

2019 IL App (2d) 180309-U
No. 2-18-0309
Order filed August 20, 2019

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
SECOND DISTRICT

In re MARRIAGE OF)	Appeal from the Circuit Court
JYOTI SINHA,)	of Du Page County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 15-D-2474
)	
MUKESH K. SINHA,)	Honorable
)	Karen M. Wilson,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McLaren delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction. Final judgment in dissolution proceeding resolved fewer than all claims pending. Court did not make proper written Rule 304(a) finding that there was no just reason to delay enforcement or appeal of the judgments. We, therefore, have no jurisdiction to consider the appeal.

¶ 2 In its judgment dissolving the marriage between petitioner, Jyoti Sinha, and respondent, Mukesh K. Sinha, the trial court determined child support, distribution of marital property, claims of dissipation, and maintenance. Respondent challenges these and other aspects of the

trial court's judgment, including the trial court's finding respondent in indirect civil contempt. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 The parties married in September 2004. Petitioner filed her first petition for dissolution of marriage in 2013, which the trial court voluntarily dismissed in January 2014. In December 2014 the parties had a son. On December 4, 2015, petitioner filed the petition for dissolution of marriage at issue.

¶ 5 On June 27, 2016, the trial court entered a parenting plan, awarding petitioner the majority of parenting time.

¶ 6 Respondent filed a notice of intent to claim dissipation, alleging that, on September 11, 2016, petitioner transferred \$540,000 from a marital E-Trade account to an unknown account in India titled solely in petitioner's mother's name. On October 18, 2016, the trial court entered an order, stating "[petitioner] shall have all remaining funds from the approximately \$540,000 transferred from her E-Trade account to an Indian account returned [and] deposited into [respondent's attorney's] escrow account."

¶ 7 On November 16, 2016, the trial court entered another order regarding the \$540,000, stating "[petitioner] shall transfer all funds from India pursuant to the prior order to an escrow account to be set up by [respondent's attorney] for the benefit of the parties."

¶ 8 On December 5, 2016, respondent filed a rule to show cause alleging that petitioner transferred \$540,000 to India and failed to comply with the trial court's orders that she transfer it to an escrow account. Respondent also alleged that petitioner failed to cooperate with a court order requiring the marital residence to be listed for sale, refused to allow showings of the home, and kept the home in an "unshowable" condition.

¶ 9 On January 23, 2017, the trial court issued a rule to show cause for petitioner's failure to return the \$540,000 from India.

¶ 10 On May 22, 2017, petitioner filed a petition for indirect civil contempt alleging that respondent failed to reimburse petitioner for their child's daycare costs of \$3415.54, and for the child's medical expenses of \$98.10. Petitioner also alleged that respondent failed to maintain a job diary and that he was in arrears in child support in the amount of \$1500.

¶ 11 Respondent filed a petition to reduce child support and daycare expenses, seeking a modification of the trial court order of November 16, 2016. Respondent alleged that since the entry of that order, he had been involuntarily terminated from his job as an Uber driver.

¶ 12 The trial court heard testimony over five days: November 2, 13, 15, December 13, 2017, and January 29, 2018.

¶ 13 On March 22, 2018, the trial court issued a written judgment stating the following. Regarding dissipation, the court denied the petitioner's dissipation claims in large part but found that respondent committed dissipation in the amount of \$19,068. The court ordered respondent to pay child support in the amount of \$926.25 per month and allocated the child's uncovered medical expenses and educational expenses 50% to each party. The court also found, "after consideration of the factors in Section 504 *** an award of maintenance to either party is not warranted." Regarding the division of marital property, the court awarded petitioner 55% and respondent 45%.

¶ 14 The trial court also held respondent in indirect civil contempt for failing to maintain and tender job diaries in violation of the court's prior order. The court ordered respondent to provide all job diaries to petitioner's counsel and the court within 30 days.

¶ 15 In addition, the trial court held respondent in indirect civil contempt for failing to pay 50% of the child’s day-care costs, failing to pay child support in violation of the trial court’s prior order, and failing to pay 50% of the child’s medical costs in violation of the court’s prior order. The court ruled that respondent shall pay arrearages and unpaid sums established subsequent to an evidential hearing to be set.

¶ 16 The trial court also stated that it “expressly finds that there is no just reason for delaying *enforcement* of this judgment.” (Emphasis added.) The court set the matter for “status on setting for evidentiary hearing as to amounts owed by [respondent] *** for [April 2, 2018] *** and purge to be determined thereon.”

¶ 17 On April 2, 2018, the trial court set the case for hearing on April 22, 2018. On April 20, 2018, the court entered an “Agreed Order” stating that respondent agreed to pay his attorney \$17,000. On April 20, 2018, respondent filed a notice of appeal regarding the court’s March 22, 2018, order.

