

2011 IL App (1st) 093304 & 101897-U
Nos. 1-09-3304 & 1-10-1897 (Consolidated)

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(3)(1).

Third Division
August 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF MARY JO ZATOR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	03 D 2222
)	
DENNIS ZATOR,)	Honorable
)	Lisa Ruble Murphy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

ORDER

HELD: Where an appeal is taken from an interlocutory order that fails to dispose of all claims and does not include a Rule 304(a) finding, this court lacks jurisdiction over that appeal.

¶ 1 A petition for dissolution of marriage was filed on March 4, 2003. The petition stated that three children were born during the marriage: Brian, born October 21, 1981; Emily, born February 7, 1984; and Douglas, born April 3, 1989. On August 8, 2005, the trial court entered a judgment for dissolution of marriage dissolving the marriage of Mary Jo Zator and

Dennis Zator. The judgment for dissolution provided that the temporary maintenance award would be reviewed in 2007, after the marital residence was sold, and Mary Jo was awarded a judgment in the amount of \$10,000 for attorneys' fees. Finally, the court retained jurisdiction to enforce the judgment.

¶ 2 We note that Dennis has not provided this court with a record containing all the motions filed and orders entered in the trial court prior to March of 2008. In addition, he did not provide a "complete table of contents *** of the record" as required by Rule 342(a). Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). A January 19, 2007, order stated that Mary Jo filed a motion to enforce the judgment, and filed a petition for contribution for Douglas' college expenses.

¶ 3 On March 19, 2007, the court entered an order finding that Dennis Zator's offer to purchase the marital residence for \$436,000 was the highest bid. In July of 2007, the court entered an order that Mary Jo's temporary maintenance payments of \$1000 per month were to remain in effect until further order of the court. Mary Jo was also given leave to file an amended petition for maintenance. In August of 2007, the court entered an order continuing the hearing on Mary Jo's petition for maintenance and contribution for Douglas' college expenses. In September of 2007, Mary Jo filed a petition for rule to show cause regarding Dennis' failure to comply with the court's July 2007 order regarding maintenance payments. On September 14, 2007, the court entered an order which allowed Mary Jo to withdraw her petition for rule to show cause, and continued the hearing on her request for contribution for Douglas' college expenses and for maintenance.

¶ 4 In March of 2008, Mary Jo filed a petition for interim attorneys' fees, which was granted, and the court ordered Dennis to pay \$10,000 to Mary Jo's attorneys' within 30 days. On July 15, 2008, Mary Jo filed a petition for rule to show cause regarding Dennis' nonpayment of her attorneys' fees. On September 22, 2008, Mary Jo filed a petition for rule to show cause regarding Dennis' failure to pay child support pursuant to the judgment for dissolution. On December 18, 2008, Dennis filed a motion to dismiss Mary Jo's petition for rule to show cause regarding his failure to pay child support.

¶ 5 On April 1, 2009, the court entered an order that (1) granted Mary Jo's petition to extend maintenance and required Dennis to continue to pay \$1000 in maintenance, which would be reviewed in September of 2010; (2) found that Dennis' failure to pay the \$10,000 in attorneys' fees was willful and ordered that a memorandum of judgment be recorded against Dennis' real property for \$10,000; and (3) found that Dennis would be solely responsible for college expenses for the parties' three children. A status hearing was set for May 21, 2009, on Mary Jo's rule to show cause regarding Dennis' failure to pay child support and on Dennis' petition to abate or modify maintenance.

¶ 6 On April 15, 2009, a memorandum of judgment was recorded for \$10,000 in favor of the Vrdolyak firm, which represented Mary Jo. On April 30, 2009, Dennis filed a motion to reconsider the court's April 1, 2009, order extending maintenance and finding Dennis solely responsible for the payment of college expenses for the parties' children. In his motion to reconsider, Dennis stated that his motion to abate or modify maintenance was still pending.

¶ 7 On June 24, 2009, the court entered an order continuing (1) the hearing on Dennis' motion to abate or modify maintenance, (2) his motion to reconsider the April 1, 2009, order, and (3) Mary Jo's petition for rule to show cause, until October 2, 2009.

¶ 8 On July 11, 2009, Mary Jo filed a petition for rule to show cause regarding Dennis' failure to pay her attorneys fees. On August 13, 2009, she filed a petition for rule to show cause regarding Dennis' failure to pay medical expenses for one of the parties' children and for college expenses.

