any other defendants. Moreover, only Adler and plaintiffs' counsel appeared in court for the ruling on the Adler defendants' motion to dismiss. The Avila defendants not only declined to join the Adler defendants' motion to dismiss, but they also failed to obtain leave to join the prior motions to dismiss, calling into question whether they were ever a party to any such motion. Most importantly, the report of proceedings indicates that the circuit court was ruling on the issue of

jurisdiction only as it pertained to those defendants who filed the motion, namely the Adler defendants. Specifically, prior to ruling on the motion, the circuit court attempted to identify those defendants who were bringing the motion to dismiss. The circuit court acknowledged that the motion did not address all of the numerous defendants, and rather than name each defendant individually, the circuit court requested that the parties do so in the written order, stating, “just so long as the record will properly identify all of the parties who are involved here.”⁴ The motion before the circuit court expressly listed only the six Adler defendants. Once the circuit court granted the Adler defendants’ motion to dismiss, plaintiffs’ claims against the remaining eight defendants were still pending before the circuit court. See *Zak*, 252 Ill. App. 3d at 965; see also *Blanchette v. Martell*, 52 Ill. App. 3d 1029, 1030-31 (1977) (defendant remained a party in the action after his co-defendant’s motion for summary judgment was granted). Moreover, where litigation involves multiple claims or parties, the obligation ultimately lies with the parties to track the circuit court’s disposition of the substantive issues raised in the pleadings and to seek clarification from the court when the effect of an order is in doubt. Here, the parties declined to seek clarification regarding which defendants were included in the circuit court’s dismissal order. The circuit court’s order thus adjudicated the rights of fewer than all of the parties and is therefore not a final judgment. See *Resurgence Financial, LLC*, 376 Ill. App. 3d at 62; *Shanklin*, 277 Ill. App. 3d at 99.

¶ 15 While we acknowledge that a circuit court may dismiss nonmoving defendants in certain instances, such as where a cause of action asserts a claim under the theory of *respondeat*

⁴ When a circuit court’s oral pronouncement conflicts with the written order, the oral pronouncement controls. *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009). The circuit court’s oral order that the parties address which defendants were included in the motion to dismiss is therefore controlling over the written order which states that “defendants’ ” motion is granted. See *id.*

superior or where a complaint was not timely filed, that is not the case here. See *Merritt v. Randall Painting Co.*, 314 Ill. App. 3d 556, 558-59 (2000) (finding the court had jurisdiction to consider the appeal where the claims against an employer and those against the employees were “one and the same,” the circuit court intended to dismiss the complaint in its entirety, and the complaint was dismissed on statute of limitation grounds). In this case, plaintiffs’ claims against defendants are not “one and the same.” *Id.* at 559. Furthermore, we cannot say the circuit court conclusively intended to dismiss the entire complaint where the circuit court acknowledged that the motion to dismiss did not address all of the defendants and ordered the parties to address the issue in the written order.⁵

¶ 16 Moreover, a motion to dismiss for lack of personal jurisdiction, as in this case, must be applied on a defendant-by-defendant basis, unlike a motion regarding the statute of limitations. See *Ploense v. Electrolux Home Products, Inc.*, 377 Ill. App. 3d 1091, 1108 (2007); *Salvator v. Admiral Merchant’s Motor Freight*, 175 Ill. App. 3d 901, 905-06 (1988) (stating that the requirements for personal jurisdiction must be met for each defendant). Memon, who was a nonmoving defendant and resides in Cook County, and other nonmoving defendants who were alleged to have committed acts in Illinois, are thus in a categorically different position than the defendants who moved to dismiss for lack of personal jurisdiction.⁶ Some of the nonmoving defendants appeared in the matter and had an opportunity to join the motion to dismiss or file a motion on their own behalf, but failed to do so, unlike the nonmoving defendants in *Merritt* who were unserved and were not represented by counsel. *Merritt*, 314 Ill. App. 3d at 558-59.

⁵ The circuit court’s oral order controls over the written order which states that “defendants’ ” motion to dismiss is granted. See *Danada Square, LLC*, 392 Ill. App. 3d at 607.

⁶ Memon’s contrasting status as an Illinois resident was recognized by the circuit court in its ruling on the Adler defendants’ motion to dismiss.

¶ 17 We do acknowledge, however, that at the request of plaintiffs' counsel the order granting the Adler defendants' motion to dismiss stated it was "final and appealable." Yet, just because an order includes such language does not make it so. When a final judgment does not dispose of all of the parties presented to the court, Rule 304(a) governs. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 982 (1994).

Rule 304(a) states,

"If 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. Mar. 8, 2016).

Under Rule 304(a), an order that dismisses fewer than all of the parties is not appealable unless it is accompanied by the circuit court's express written finding that there is "no just reason for delaying either enforcement or appeal or both." *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 543 (2011). While the circuit court need not recite Rule 304(a) exactly in order to invoke it, the Rule requires some reference to the immediate appealability of an order or the justness of delaying the appeal. *Id*; *In re Application of the Du Page County Collector*, 152 Ill. 2d 545, 550 (1992). It is well settled that the circuit court's declaration that an order is "final and appealable" is insufficient to satisfy the requirements of Rule 304(a). *Rohr Burg Motors, Inc. v. Kulbarsh*, 2014 IL App (1st) 131664, ¶¶ 36-37; *Palmolive Tower Condominiums, LLC*, 409 Ill. App. 3d at 544 (stating that without reference to the justness of delay or to immediate appealability, the circuit court's declaration that an order is "final and appealable" "evinces no application of the discretion Rule 304(a) contemplates" and "amounts to nothing more than a

nonbinding interpretation”).

¶ 18 Here, the circuit court made no reference to Rule 304(a), the immediate appealability of its order, or the justness of delaying the appeal of its order. It is evident that the circuit court did not intend to invoke Rule 304(a), and we therefore lack jurisdiction under the Rule. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *Palmolive Tower Condominiums, LLC*, 409 Ill. App. 3d at 543; *Du Page County Collector*, 152 Ill. 2d at 550.

¶ 19 **CONCLUSION**

¶ 20 For the reasons stated above, we dismiss this matter for lack of appellate jurisdiction.

¶ 21 Dismissed.