¶ 18 II. ANALYSIS

¶ 19 A. Jurisdiction

¶ 20 Before addressing the merits of this appeal, we must determine whether we have jurisdiction. See *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 14. Indeed, at oral argument we asked the parties whether the judgment for dissolution is a final and appealable order where the trial court found respondent in contempt but did not impose a penalty for the contempt findings. See Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010) (stating that a contempt order imposing a penalty is immediately appealable).

¶ 21 Our jurisdiction is limited to review of appeals from final judgments unless otherwise permitted under Illinois Supreme Court rules or by statute. *Inland Commercial Property*

Management, Inc. v. HOB I Holding Corp., 2015 IL App (1st) 141051, ¶ 17. Pursuant to Supreme Court Rule 301, “[e]very final judgment of a circuit court in a civil case is appealable as of right.” Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Generally, parties may only appeal from final orders disposing of every claim in a case. *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 339 (2001). Our supreme court defines a claim as “any right, liability or matter raised in an action.” *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 465 (1990). Respondent argues that the judgment of dissolution is appealable pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 22 Rule 304(a) provides:

“If multiple parties or multiple claims 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.*” (Emphasis added.) Ill. S. Ct. R. 304(a).

¶ 23 Here, the judgment states only that “The court expressly finds that there is no just reason for delaying *enforcement* of this judgment.” (Emphasis added.) Petitioner argues that this language is inadequate to confer jurisdiction of this appeal because the trial court did not include the word “appeal.” Petitioner supports her argument with the Rule 304(a) phrase “either enforcement or appeal or both.” According to petitioner, it is clear from this phrase that “enforcement” and “appeal” are separate and distinct words necessary to confer jurisdiction to this court of a final judgment. This argument was addressed by our supreme court in *In re Du Page County Collector*, 152 Ill. 2d 545, 549-50 (1992), where the court explained:

“We therefore hold that where it is clear from the record that review is sought from a judgment pursuant to Rule 304(a) and the judgment confers a legal right capable of

enforcement, the required written finding is sufficient to establish appellate jurisdiction if it refers to either the judgment's immediate enforceability or its immediate appealability.

*** [W]here the written finding makes the judgment immediately enforceable and it is clear from the record that Rule 304(a) is intended to be invoked, reference to appealability is unnecessary as surplusage.” *Id.* at 550-51.

¶ 24 Here, however, nothing in the record indicates petitioner sought review of the judgment pursuant to Rule 304(a). The trial court expressly stated “that there is no just reason for delaying *enforcement* of this judgment.” The court did not include the language “there is no just reason for delaying enforcement *or appeal or both*” in the order and did not use the term “Rule 304(a)”; nor was it clear from the record that the court intended to invoke Rule 304(a). The order refers only to enforceability. We decline to determine that the court’s statement constitutes a sufficient express written finding to invoke Rule 304(a). See *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 8 (order that stated certain provisions were “hereby appealable” without reference to Rule 304(a) or language tracking the rule did not confer appellate jurisdiction); see also *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011) (“A circuit court’s declaration that an order is ‘final and appealable,’ without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates”).

¶ 25 Moreover, respondent filed a notice of appeal from the trial court’s judgment of dissolution of marriage and its finding him to be in indirect civil contempt. However, only a contempt judgment that imposes a sanction is a final, appealable order. *In Re Marriage of Gutman*, 233 Ill. 2d 145, 152 (2008). Because the order appealed from did not dispose of every claim, this court does not have jurisdiction under Rule 301. See *John G. Phillips & Associates*

v. Brown, Ill. 2d 337, 339 (2001). Because the trial court did not make a proper finding under Rule 304(a), the order was not appealable under that rule either.

¶ 26 Respondent's appeal, filed before the resolution of all of his contempt petitions and without a proper Rule 304(a) finding, was premature. See *Gutman*, 233 Ill. 2d at 156. A premature notice of appeal does not confer jurisdiction on the appellate court. *Id.* Consequently, we must dismiss this appeal for lack of jurisdiction.

¶ 27 Pursuant to Rule 303(a)(2) Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017), which applies retroactively here (*In re Marriage of Knoerr*, 377 Ill.App.3d 1042, 1049-50 (2007)), we dismiss respondent's appeal because on the present record, respondent's notice of appeal is premature. We presume that respondent can timely file a notice of appeal upon the resolution of the pending petition for a rule to show cause and any other pending claims in this matter. However, if pending claims have been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows respondent to establish the effectiveness of the present notice of appeal. In the latter event, respondent may file a motion for reconsideration and to supplement the record, thereby establishing our jurisdiction to address the merits.

¶ 28 III. CONCLUSION

¶ 29 Supreme court decisions dictate that a final order disposing of one of several claims may not be appealed without an express finding that there is no just cause for delay. Here, claims remain pending in the trial court, but that court has not entered a Rule 304(a) finding. Accordingly, we dismiss this appeal.

¶ 30 Dismissed.