¶ 9 On November 5, 2009, the court entered an order which provided that (1) Dennis' motion to reconsider the April 1, 2009, order, was denied; (2) Dennis shall provide medical and dental coverage to Douglas within 21 days; (3) Dennis shall pay Mary Jo \$2,187 for Douglas' wisdom tooth extraction within 45 days; (4) Dennis shall pay \$9740 to Mary Jo for college expenses within 14 days; and (5) judgment was entered in favor of Mary Jo and against Dennis in the amount of \$4040 for child support arrears, with 9% statutory interest to accrue if the arrearage was not paid in 30 days. A status date on Dennis' compliance was set for January 1, 2010. The order did not include a 304(a) finding regarding appealability, did not address Dennis' motion to abate or modify maintenance, and did not address Mary Jo's petition for rule to show cause regarding the \$10,000 award for attorneys fees.

¶ 10 On December 2, 2009, Dennis filed a notice of appeal, from the trial court's November 5, 2009, order. On December 23, 2009, Dennis filed a motion to stay the court's November 5, 2009, order and to abate or modify maintenance due to a substantial change in circumstances. On January 5, 2010, Mary Jo filed a petition for rule to show cause against

Dennis for his failure to comply with the court's November 5, 2009, order. On January 26, 2010, she filed a motion to strike Dennis' motion to stay, abate or modify maintenance as insufficient at law and untimely. On January 27, 2010, Mary Jo filed an emergency petition for rule to show cause regarding Dennis' failure to pay the entire amount of maintenance ordered by the court.

¶ 11 On March 24, 2010, the parties entered into an "agreed order" which provided that Dennis (1) would pay a total of \$26,469 to Mary Jo for dental expenses, college tuition and maintenance; (2) would pay \$2000 to the Vrdolyak firm every two weeks starting March 26, 2010; and (3) Mary Jo's motion to strike Dennis motion to stay was granted. On April 21, 2010, Dennis filed a motion to reconsider the March 24, 2010, agreed order.

¶ 12 On May 3, 2010, Dennis filed a motion for substitution of judge for cause. On May 7, 2010, Mary Jo filed a petition for rule to show cause regarding Dennis' failure to pay her attorneys' fees. On May 25, 2010, Mary Jo filed a motion to strike Dennis' motion to reconsider the court's March 24, 2010, agreed order. On June 2, 2010, Dennis filed an amended motion for substitution of judge for cause. On June 3, 2010, Mary Jo filed a motion to strike Dennis' amended motion for substitution of judge for failure to request leave of court to file the motion. After a hearing, on June 3, 2010, the court denied Dennis' motion for substitution of judge and entered a directed finding in favor of Mary Jo.

¶ 13 On June 14, 2010, Mary Jo filed a notice of motion which referenced an emergency motion for rule to show cause against Dennis. On the aforementioned date, Dennis also filed an amended motion to reconsider the court's March 24, 2010, agreed order. In a June 28,

2010, order, the court set a hearing date of September 10, 2010 (1) on Dennis' compliance with the March 24, 2010, agreed order, (2) on Mary Jo's petition for rule to show cause, and (3) on Dennis' motion to abate or modify maintenance and on his motion to reconsider.

¶ 14 On July 6, 2010, Dennis filed a notice of appeal from the trial court's June 3, 2010, order denying his motion for substitution of judge for cause. On August 8, 2010, the appellate court granted Dennis' motion to consolidate the December 2, 2009, appeal with the July 6, 2010, appeal.

¶ 15 ANALYSIS

¶ 16 The Trial Court's November 5, 2009, Order

¶ 17 (Appeal No. 1-09-3304)

¶ 18 On December 2, 2009, Dennis filed a notice of appeal from the trial court's November 5, 2009, order which (1) denied his motion to reconsider the trial court's April 1, 2009, order extending maintenance and finding Dennis solely responsible for the payment of college tuition for the parties' children; and (2) required Dennis to provide medical and dental coverage to Douglas, to pay for Douglas' wisdom tooth extraction, to pay for college expenses, and to pay child support arrears. Mary Jo maintains that this court does not have jurisdiction over the December 2, 2009, appeal. Dennis' jurisdictional statement states that this court is conferred with jurisdiction by Supreme Court Rule 301.

¶ 19 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). Cases interpreting the rule make it clear that "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 a separate part thereof.” *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008), citing *R.W. Duntelman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998).

¶ 20 Rule 304 provides for appeals in cases where multiple parties or multiple claims for relief are involved in an action. Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006). Rule 304(a) provides in pertinent part:

“If 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 has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.* * * * 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 enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.” (Emphasis added) Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006).

Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved. *Gutman*, 232 Ill. 2d at 151, citing *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 464 (1990). We note that the purposes of the rule were “to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was

entered on fewer than all of the matters in controversy.” *Marsh*, 138 Ill. 2d at 465.

