

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2021 IL App (3d) 190339

Order filed February 2, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
DARIEN M. KRUSS,)	Will County, Illinois.
)	
Petitioner-Appellee,)	
)	Appeal No. 3-19-0339
and)	Circuit No. 18-D-1433
)	
SZILVIA I. KRUSS,)	The Honorable
)	Elizabeth D. Hoskins Dow,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) This court lacks jurisdiction to consider ex-wife's appeal of trial court orders quashing subpoenas issued to third parties in divorce action; (2) ex-wife and her counsel ordered to pay sanctions to ex-husband for fees and costs he incurred in frivolous appeal of nonfinal orders.

¶ 2 In dissolution proceedings between petitioner Darien Kruss and respondent Szilvia Kruss, Szilvia issued subpoenas to the Will County State's Attorney's Office (WCSAO) and two employees of the Will County Children's Advocacy Center (WCCAC), seeking documents and

recordings related to interviews with the parties' child, I.R.S.K. WCSAO, on its own behalf and on behalf of the WCCAC employees, filed motions to quash the subpoenas, which the trial court granted. Szilvia appeals the trial court's orders granting the motions to quash. Darien filed a motion to dismiss this appeal for lack of jurisdiction and for sanctions against Szilvia pursuant to Illinois Supreme Court Rule 375 (Ill. S. Ct. R. 375 (eff. Feb. 1, 1994)). We dismiss the appeal for lack of jurisdiction and grant Darien's motion for sanctions.

¶ 3

BACKGROUND

¶ 4

Darien Kruss and Szilvia Kruss were married in 2004. They had one child together, I.R.S.K., in 2012. In 2015, Darien filed a petition for dissolution of marriage in DuPage County.

¶ 5

In April 2018, Szilvia filed a petition for an order of protection against Darien, alleging that he abused I.R.S.K. On May 30, 2018, Szilvia issued a subpoena to WCSAO seeking "[a]ny reports, recordings (audio, video, or otherwise), and transcripts of any kind regarding any statements or interviews" of I.R.S.K., including victim sensitive interviews conducted on April 24, 2018, and May 3, 2018. WCSAO filed a motion to quash the subpoena, arguing that the Abused and Neglected Child Reporting Act (325 ILCS 5/1 *et seq.* (West 2018)) precluded production of the requested materials.

¶ 6

In August 2018, the DuPage County trial court entered a judgment for dissolution of marriage, dissolving the parties' marriage. In its judgment, the court transferred "all future proceedings, including child related and order of protection issues" to Will County, where both parties had relocated.

¶ 7

On January 14, 2019, Szilvia issued a second subpoena to WCSAO seeking "any reports created in connection with all Victim Sensitive Interviews (VSI)" of I.R.S.K. conducted on May 11, 2016, April 24, 2018, and May 3, 2018, as well as "[a]ny audio, video, or other recordings of

any kind made of said interviews, and any transcription[s] thereof.” On January 15, 2019, the trial court granted WCSAO’s motion to quash, quashing the subpoenas Szilvia issued to WCSAO on May 30, 2018 and January 14, 2019. The trial court’s order stated: “This shall constitute a final and appealable order under Supreme Court Rule 304(b).”

¶ 8 On March 16, 2019, Szilvia issued subpoenas to two WCCAC employees seeking “all notes, memoranda, documents, reports, VSI, emails, correspondence, cocommunications [sic] (written or verbal recordings) with, about, relating to, and/or concerning” I.R.S.K. WCSAO appeared on behalf of the WCCAC employees and moved to quash the subpoenas. On May 15, 2019, the trial court granted the motion to quash. The court’s order stated: “This ORDER shall constitute a final and appealable order under Supreme Court Rule 304(b).”

¶ 9 Szilvia filed a notice of appeal on June 12, 2019, identifying the court’s January 15, 2019 and May 15, 2019 orders as the “judgments/orders being appealed.” Darien filed a motion to dismiss the appeal for lack of jurisdiction and for sanctions under Illinois Supreme Court Rule 375 (Ill. S. Ct. R. 375 (eff. Feb. 1, 1994)).

