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SIXTH DIVISION  
November 7, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
EDGAR PALACIOS,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 08 D3 30585
	)	
HEIDI WOLFE-PALACIOS,	)	Honorable
	)	Patrick T. Murphy,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Justices Hall and Rochford concurred in the judgment.

**ORDER**

¶1 *Held:* In a postdissolution proceeding to modify custody, the appellate court lacked jurisdiction to consider the father's interlocutory appeal from the circuit court's nonfinal order denying the father's motion to vacate the court's prior order, which had entered and continued the mother's motion to reconsider an award of residential custody in favor of the father and ordered, pursuant to statute, a custody evaluation by professional personnel.

¶2 Petitioner, Edgar Palacios, appeals from the circuit court's order denying his motion to vacate the court's October 29, 2013 order. That October 29 order had (1) entered and continued the timely-filed motion of respondent, Heidi Wolfe-Palacios, to reconsider an award of residential custody in favor of Edgar and (2) *sua sponte* ordered, pursuant to statute, a custody evaluation by professional personnel. Although the circuit court entered a finding that there was no just reason to delay enforcement, appeal, or both of the October 29 order, it was not a final judgment. Accordingly, we dismiss this appeal for lack of jurisdiction.

¶3 I. BACKGROUND

¶4 This custody dispute was before this court in a prior expedited interlocutory appeal, which this court dismissed for lack of jurisdiction. *In re Marriage of Palacios*, 2014 IL App (1st) 141626-U. A detailed summary of the background of the case was set forth in that order, so a very brief summation of the relevant procedural history of this case is sufficient here.

¶5 After their divorce, Edgar and Heidi shared joint custody of their minor son, Isaac, but Heidi was the primary residential parent. When Heidi became engaged to marry, she filed a motion to amend the parties' joint parenting agreement (JPA) to allow her to move with Isaac from LaGrange Park, Illinois, to Morton, Illinois. Edgar challenged Heidi's motion to amend the JPA and also filed a petition to modify the JPA to either designate Edgar as the primary residential parent or terminate joint custody and award him the sole care, custody and control of Isaac. After a custody hearing on June 28, 2013, the trial court ruled that it was in Isaac's best interests to remain in Cook County with Edgar. Heidi timely filed a motion for reconsideration within 30 days of that June 28 order, pursuant to section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203) (West 2012)).

¶6 On October 29, 2013, the trial court entered and continued Heidi's motion to reconsider, and *sua sponte* ordered, pursuant to statute, an expedited custody evaluation by professional personnel. On November 26, 2013, Edgar moved the court to vacate the October 29 order for an expedited custody evaluation. Edgar argued, *inter alia*, that Heidi's motion to reconsider was limited to the issue of misapplication of the law; her counsel's oral motion for a statutory custody evaluation was a pretrial motion that had occurred in the posttrial phase of litigation; and the trial court lacked statutory authority and subject matter jurisdiction to order the evaluation because Heidi had no pending petition to modify visitation.

¶7 On December 19, 2013, the trial court denied Edgar's motion to vacate, finding that the court's jurisdiction was properly invoked by Edgar's petition seeking custody and Heidi's timely motion to reconsider, which was still pending. The trial court ruled there was no reason to delay enforcement of the December 19 order pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Edgar filed an appeal challenging the December 19 and October 29, 2013 orders.

## ¶8 II. ANALYSIS

¶9 A reviewing court has an independent duty to consider its jurisdiction before proceeding to the merits of the case, and when jurisdiction is lacking, the court must dismiss the appeal on its own motion. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). Therefore, we must consider our jurisdiction regardless of whether the parties have raised the issue.

¶10 In his jurisdictional statement and amended notice of appeal, Edgar contends that we have jurisdiction over his interlocutory appeal pursuant to Rule 304(a) or, alternatively, because the October 29 and December 19, 2013 orders were void for lack of jurisdiction. We disagree.

¶11 “By the rule’s own terms, a Rule 304(a) finding can confer appealability only on a judgment that is already final.” *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 735 (2007). Rule 304(a) provides that “[i]f multiple parties or multiple claims for relief 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 had 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. Feb. 26, 2010). “However, the fact that an order contains language stating this it is final and appealable does not make an otherwise nonfinal order either final or appealable.” *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 307 Ill. App. 3d 528, 539 (1999). See also, *In re Estate of Stark*, 374 Ill. App. 3d 516, 522 (2007) (a trial court cannot confer appellate jurisdiction merely by using the Rule 304(a) language that “there is no just reason for delaying enforcement or appeal.”)

