THIRD DIVISION
September 19, 2018

No. 1-18-0355

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DOOR PROPERTIES, LLC, SERRANI CAROL ANDERSON, MIDWEST BANK TRUST COMPANY, and WILDWOOD, LLC,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellees,	)	10 L 12931
v.	)	Honorable Alexander P. White Judge Presiding
AYAD M. NAHLAWI,	)	
Defendant-Appellant.	)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

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

¶ 2 Appellant, Ayad M. Nahlawi (Nahlawi), appeals, pursuant to Supreme Court Rule 307(a)(1), from an order denying his motion for protective order and requiring him to produce documents. Because we find that the order being appealed does not qualify as an "injunction," we lack jurisdiction to review this interlocutory order and dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 Appellee, Door Properties, LLC (Door), obtained a judgment against Nahlawi for breach of a personal guaranty. Door then initiated supplemental citation proceedings under section 2-1402 of the Code of Civil Procedure to collect the judgment. See 735 ILCS 5/2-1402 (West 2016). In its citation to discover assets, Door sought, in paragraph 20 of the Rider:

> "[a]ny and all documents, including but not limited to email, correspondence, contracts, notes, minutes, or the like, that refer reflect or relate to Debtor and Foodworks of Arlington Heights, LLC; Foodworks USA, Inc.; Foodworks Hospitality Group, Inc.; Foodworks Holdings, LLC; Foodworks Management Inc.; Foodworks Solutions, Inc.; Foodworks 2047 LLC; Mago AH, LLC.; Mago BB, LLC; Mago SB, LLC; Mago RC, LLC; McCaffery Interests, Inc.; The Arboretum of South Barrington; Roosevelt Collection; Village of Arlington Heights; Village of South Barrington; Village of Bolingbrook; West Suburban Bank; Kiss the Chef Holdings LLC; Kathy Scheublein; . [*sic*]"

¶ 5 Nahlawi objected that paragraph 20 was "vague, overbroad in scope and beyond the stated purpose of a citation to discover assets." Initially, in October 2015, the court overruled Nahlawi's objection to paragraph 20. Nahlawi continued trying to limit paragraph 20 on the ground that the number of documents requested were oppressively voluminous.

¶ 6 After Nahlawi's protracted efforts to clarify and reconsider the court's order, the court ruled that "(1) Citation Rider Paragraph 20 is hereby limited to documents that refer, reflect or relate to the relationship between Debtor and the identified third-parties; (2) Defendant's Motion to Reconsider the October 30, 2015 Order is otherwise deemed moot by Paragraph 1 above."

¶ 7 Unsatisfied with this limitation, Nahlawi filed a motion for protective order, seeking to further limit the production required by paragraph 20. The motion stated that, in response to the court's limitation, "Defendant's counsel began reviewing Defendant's emails for responsiveness to the June 21, 2017 order, and realized the extreme ambiguity and over-broadness in the request as shown in the following emails." These examples include: a LinkedIn request from Kathy Scheublein, the tax return for Nahlawi's parents which was sent to Ms. Scheublein, and an email notification about a UPS package sent to Nahlawi for Foodworks Hospitality Group. Nahlawi argued that these documents, while they "refer, reflect or relate to" his "relationship" with these third-parties, are wholly unresponsive and outside the scope of a citation to discover assets.

¶ 8 Citing the decision in *Carlson v. Jerousek*, 2016 IL App (2d) 151248, Nahlawi argued that paragraph 20 violated Illinois Supreme Court Rule 201's new proportionality requirement because the court "failed to actually limit the disproportionate amount of time and expense needed to produce responsive documents." Nahlawi requested that the court enter a protective order requiring Door "to specify the documents it seeks, based on the responses to Defendant's and third party citations Plaintiff has obtained to date."

¶ 9 After briefing and a hearing, on February 6, 2018, the court entered an order denying Nahlawi's motion for a protective order and ordered "Judgment Debtor to produce documents responsive to Paragraph 20 of the Rider by Feb. 27, 2018." This appeal followed.

¶ 10 ANALYSIS

¶ 11 On appeal, Nahlawi argues that the trial court abused its discretion by failing to further limit the scope of paragraph 20. In response, Door first argues that the court lacks jurisdiction to review the February 6 order. Before addressing the merits, we must determine whether we have jurisdiction over this appeal, a threshold issue.

¶ 12 "Finality is generally a prerequisite to appellate jurisdiction." *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7 (1998). Nahlawi is not claiming that the order under appeal was a final order in a section 2-1402 proceeding. And for good reason. " 'An order in a section 2–1402 proceeding is said to be final when the citation petitioner is in a position to collect against the judgment debtor or a third party, or the citation petitioner has been ultimately foreclosed from doing so.' " *PNC Bank, N.A. v. Hoffmann*, 2015 IL App (2d) 141172, ¶ 24; accord *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 26; *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 642 (2008).

¶ 13 That is not the case here. The order denying the protective order and compelling Nahlawi to produce documents did not end that supplementary proceeding; it did not put his opponent in position to collect a judgment or foreclose him from doing so. It was one of many procedural steps in the supplementary proceeding and not a final order. See, *e.g.*, *In re Marriage of McElwee*, 230 Ill. App. 3d 714, 719 (1992) (order finding garnishment valid and allowing it to proceed was not final order, as order "merely placed the parties at the beginning of the garnishment process, not the end, and there are many additional procedural safeguards which must be followed before respondent will be in a position where she can actually collect the judgment debt out of the subject property.").

