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2018 IL App (3d) 170308-U

Order filed August 22, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

CHARLES CRAIG, JR.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	
	)	Appeal No. 3-17-0308
MOHAMMED ALAEDDIN, SALAH	)	Circuit No. 15-L-819
BASHIR, and BASHIR & SONS, INC.,	)	
d/b/a RANCH LIQUORS,	)	The Honorable
	)	Raymond E. Rossi,
Defendants-Appellees.	)	Judge, presiding.

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PRESIDING JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* In an appeal in a multiple-count civil case where the trial court denied plaintiff's combined motion to strike certain portions of defendants' answer and for judgment on the pleadings as to some counts of the operative complaint, the appellate court lacked jurisdiction to review the trial court's ruling. The appellate court, therefore, dismissed the appeal for lack of appellate jurisdiction.

¶ 2 Plaintiff, Charles Craig, Jr., filed a multiple-count civil action in the trial court against defendants, Mohammed Alaeddin, Salah Bashir, and Bashir & Sons, Inc., d/b/a Ranch Liquors, relating to defendants' alleged discriminatory conduct toward plaintiff and their prosecution of a

defamation action against plaintiff. Plaintiff's complaint was amended several times. During pretrial proceedings, plaintiff filed a combined motion to strike certain portions of defendants' answer and for judgment on the pleadings as to certain counts of plaintiff's fifth amended complaint. Defendants filed a response and opposed the motion. Following a hearing, the trial court denied plaintiff's motion. Plaintiff appeals. We dismiss the appeal for lack of appellate jurisdiction.

¶ 3

### FACTS

¶ 4

Defendant, Bashir & Sons, owned a liquor store in Joliet, Illinois. Defendant, Salah Bashir, was an owner or officer of Bashir & Sons, and defendant, Mohammed Alaeddin, was an employee of the liquor store. In September 2014, plaintiff Craig allegedly went into the liquor store to make a purchase. Alaeddin was working at the time. Alaeddin allegedly made racially-derogatory remarks to plaintiff, brandished a weapon, and told plaintiff to leave the store. Plaintiff made a police report about the incident, filed a complaint with the Illinois Department of Human Rights, complained at two televised city-council meetings, and allegedly circulated a flier about the incident.

¶ 5

In November 2014, Bashir & Sons filed a defamation action against plaintiff in the trial court regarding plaintiff's alleged circulation of the flier. The case proceeded to a bench trial, at the conclusion of which, the trial court entered judgment in favor of Bashir & Sons and awarded nominal damages of \$1. Although not quite clear from the record, it appears that the trial court, in response to plaintiff's motion to reconsider, later vacated its ruling and dismissed the defamation action with prejudice because it found that nominal damages could not be awarded in that type of case.

¶ 6 In November 2015, plaintiff filed the instant *pro se* action against defendants. The lawsuit related to the September 2014 incident that allegedly occurred in the liquor store and to Bashir & Son's prosecution of the defamation case against plaintiff. Over the course of pretrial proceedings, plaintiff amended his complaint several times.

¶ 7 In January 2017, plaintiff filed his verified fifth amended complaint, the operative complaint in the present case. The fifth amended complaint contained five counts: count I against Bashir & Sons for violation of the Illinois Human Rights Act (775 ILCS 5/5-101(A)(2), 5-102(A) (West 2014)), count II against Salah Bashir and Bashir & Sons for intentional infliction of emotional distress, count III against Mohammed Alaeddin for a violation of 42 U.S.C. § 1981(a) (2012), count IV against Salah Bashir and Bashir & Sons for abuse of process, and count V against Salah Bashir and Bashir & Sons for malicious prosecution.

¶ 8 Defendants filed a verified answer to the fifth amended complaint. In the answer, defendants denied that the underlying September 2014 incident took place, although they did not deny that plaintiff had made various statements about the alleged incident. The answer was signed by Alaeddin and Bashir (both personally and on behalf of Bashir & Sons) and was notarized by their attorney. Defendants' attorney, however, failed to sign the answer himself as required by Illinois Supreme Court Rule 137(a) (eff. Jul. 1, 2013).

¶ 9 In February 2017, plaintiff filed a combined motion to strike certain portions of defendants' answer pursuant to section 2-615(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(b) (West 2016)) and for judgment on the pleadings pursuant to section 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2016)) as to counts II, IV, and IV of the fifth amended complaint. Plaintiff alleged in his motion that: (1) defendants' answer failed to comply with Supreme Court Rule 137 and with the pleading requirements of section 2-610 of the Code (735

ILCS 5/2-610 (West 2016)); (2) portions of defendants' answer should be stricken due to the lack of compliance; (3) if the non-compliant portions of defendants' answer were stricken, defendants should be deemed to have admitted the operative facts underlying counts II, IV, and IV of plaintiff's fifth amended complaint; and (4) plaintiff was, therefore, entitled to judgment on the pleadings as to counts II, IV, and IV of the fifth amended complaint. In March 2017, defendants' attorney filed the missing Rule 137 verification for defendants' answer. Defendants also filed a response and opposed plaintiff's motion. Plaintiff filed a reply to that response.