¶ 10 ANALYSIS

¶ 11 I. Jurisdiction

¶ 12 Illinois Supreme Court Rules govern appeals to this court. Supreme Court Rule 301 provides that “[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). Supreme Court Rule 304 provides for appeals from final judgments as to fewer than all 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. March 8, 2016). “In the absence of such a finding, any judgment that

adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not *** appealable.” *Id.*

¶ 13 A written finding that an order is “appealable pursuant to Supreme Court Rule 304” is “not an express written finding in accordance with Rule 304(a).” *In re Marriage of Morgan*, 2019 IL App 3d 180560, ¶ 12. A court must state that there is no just reason for delaying enforcement or appeal and specifically cite to Rule 304(a) to confer jurisdiction under that rule. See *id.* ¶¶ 12-13. Simply mentioning appealability and vaguely referencing Rule 304 “does not confer appellate jurisdiction.” *Id.* ¶ 13. “[A] circuit court’s declaration that an order is ‘final and appealable’ is nothing more than a non-binding interpretation.” *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011).

¶ 14 Supreme Court Rules 306, 307, and 308 provide for appeals from certain specified interlocutory orders. See Ill. S. Ct. R. 306 (eff. Oct. 1, 2019), 307 (eff. Nov. 1, 2017), and 308 (eff. Oct. 1, 2019). “Discovery orders are not made appealable under the provisions of these rules.” *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981).

¶ 15 The general rule is that orders granting or denying a motion to quash a subpoena are not final. See *Kmoch v. Klein*, 214 Ill. App. 3d 185, 191 (1991). “Rather, they are interlocutory in nature, made as preliminary discovery orders in a pending suit.” *Id.* “[S]uch orders are not appealable because they are reviewable on appeal from the final order.” *Id.* The only exception to this rule is that “[a]n order which in substance finally adjudicates the rights of the parties and terminates the litigation is final and appealable.” *Laurent v. Brelji*, 74 Ill. App. 3d 214, 216 (1979). This exception applies when a person or entity is served a subpoena in an independent action. See *id.*; *People v. Doe*, 211 Ill. App. 3d 962, 965 (1991).

¶ 16 “[T]he mere presence of Rule 304(a) language cannot make a nonfinal order final and appealable.” *People ex rel. Block v. Darm*, 267 Ill.App.3d 354, 356 (1994); see *In re Marriage of Morgan*, 2019 IL App 3d 180560, ¶ 14 (“[I]t is well-settled law that the inclusion of Rule 304(a) language in a nonfinal order does not make the order appealable.”).

¶ 17 Here, Szilvia filed the various subpoenas in her divorce action in which she and Darien are the only parties. The subpoenas were not served in an independent action. Thus, they are not final and appealable. See *Silverstein*, 87 Ill. 2d at 171; *Kmoch*, 214 Ill. App. 3d at 191.

¶ 18 Additionally, the court’s declarations that each order “shall constitute a final and appealable order under Supreme Court Rule 304(b)” does not confer appellate jurisdiction on this court for two reasons. First, the orders granting the motion to quash were interlocutory, nonfinal orders, which are not rendered final by a Rule 304(a) finding. See *Morgan*, 2019 IL App 3d 180560, ¶ 14. Second, the language used by the trial court does not comply with Rule 304(a) because it (1) failed to state that there is no just reason to delay enforcement or appeal, and (2) referred to Rule 304(b), not Rule 304(a). See *id.* ¶¶ 12-13. For these reasons, we lack jurisdiction to consider Szilvia’s appeal.

