2013 IL App (1st) 122890-U

FIRST DIVISION
FILED: MAY 28, 2013

No. 1-12-2890

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UNIVERSAL CASUALTY COMPANY, Plaintiff-Appellant, v. ESTATE OF ISAIAS DE LA CRUZ, by his personal representatives, Elsa Ocampo and Ana Ocampo, Defendant-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 11 CH 25536 The Honorable Michael Hymen, Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal was dismissed for lack of jurisdiction.

¶ 2 The plaintiff, Universal Casualty Company, filed a declaratory judgment action seeking a declaration that it owes no duty to the defendant, the estate of Isaias De La Cruz, under an insurance policy it issued to De La Cruz's alleged relative, Ana Ocampo. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

¶ 3 In July 2011, the plaintiff filed a declaratory judgment action alleging that De La Cruz was

killed when an uninsured motorist used her car as a weapon to run over De La Cruz, who was walking. The plaintiff alleged that this incident was not accidental and thus was not covered by an uninsured motorist policy it had issued to Ocampo. In December 2011, the defendant moved to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), and, in March 2012, the circuit court granted the motion to dismiss. In its written ruling, the circuit court stated that the plaintiff was granted leave to file an amended complaint and that the dismissal was entered without prejudice on several issues. In September 2012, apparently at the request of one or both of the parties, the circuit court entered an order stating that the "order dismissing complaint is final and appealable." The plaintiff filed a notice of appeal following the September 2012 order.

¶ 4 Before addressing this appeal, we must admonish the plaintiff for its failure to comply with Supreme Court Rule 342 (eff. January 1, 2005). That rule requires an appellant to include in its brief an appendix with, among other things, a copy of the judgment appealed from, any findings of fact or memorandum opinions issued by the circuit court, any relevant pleadings, and a complete table of contents of the record on appeal. Ill. Sup. Ct. R. 342 (eff. January 1, 2005). The plaintiff's brief fails in each of these respects. We remind counsel that our Supreme Court Rules are not advisory suggestions, but, rather, rules to be followed. *Eg.*, *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57.

¶ 5 Even if the plaintiff's brief were sufficient under our rules, we could not grant the plaintiff any relief in this case. Although the parties agree that we have jurisdiction over this appeal, we have an independent duty to consider the issue and dismiss the appeal where our jurisdiction is lacking.

Palmolive Tower Condominiums v. Simon, 409 Ill. App. 3d 539, 542, 949 N.E.2d 723 (2011). "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey and Milligan*, 325 Ill. App. 3d 1152, 1153, 759 N.E.2d 110 (2001). Here, there can be no dispute that the circuit court's March 2012 order dismissing the plaintiff's complaint without prejudice was not a final and appealable order. See *Cole*, 325 Ill. App. 3d at 1153 ("an order striking or dismissing a complaint is not final and therefore not appealable unless its language indicates the litigation is terminated and the plaintiff will not be permitted to replead.") The parties apparently attempted to cure this problem by securing an order stating that the order dismissing the complaint was "final and appealable." This language, however, did not itself dispose of the entire proceeding or convert the March 12 order into an order disposing of the entire proceeding. See *Cole*, 325 Ill. App. 3d at 1155 ("the inclusion of [language that there was no just reason to delay enforcement or appeal pursuant to Supreme Court Rule 304(a) (eff. February 26, 2010))], however, did not render this order final because the order itself, like the order striking and dismissing plaintiff's second amended complaint, did not dismiss plaintiff's suit or bar her from filing an amended complaint.")

¶ 6 Further, although the parties seem to assume that the circuit court's order invested us with jurisdiction pursuant to Rule 304(a), we note that the language used was insufficient to trigger the rule. See *Palmolive Tower Condominiums*, 409 Ill. App. 3d 539. Rule 304(a) allows parties to take an appeal from a final judgment as to one or more but fewer than all 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. Sup. Ct. R. 304(a) (eff. February 26, 2010). The court's

September 2012 order stated only that its prior order was "final and appealable," and it made no mention of Rule 304(a), the justness of delaying enforcement or appealability, or the propriety of immediate appeal. Such an order cannot trigger appellate jurisdiction under Rule 304(a). See *Palmolive Tower Condominiums*, 409 Ill. App. 3d at 542-45. Further, even if the September 2012 order contained a valid Rule 304(a) finding, it would not give us jurisdiction, because "the 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, 642 N.E.2d 863 (1994). As we have explained, the March 2012 order was a nonfinal order, and the September 2012 order declaring it to be "final and appealable" did not change that fact. For these reasons, we must dismiss this appeal for want of jurisdiction.

¶ 7 In so doing, we observe that the defendant asks us to reverse a part of the circuit court's ruling denying its request for fees pursuant to Illinois Supreme Court Rule 137 (eff. February 1, 1994). However, the defendant filed no cross-appeal. "An appellee who has not prosecuted a cross-appeal cannot properly seek to modify a portion of the trial court's order in order to secure affirmative relief," and we lack jurisdiction to consider such a request. *Buccieri v. Wayne Township*, 111 Ill. App. 3d 396, 398, 444 N.E.2d 249 (1982).

¶ 8 For the foregoing reasons, we dismiss the appeal.

¶ 9 Dismissed.