¶ 10 In May 2017, a hearing was held on plaintiff's motion to strike and for partial judgment. After listening to the arguments of plaintiff and of defendants' attorney, the trial court denied plaintiff's motion and scheduled the case for completion of written discovery and for further proceedings. Plaintiff appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff argues that the trial court erred in denying his motion to strike and for partial judgment. Plaintiff asserts that his motion should have been granted because: (1) defendants' answer did not strictly comply with Supreme Court Rule 137 or with section 2-610 of the Code; (2) defendants could not in good faith deny any of the operative facts relative to counts II, IV, and V of the fifth amended complaint; and (3) defendants could not produce any documentary evidence to dispute the documentary evidence that plaintiff presented in support of the operative facts underlying counts II, IV, and IV of the fifth amended complaint. Plaintiff asks, therefore, that we reverse the trial court's denial of his motion, that we grant the relief sought, and that we impose sanctions upon defendants and their attorney.

¶ 13 Defendants argue that the trial court's ruling was proper and should be upheld. Defendants assert that: (1) defendants' answer was brought into compliance with Rule 137 when

defendants' attorney filed his verification in the trial court in March 2017; (2) in their answer, defendants properly admitted or denied plaintiff's allegations as required by section 2-610 of the Code; (3) plaintiff was not entitled to a partial judgment on the pleadings as to counts II, IV, and V of the fifth amended complaint because defendants denied the pertinent allegations relating to those counts; and (4) in ruling upon a judgment on the pleadings, the trial court does not consider documentary evidence. For those reasons, defendants ask that we affirm the trial court's judgment.

¶ 14 Before we reach the merits of the parties' arguments on appeal, however, we must first determine whether appellate jurisdiction exists in this case. It is well settled that an appellate court has a duty to consider its jurisdiction and must dismiss an appeal if jurisdiction is lacking. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). The appellate court's jurisdiction is limited and is confined to reviewing basically two different categories of appeals: (1) appeals from final orders and judgments; and (2) those interlocutory appeals that are provided for by supreme court rule. See *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 514 (1992). A final judgment is one that terminates the litigation on the merits of the case and determines the ultimate rights of the parties such that if the judgment is affirmed, the only remaining action to take is to proceed to execution of the judgment. *Id.*

¶ 15 A trial court's order denying a section 2-615(b) motion to strike is generally not a final and appealable order because the merits of the underlying case are still pending. See *George F. Mueller & Sons, Inc. v. Daly*, 124 Ill. App. 2d 265, 267 (1970). Rather, such a ruling is a merely an interlocutory order that does not finally dispose of the proceedings and does not give the appellate court jurisdiction over the matter on appeal. See *id.* Similarly, a trial court's denial of a section 2-615(e) motion for judgment on the pleadings is also not a final and appealable

judgment for the same reason. See *Baird v. Liepelt*, 29 Ill. App. 2d 234 (1961) (abstract of op.); *Cook v. East Shore Newspapers, Inc.*, 301 Ill. App. 362, 365 (1939).

¶ 16 In the present case, plaintiff asserted in his appellate brief that he had filed his notice of appeal pursuant to Illinois Supreme Court 303 (eff. Jan. 1, 2015). Rule 303 sets forth the procedure for filing an appeal from a final judgment in a civil case. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015). As the case law cited above makes clear, however, the trial court's denial of a motion to strike or for judgment on the pleadings is not a final and appealable judgment. See *George F. Mueller & Sons, Inc.*, 124 Ill. App. 2d at 267; *Baird*, 29 Ill. App. 2d 234; *Cook*, 301 Ill. App. at 365. Since the trial court's ruling in this case did not constitute a final and appealable judgment, this court does not have jurisdiction to hear and decide this appeal. See *Agustsson*, 223 Ill. App. 3d at 514. Plaintiff has not suggested, and we have not found, any other basis for appellate jurisdiction to exist in this case. See *id.*; *George F. Mueller & Sons, Inc.*, 124 Ill. App. 2d at 267; *Baird*, 29 Ill. App. 2d 234; *Cook*, 301 Ill. App. at 365. We must, therefore, dismiss this appeal for lack of jurisdiction. See *Archer Daniels Midland Co.*, 103 Ill. 2d at 539. Because we have found that there is no appellate jurisdiction in this case, we make no ruling as to the merits of the parties' arguments on appeal.

¶ 17 CONCLUSION

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

¶ 19 Appeal dismissed.