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2019 IL App (3d) 180116-U

Order filed January 4, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
TODD E. GILBERT,)	Will County, Illinois.
)	
Petitioner-Appellee,)	
)	Appeal No. 3-18-0116
and)	Circuit No. 12-D-2387
)	
PAMELA GILBERT,)	
)	Honorable Dinah Archambeault,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton, specially concurred.

ORDER

¶ 1 *Held:* Respondent’s appeal of the trial court’s denial of the motion for directed finding at the close of petitioner’s case is dismissed for lack of jurisdiction.

¶ 2 Petitioner, Todd Gilbert, filed a petition to order respondent, Pamela Gilbert, to vaccinate their two minor children. The parties divorced in 2013. They entered into a joint parenting agreement that provided they would share in the decision-making power for the welfare of the children. At the close of petitioner’s case during the hearing on the petition, respondent moved

for a directed finding. She asked the circuit court to find that petitioner failed to present a *prima facie* case that vaccination was in the best interests of the children. The circuit court denied respondent's motion for a directed finding. The court then heard arguments on whether respondent should be granted leave to appeal the denial. The circuit court granted respondent leave to appeal. We dismiss the appeal for lack of jurisdiction.

¶ 3 Respondent improperly filed this appeal arguing the denial of the motion for a directed finding is a final judgment. She suggests this court has jurisdiction pursuant to Rule 303. Ill. S. Ct. R. 303 (eff. July 1, 2017). Alternatively, she suggests this court has jurisdiction to hear this appeal under Rule 306(a)(5). Ill. S. Ct. R. 306(a)(5) (eff. Nov. 1, 2017). Finally, respondent maintains she must be permitted to appeal the circuit court's denial as the statute governing motions for directed findings states, "[i]f the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, in which event the motion is waived." 735 ILCS 5/2-1110 (West 2016).

¶ 4 The circuit court had no basis to grant respondent leave to appeal. "A final judgment is one that disposes of the rights of the parties with regard to the entire controversy or a definite and separate part thereof." *Djikas v. Grafft*, 344 Ill. App. 3d 1, 8 (2003). A party may appeal when a judgment is final "as to one or more but fewer than all of the parties or claims" and "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). However, it is well settled that the lower court's grant for leave to appeal does not make an otherwise nonfinal order final and appealable. *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 23.

¶ 5 The circuit court’s denial of respondent’s motion for a directed finding was not a final judgment as to one or more but fewer than all of the parties or claims. The circuit court did not enter judgment on the petition for vaccination. The circuit court denied respondent’s motion to find petitioner failed to present a *prima facie* case that it was in the children’s best interests to vaccinate; it did not order either party to act or affect a right of either party. The circuit court’s order giving respondent leave to appeal does not alone confer jurisdiction upon this court. In this case, respondent has two options. She may present her case-in-chief and await the circuit court’s entry of judgment. Alternatively, if respondent does not want to waive her motion for a directed finding, she must tell the court she stands on her motion, offer no evidence, and await the court’s judgment. In either instance, if she is not satisfied with the judgment, she may then properly bring this appeal.

¶ 6 Alternatively, respondent argues this court has jurisdiction under Illinois Supreme Court Rule 306(a)(5) (eff. Nov. 1, 2017). The rule provides that a party may petition for leave to appeal “from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors *** if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules.” *Id.* Procedurally, the rule states a party “may petition for leave to appeal to the Appellate Court.” *Id.*

¶ 7 Here, respondent never petitioned this court for leave to appeal under Rule 306. She filed notice of her appeal but never complied with the rules governing this specific avenue for appeal. For this reason, this court does not have jurisdiction under Rule 306(a)(5).

¶ 8 Again, in the alternative, respondent argues this court has jurisdiction to hear her appeal under the statute governing directed findings. 735 ILCS 5/2-1110 (West 2016). The statute

provides, “[i]f the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, in which event the motion is waived.” *Id.*

¶ 9 The respondent argues a denial of a directed finding is a final judgment because she waives the motion if she proceeds with her case-in-chief. She provides no support for this argument. She also maintains “there must be an avenue for appeal” from a denial of a motion for directed finding because the motion is waived if she proceeds. No! Trials would come to a screeching halt if every motion for a directed finding at the close of the plaintiff’s/petitioner’s case-in-chief were immediately appealable. Defendants/respondents routinely make such motions. Appeals at this stage would leave a broken system.

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

¶ 11 Appeal dismissed.

¶ 12 JUSTICE LYTTON, specially concurring:

¶ 13 I concur with the majority in that the court has no jurisdiction for this appeal. But, I write separately to distance myself from the unnecessary commentary contained therein.

¶ 14 JUSTICE CARTER, specially concurring:

I concur with the dismissal of this appeal for lack of jurisdiction. I agree with Justice Lytton and I do not concur or agree with the unnecessary commentary contained in Justice Schmidt’s reasoning.