¶ 19 II. Sanctions

¶ 20 Illinois Supreme Court Rule 375(b) provides: “If, after consideration of an appeal ***, it is determined that the appeal *** is frivolous, *** an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties.” Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). An appeal is “deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” *Id.* An appellate court has jurisdiction to determine if Rule 375 sanctions are warranted even if it dismisses the appeal. See *Gilkey v. Scholl*, 229 Ill.App.3d 989, 993 (1992).

¶ 21 A reviewing court applies an objective standard to determine whether an appeal is frivolous. *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.*, 203 Ill.App.3d 304, 312 (1990). An “appeal is considered frivolous if it would not have been brought in good faith by a reasonable, prudent attorney.” *Id.*

¶ 22 Rule 375(b) provides that “[a]ppropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal ***, and any other expenses necessarily incurred by the filing of the appeal ***, including reasonable attorney fees.” Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). “The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys who appear before us.” *Fraser v. Jackson*, 2014 IL App (2d) 130283, ¶ 51. “The imposition of Rule 375 sanctions is left entirely to the discretion of the reviewing court.” *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87.

¶ 23 A party’s attempt to appeal an interlocutory nonfinal order “represents an utterly frivolous appeal causing unnecessary delay.” See *Kennedy v. Miller*, 197 Ill. App. 3d 785, 789 (1990). Rule 375 sanctions should be awarded where “[t]here is absolutely no arguable basis in law supporting the exercise of this court's jurisdiction over the appeal ***, nor has an argument been advanced for modification of existing law.” See *id.*

¶ 24 Here, Szilvia brought this appeal, with her counsel alleging that we had jurisdiction to review the trial court’s orders quashing her subpoenas because (1) those orders were final in that they ended the litigation between the parties (Szilvia and WCSAO/WCCAC), and/or (2) the trial court evinced its intent to make the orders appealable based on language it included in the orders.

¶ 25 The first basis for jurisdiction alleged by Szilvia’s counsel is meritless for two reasons. First, WCSAO and WCCAC were not parties to these proceedings. The parties to this divorce

action are Szilvia and Darien. WCSAO and WCCAC are non-parties to whom Szilvia issued subpoenas. The trial court's orders quashing Szilvia's subpoenas did not end the litigation between the parties (Szilvia and Darien). Additionally, the orders quashing the subpoenas were not final orders but were nonfinal interlocutory orders. See *Morgan*, 2019 IL App 3d 180560, ¶ 14. For these reasons, Szilvia's counsel lacked a reasonable, arguable basis to assert that this court had jurisdiction based on the entry of final orders ending the litigation between the parties.

¶ 26 The second basis for jurisdiction alleged by Szilvia's counsel is also meritless. As set forth above, the trial court's orders were nonfinal interlocutory orders. See *id.* As such, Szilvia could not appeal from them even if they contained the requisite 304(a) language, which they did not. See *id.* ¶¶ 12-14. A reasonable, prudent attorney would know that (1) the trial court's orders were nonfinal and non-appealable even with 304(a) language, and (2) the language contained in the orders did not comply with Rule 304(a). See *id.*

¶ 27 Szilvia's attempt to appeal an interlocutory nonfinal order "represents an utterly frivolous appeal causing unnecessary delay." See *Kennedy*, 197 Ill. App. 3d 789. Rule 375 sanctions are appropriate in this case because "[t]here is absolutely no arguable basis in law supporting the exercise of this court's jurisdiction over the appeal ***, nor has an argument been advanced for modification of existing law." See *id.*

¶ 28 We agree with Darien that sanctions should be entered against Szilvia and her counsel for the legal fees and costs Darien incurred in defending this appeal. Darien and his counsel are directed to file a statement of reasonable attorney fees and costs related to this appeal within 21 days of the filing of this order. Szilvia and her counsel shall have 14 days to file a response. A supplemental order determining an appropriate monetary sanction imposed on Szilvia and her counsel will be entered in due course.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, this appeal is dismissed for lack of jurisdiction and petitioner's motion for sanctions is granted.

¶ 31 Appeal dismissed; motion for sanctions granted.