¶ 21 In dissolution proceedings, a petition for dissolution advances a single claim, and issues such as maintenance, property division, child support, and attorneys’ fees are ancillary issues related to that claim, and orders resolving individual ancillary issues are not appealable until the court resolves the entire dissolution claim. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 520 (2009), citing *In re Marriage of Leopando*, 96 Ill. 2d 114, 118-20 (1983); see also *Gutman*, 232 Ill. 2d at 151-52. It should be noted, however, in 2010, our supreme court adopted Supreme Court Rule 304(b)(6), which provides that a child custody judgment or a modification of custody are appealable without the findings required under Rule 304(a). Ill. S. Ct. R. 304(b)(6)(eff. Feb. 26, 2010). But Dennis has not appealed any custody orders, therefore, Rule 304(b)(6) does not provide this court with jurisdiction.

¶ 22 In this case, the November 5, 2009, order was not final and appealable. First, the order did not dispose of the following claims of the parties: (1) Dennis’ motion to abate or modify maintenance; and (2) Mary Jo’s petition for rule to show cause regarding the \$10,000 award of attorneys fees. Second, the order did not include a Rule 304(a) certification. In the absence of a Rule 304(a) certification, the circuit court retains jurisdiction over a judgment beyond the 30-day period if other claims in that action remain pending. *In re Marriage of Ehgartner-Shachter and Shachter*, 366 Ill. App. 3d 278, 286 (2006). Therefore, because the November 5, 2009, order did not dispose of all claims and did not contain a Rule 304(a) certification, the order was not final and appealable, and this court does not have jurisdiction to decide the issues in this appeal (No. 1-09-3304) involving the November 5, 2009, order.

Mackin, 391 Ill. App. 3d at 520; *see also Gutman*, 232 Ill. 2d at 151-152; *Shachter*, 366 Ill. App. 3d at 286.

¶ 23

The Trial Court's June 3, 2010, Order

¶ 24

(Appeal No. 1-10-1897)

¶ 25

Dennis also filed a notice of appeal from the trial court's June 3, 2010, order which denied his motion for substitution of judge for cause. Dennis' jurisdictional statement indicates that this appeal was brought pursuant to Rule 301. Although Mary Jo does not contest the court's jurisdiction over this appeal, a reviewing court has a *sua sponte* responsibility to determine its jurisdiction. *Mackin*, 391 Ill. App. 3d at 519; *In re Estate of Gebis*, 186 Ill. 2d 188, 192 (1999).

¶ 26

This court has held that an order denying a motion for substitution of judge is an interlocutory order and is not final for purposes of appeal. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969-70 (2004) (an order denying a motion for substitution of judge is interlocutory and is not final). Therefore, because the June 3, 2010, order denying the motion for substitution is an interlocutory order and did not include a Rule 304(a) finding, this court does not have jurisdiction over this appeal.

¶ 27

The supreme court in *In re the Marriage of Gutman*, 232 Ill. 2d 145 (2009), addressed a similar issue. In *Gutman*, the issue was whether a postdissolution order was final and appealable absent a Rule 304(a) finding where a petition for rule to show cause remained pending. *Gutman*, 232 Ill. 2d at 150. The former wife's petition for rule to show cause regarding the termination of maintenance was still pending when the trial court granted the

former husband's motion to modify the judgment of dissolution and terminate maintenance. The *Gutman* court held that a petition for rule to show cause was a part of the underlying proceeding and consequently represented an unresolved claim that prevented appellate jurisdiction from attaching without a Rule 304(a) finding by the trial court. *Gutman*, 232 Ill. 2d at 151-154. Therefore, the *Gutman* court held that an appeal filed prior to the resolution of the contempt petition and without a Rule 304(a) finding was premature. *Gutman*, 232 Ill. 2d at 156.

¶ 28 In this case, when Dennis filed his notice of appeal, there were three petitions still pending: (1) Mary Jo's petition for rule to show cause, (2) Dennis' motion to abate or modify maintenance and (3) Dennis' motion to reconsider. Because there were three petitions pending at the time of Dennis' appeal from the order denying his motion for substitution for cause, and because there was no Rule 304(a) finding in the order, his appeal is premature. *Gutman*, 232 Ill. 2d at 156. Accordingly, the premature notice of appeal did not confer jurisdiction on this court. *Gutman*, 232 Ill. 2d at 156, citing *Marsh*, 138 Ill. 2d at 469.

¶ 29 CONCLUSION

¶ 30 In this consolidated appeal, because the trial court's November 5, 2009, order (Appeal No. 1-09-3304) was not final and appealable and the June 3, 2010, order (Appeal No. 1-10-1897) was not final and appealable, this court does not have jurisdiction over these appeals.

¶ 31 Appeal dismissed.