

No. 1-12-3541

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LARRY ORUTA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 L 8803
)	
B.E.W., BUDGET AVIS, and CONTINENTAL)	Honorable
AIR TRANSPORT INC.,)	William D. Maddux,
)	Judge Presiding.
Defendants-Appellees.)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Where an appellant appeals a non-final order that is not permissible under Supreme Court Rules, the appeal must be dismissed because the appellate court does not have jurisdiction to hear the appeal.

¶ 2 Plaintiff Larry Oruta filed a series of *pro se* complaints, that were completely unintelligible, against defendants B.E.W., Continental Air Transport, Inc., Budget Avis (Budget) and other parties seeking to enforce a judgment that never existed. Defendant Budget, who is the only party before this court on appeal, responded to each complaint with a motion to dismiss

No. 1-12-3541

pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). Oruta filed a garnishment against a bank claiming he obtained a judgment against Continental on a workers compensation case, and after service of process, filed a motion for a turn over of funds. The trial court granted the motion, ordering the bank to turn over \$80,000 to Oruta in satisfaction of the judgment. Actually, the record on appeal indicates that Oruta received no award from the workers compensation case, had no judgment, and filled out the garnishment forms claiming that there was a judgment. The trial court subsequently vacated its turn over order, finding that no judgment existed, and ordered that Oruta return any money he may have received. Oruta appealed the order vacating the turn over order only and, for the following reasons, we dismiss the appeal for lack of jurisdiction. After Oruta filed his notice of appeal, Budget, who was apparently not a party to the workers compensation case, prevailed on its motion to dismiss.

¶ 3

BACKGROUND

¶ 4 Oruta filed a series of *pro se* complaints against multiple defendants, including Budget, Continental, and B.E.W. The complaints were unintelligible, and were merely a venting process by this *pro se* plaintiff which may have included the seeking of the enforcement of a judgment that did not exist. As the trial court later discerned, that judgment never existed.

¶ 5 Budget was the only defendant that respond to any of the complaints, and Budget moved to dismiss each complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). Throughout the course of the proceedings, Oruta filed numerous motions for relief, garnishment summons against various defendants, and citations. Oruta's

No. 1-12-3541

motions included a motion for a default against defendant B.E.W.

¶ 6

I. The First Order

¶ 7

On October 15, 2012, the trial court entered an order directing Fifth Third Bank to turn over \$80,000 to Oruta to satisfy a claimed pre-existing judgment. The order stated:

"1. That the Citation respondent [Fifth Third Bank] is ordered to turn over funds of the defendant [Continental] that it is currently holding pursuant to a served Citation in the amount of \$80,000.

2. That said funds shall be turned over to [Oruta] through [his] attorneys to satisfy in part a judgment entered herein.

3. That a judgment in the sum of \$80,000 is hereby entered against Continental Air Transport, Inc. and 5th Third Bank and in favor of Larry Oruta."

¶ 8

II. The Second Order

¶ 9

On December 4, 2012, the trial court vacated the October 15, 2012, order, observing that no judgment existed against any of the defendants:

"The Court makes the following findings:

1. The only properly served and represented Defendant is Budget Car Rental [Budget].

2. An Amended Complaint naming B.E.W. as a defendant is **NOT** contained in the electronic docket or the court file.

3. There is **NO** default against **ANY** defendant reflected on the electronic docket or contained in the court file.

4. There is **NO** monetary judgment against any defendant reflected on the electronic docket or contained in the court file.

Pursuant to the Court's findings above, **IT IS HEREBY**

ORDERED:

1. Plaintiff's Motion to Default B.E.W. is DENIED. The Court finding Plaintiff did **NOT** properly serve Defendant B.E.W. with an amended complaint naming B.E.W.

2. That any previous order referencing a monetary judgment against any Defendant is vacated and held for naught, the Court determining that no such judgment exists.

3. That any previous citation to discover assets proceeding is vacated and held for naught, the Court finding there is no basis for such a proceeding.

4. That any previous order requiring the turnover of funds is vacated and held for naught, the Court finding that there is no monetary judgment entered against any Defendant, and therefore there should have been **NO** citation to discover assets issued and **NO** turnover of funds order entered.

