

NOTICE
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2016 IL App (5th) 150157-U

NO. 5-15-0157

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

KENISHA RUFUS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Wayne County.
)	
v.)	No. 14-LM-27
)	
TERRY McGAHA,)	Honorable
)	William C. Hudson,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Welch and Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* The cause is remanded for clarification because the appellate court could not determine whether the circuit court issued a final and appealable order.
- ¶ 2 Kenisha Rufus appeals from the circuit court's grant of appellee's amended motion to dismiss. The appellant argues that the circuit court erred in its application of the law to the facts in this case despite the appellant's failing to argue against the amended motion to dismiss at a scheduled hearing. For the reasons that follow, we remand to the circuit court with specific directions on the limited issue of jurisdiction.

¶ 3

BACKGROUND

¶ 4 On or about February 18, 2014, the appellant filed a three-count complaint against the appellee in the circuit court of Cook County, alleging causes of action for violations of the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2014)), breach of contract, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2014)). Appellee, *pro se*, filed and succeeded on a motion to change venue in the circuit court of Cook County, and on September 22, 2014, the matter was transferred to Wayne County. On December 8, 2014, the appellee filed a motion to dismiss all three counts under sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619(a)(9) (West 2014)). On December 15, 2014, the appellant filed an opposition to the motion to dismiss. On January 15, 2015, the appellee filed an amended motion to dismiss. The amended motion to dismiss asked the circuit court to dismiss each count of the complaint, but it did not request dismissal with prejudice. The appellant was given 21 days by the circuit court to respond to the amended motion to dismiss, but did not.

¶ 5 On April 13, 2015, the circuit court held a hearing on the amended motion to dismiss. No one appeared on behalf of the appellant. According to the docket entry for that day, the circuit court granted the amended motion to dismiss with the language "Mot granted." No other language or clarification for the circuit court's decision was given. On April 27, 2015, the appellant filed notice of appeal from the circuit court's granting of the amended motion to dismiss.

¶ 6

ANALYSIS

¶ 7 Before we address the appellant's arguments, we first must consider whether this court has jurisdiction. While neither the appellant nor the appellee has discussed jurisdiction, this court has a duty to ascertain whether it has jurisdiction in an appeal. See *People v. Smith*, 228 Ill. 2d 95, 106 (2008). "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located ***. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts." Ill. Const. 1970, art. VI, § 6. In other words, this court's jurisdiction encompasses judgments, orders, or decrees that qualify as final, but this court "is without jurisdiction to review judgments, orders or decrees which are not final," except as provided by supreme court rule. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A final judgment has been defined as a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982).

¶ 8 The appellant claims that her case was dismissed with prejudice. However, nothing in the docket entry dismissing her case, nor anywhere else in the record, states that this case was dismissed with prejudice. "Where, as here, a dismissal order does not explicitly state that it is entered 'with prejudice' or 'without prejudice,' it is necessary 'to look to the substance of what was actually decided by the dismissal order' to determine if the order is final." *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 494 (2009) (quoting *McMann v. Pucinski*, 218 Ill. App. 3d 101, 106 (1991)). "[I]t is the actual ramifications

of a trial court's order, rather than its language alone, that determines whether the order is appealable." *People v. Vari*, 2016 IL App (3d) 140278, ¶ 20.

¶ 9 Upon reviewing the circuit court's order and its ramifications, we cannot determine if the order was intended to be a final and appealable order. In considering the amended motion to dismiss, the circuit court made no findings, nor did it state that it considered the substance and merits of the motion. Further, the record does not contain a transcript of the hearing held on the amended motion to dismiss. The appellant did not attend the hearing on the amended motion to dismiss, nor did she timely file a new written response to the amended motion to dismiss. The appellant also did not state that she intended to stand on her written opposition to the original motion to dismiss as a response to the amended motion to dismiss. Thus, the circuit court's actions could be seen in the nature of a default judgment against the appellant or dismissal for want of prosecution.

¶ 10 On the other hand, the circuit court's order granting the amended motion to dismiss uses the language "Mot granted," without any qualifying language, in granting the appellee's motion. The amended motion to dismiss does not argue want of prosecution or default as a basis but rather argues that the appellant has failed to state claims for which relief can be granted and that the appellee has affirmative defenses to any claims. Both the appellant and appellee have stated in their briefs that the circuit court's order is final and appealable. Given the language used in granting the motion and the litigants' interpretation of the order granting the motion, the circuit court's actions could be seen as a final and appealable order.

¶ 11 Without further clarification, this court cannot determine whether the circuit court has issued a final and appealable order. Thus, we remand the cause to the circuit court on the limited issue of jurisdiction. The circuit court must issue an order within 21 days of this order telling us whether a dismissal with prejudice was intended and, therefore, this is a final and appealable order and we have jurisdiction. If the circuit court intended to dismiss with prejudice, it must also explain its rationale within the order. Upon receiving confirmation that the circuit court intended to dismiss with prejudice, we will rule on the appeal before us without further argument or briefing. If, however, the circuit court intended to dismiss without prejudice, then it must so indicate. The circuit court would then retain jurisdiction to make such further orders as necessary, such as in determining whether the appellant has time to replead.

¶ 12 CONCLUSION

¶ 13 For the reasons stated, we remand the case to the circuit court with specific directions to address the limited issue of jurisdiction.

¶ 14 Remanded with specific directions.