¶ 14 Nahlawi claims that jurisdiction is proper under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which provides appellate jurisdiction from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." The key to a Rule 307(a)(1) appeal is thus whether the order relates to an "injunction" versus some other type of interlocutory order. *Zitella v. Mike's Transportation, LLC*, 2018 IL App (2d) 160702, ¶ 13.

¶ 15 "Illinois courts have construed the meaning of 'injunction' in Rule 307(a)(1) broadly." *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 221 (2000); see *In re A Minor*, 127 Ill. 2d 247, 262 (1989). Still, "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). To determine whether an order is an injunction, we look to "its substance rather than its form." *Id.*; *Skolnick*, 191 Ill. 2d at 221.

¶ 16 "An injunction is a 'judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.' " *Skolnick*, 191 Ill. 2d at 221 (quoting *A Minor*, 127 Ill. 2d at 261). It stems from "the power traditionally reserved to courts of equity that affects the relationship of the parties in their everyday activities apart from the litigation." *Zitella*, 2018 IL App (2d) 160702, ¶ 14. By contrast, orders such as "subpoenas, discovery orders, and orders relating to the control of the court's own docket" are "ministerial or administrative" (*Short*, 356 Ill. App 3d at 960) and "are part of the inherent power possessed by *any* court to compel the appearance of witnesses, to regulate their testimony, and to control the court's own docket." (Emphasis added.) *Zitella*, 2018 IL App (2d) 160702, ¶ 14.

¶ 17 It is for this reason that our courts have consistently held that discovery orders are not appealable under Rule 307(a)(1). See *Skolnick*, 191 Ill. 2d at 221; *A Minor*, 127 Ill. 2d at 262; *Goodrich Corp. v. Clark*, 361 Ill. App. 3d 1033, 1039 (2005); *Short*, 356 Ill. App. 3d at 960; *Allianz Insurance Co. v. Guidant Corporation*, 355 Ill. App. 3d 721, 729 (2005); *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918 (1999). Circuit courts routinely compel the production of documents; compel submission to depositions; order that an appearance be filed by a date certain; order the parties to appear on a date certain for trial; and the like. Many of these orders have a measure of compulsion. If every such order were considered an "injunction," an

inordinate number of trial court orders would become immediately appealable, bringing litigation in the trial court to a screeching halt and resulting in piecemeal litigation, up and down, from appellate to trial court.

¶ 18 Here, although the order was entered in the context of a supplemental proceeding involving a citation to discover assets, it was still a discovery order in that it compelled the production of documents. It did not affect the rights of the parties outside the litigation; it controlled the conduct of the litigation itself, an administrative power that all courts possess. See *Zitella*, 2018 IL App (2d) 160702, ¶ 14 (preservation order, compelling production of documents, was not injunction, was "most closely akin to a nonappealable discovery order," and thus was not appealable under Rule 307(a)(1)); *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 921 (1999) (order compelling answers to deposition questions was discovery order "not within the class of appealable interlocutory orders delineated under [Rule] 307.").

¶ 19 Nahlawi cites to *Bush v. Catholic Diocese of Peoria*, 351 Ill. App. 3d 588 (2004), to support his contention that a ruling on a protective order falls within Rule 307(a)(1). The court in *Bush* did not explain why it allowed that appeal, but it is not difficult to see why. That case involved a defamation claim by a former priest against the Catholic church and church officials who allegedly falsely accused the former priest of sexually abusing minors. The court's protective order prevented the plaintiff from disclosing to the media or the public at large the names or other identifying information of the alleged minor victims. *Id*. That order was very much an injunction, as it affected the plaintiff in its "everyday activities apart from the litigation." *Zitella*, 2018 IL App (2d) 160702, ¶ 14. It prohibited plaintiff from doing something beyond the courtroom walls—namely, sharing certain information with the public or with the media. That case does not help Nahlawi.

¶ 20 Nor does the other case on which he principally relies, *Spirek v. State Farm Mutual Automobile Insurance Co.*, 65 Ill. App. 3d 440 (1978). That case involved an attempt to file a nationwide class action against State Farm, including plaintiffs not only from Illinois but around the country, and consolidated with that Rule 307(a) appeal were three certified questions related to the propriety of that class action. *Id*. at 442. The protective order that was the subject of the appeal required State Farm to preserve documents related to the payment of medical expenses to all insureds from across the country, dating back to the year 1969. *Id*. Again, the court never discussed why it granted the Rule 307(a) petition. We can thus derive little precedential value from this case. But we do know that State Farm's argument was that the protective order "should not have been national in scope, but limited to Illinois residents." *Id*. The argument, in other words, was that the protective order went beyond the permissible scope of the litigation into State Farm's everyday business—an argument with which the appellate court ultimately agreed on the merits, limiting the class action to Illinois plaintiffs. See *id*. at 454. In that way, it is quite reasonable to infer that the appellate court saw the order as much more like an injunction—reaching beyond the litigation into the everyday business of State Farm—than a mere run-of-the-mill discovery order.

¶ 21 In any event, however a court may view what in *Spirek* was an incredibly wide-ranging preservation order (which the appellate court limited severely), our case involves nothing of that sort. The order entered here was a garden-variety discovery order that denied a protective order and compelled the production of documents.

¶ 22 As the February 6, 2018 order did not constitute an appealable interlocutory injunction order under Rule 307(a)(1), we lack jurisdiction to consider this appeal and must dismiss it.

¶ 23 Appeal dismissed.