¶12 An “order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties either on the entire controversy or on a separate part thereof.” *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (1008). “A Rule 304(a) finding does not make a nonfinal order appealable; rather, a Rule 304(a) finding makes a final order appealable where there are multiple parties or claims in the same action.” *Revolution Portfolio, LLC v. Beale*, 332 Ill. App. 3d 595, 598-99 (2002).

¶13 The present case involves one petitioner, one respondent, and essentially only one claim, *i.e.*, the custody of Isaac. Perhaps Edgar would argue that the issue of custody could be seen as multiple claims where the parties sought to either amend or modify the JPA concerning the issue of primary residential custody and Edgar also sought termination of joint custody and an award to him of the sole care, custody and control of Isaac. Nevertheless, it cannot be disputed that at the time the trial court rendered the October 29 and December 19, 2013 orders, all claims concerning

the issue of custody remained pending. In addition, Heidi's timely-filed motion to reconsider the June 2013 award of primary residential custody to Edgar remained pending. The trial court's December 19, 2013 ruling denying Edgar's motion to vacate the prior order for an expedited custody evaluation did not fix the rights of any parties or terminate any part of the litigation. Therefore, the December 19, 2013 order was an interlocutory order that did not become final and appealable by the trial court's Rule 304(a) finding. See *In re the Adoption of S.G.*, 401 Ill. App. 3d 775, 783 (2010).

¶14 Edgar also contends that this court has jurisdiction to review the October 29 and December 19, 2013 orders because those orders are void and, thus, may be attacked at any time or in any court, either directly or collaterally. According to Edgar, the October 29 and December 19 orders are void because the trial court lacked jurisdiction to enter those orders. This argument lacks merit and misunderstands the nature of void judgments.

¶15 Whether a judgment is void or voidable depends on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998). Judgments may be collaterally attacked as void only where there is a complete want of jurisdiction in the court that entered the judgment, regarding either the subject matter or the parties. *Smith v. Bartley*, 364 Ill. App. 3d 725, 728 (2006). In contrast, a voidable judgment is one entered erroneously by a court having jurisdiction and is not subject to collateral attack. *In re Marriage of Mitchell*, 181 Ill. 2d at 174. Once a court has obtained jurisdiction, an order will not be rendered void nor will the court lose jurisdiction merely because of an error or impropriety in the court's determination of the facts or law. *Smith*, 364 Ill. App. 3d at 728.

¶16 The appellate court is not vested with authority to consider the merits of a case merely because the dispute involves an allegedly void order or judgment. *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). Although a void order may be attacked at any time, either directly or collaterally, the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts. *Id.* In the absence of our jurisdiction over an appeal, any order this court might direct against a void judgment would itself be void and of no effect. See *Universal Underwriters Insurance Co. v. Judge & James, Ltd.*, 372 Ill. App. 3d 372, 383 (2007).

“Compliance with the rules governing appeals is necessary before a reviewing court may properly consider an appeal from a judgment or order that is, or is asserted to be, void.” *Id.*

¶17 The trial court’s subject matter jurisdiction over the proceedings is an issue of law which we review *de novo*. *Cardona v. Del Granado*, 377 Ill. App. 3d 379, 382 (2007). There is no dispute that Heidi’s posttrial motion was filed within 30 days of the June 28, 2013 custody order, as specified by section 2-1203 of the Code. 735 ILCS 5/2-1203 (West 2012) (any party may, within 30 days after the entry of judgment, file “a motion for rehearing, or retrial, or modification of the judgment or to vacate the judgment or for other relief”). Once Heidi filed that timely posttrial motion, the trial court retained jurisdiction over the matter until the disposition of any pending posttrial motions and also had the jurisdiction to act on any error which the court perceived had to be remedied in order to do justice between the parties. See *Welch v. Ro-Mark, Inc.*, 79 Ill. App. 3d 652, 657 (1979). Accordingly, Edgar’s contention that the trial court lacked jurisdiction to enter the challenged October and December orders fails, and we, therefore, reject his argument that this court has jurisdiction to review those orders on the basis of voidness.

### ¶18 III. CONCLUSION

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

No. 1-14-0237

¶20 Appeal dismissed.