5. Any funds that might have been released to the Plaintiff

arising out of this case shall be returned within 3 days (by December 7, 2012) to the institution that released the funds.¹

Those funds having been determined by this Court to have been released in error.

6. Failure to return any funds released to the Plaintiff within 3 days will result in a Rule to Show Cause being issued against the Plaintiff for not complying with this order." (Bold in original.)

The order further stated that all subsequent proceedings under the case were assigned to the presiding judge of the law division, William Maddux.

¶ 10 III. The Third Order

¶ 11 Oruta filed a notice of appeal, pursuant to Illinois Supreme Court Rule 303,² on December 4, 2012, in which he appealed the trial court's order vacating the turn over order. Over a month after the notice of appeal was filed, on January 14, 2013, the trial court granted defendant Budget's section 2-615 motion, dismissing all claims against defendant Budget with prejudice. This third order does not appear in the appellate record. Although it appears in the appendix to Budget's brief, an appendix is not part of the record. *In re Estate of Matthews*, 409

¹ It is not clear from the record on appeal whether funds were actually turned over to Oruta, and, if they were, whether Oruta ever returned the funds. In its appellee brief, Budget asserts that Oruta "garnished tens of thousands of dollars from *B.E.W.*'s bank account." (Emphasis added.) However, the appellate record contains no record of a garnishment concerning B.E.W.

² Oruta also noted on the notice of appeal that he was requesting that the trial court proceedings be stayed, pursuant to Illinois Supreme Court Rule 305.

No. 1-12-3541

Ill. App. 3d 780, 783 (2011).

¶ 12

ANALYSIS

¶ 13 Oruta argues that the issue on appeal is whether the trial court erred in vacating its previous turn over order. However, defendant Budget argues that we lack jurisdiction to hear this appeal, and we agree. In addition, a reviewing court has the duty to consider its jurisdiction before proceeding to the merits of the case. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). When jurisdiction is lacking, an appellate court must dismiss the appeal. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251 (2010).

¶ 14

I. No Jurisdiction

¶ 15

A. Not A Final Order

¶ 16 Oruta filed his notice of appeal pursuant to Illinois Supreme Court Rule 303 (eff. Jan. 1, 1967). Rule 303 concerns appeals from final judgments of the trial court in civil cases. "An order is final if it terminates the litigation between the parties or disposes of their rights on some definite, separate part of the litigation." *Knox v. Keene Corp.*, 210 Ill. App. 3d 141, 144 (1991). The trial court's order vacating the turn over order was not a final judgment because it did not terminate the litigation, nor did it dispose of any party's rights on a definite, separate part of the litigation. The trial court explicitly ordered that all further proceedings in the case would proceed before Judge Maddux, therefore further indicating that the litigation was *not* disposed of.

¶ 17

B. Not An Appealable Non-Final Order

¶ 18 Certain non-final judgments may be appealed. Illinois Supreme Court Rule 307 (eff. Jan. 1, 1967) governs appeals of interlocutory orders as of right. Rule 307 enumerates a list of non-

final orders which a party may appeal as of right, including orders:

- "(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;
- (2) appointing or refusing to appoint a receiver or sequestrator;
- (3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;
- (4) placing or refusing to place a mortgagee in possession of mortgaged premises;
- (5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;
- (6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5);
- (7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act (735 ILCS 30/20-5-10), but the procedure for appeal and stay shall be as provided in that section." Ill. S. Ct. R. 307 (eff. Jan. 1, 1967).

Illinois Supreme Court Rule 306 (eff. Jan. 1, 1967) concerns interlocutory orders from which a

No. 1-12-3541

party may appeal with permission of the appellate court. A party may file a petition for leave to appeal:

- "(1) from an order of the circuit court granting a new trial;
- (2) from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds;
- (3) from an order of the circuit court denying a motion to dismiss on the grounds that the defendant has done nothing which would subject defendant to the jurisdiction of the Illinois courts;
- (4) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff;
- (5) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules;
- (6) from an order of the circuit court which remands the proceeding for a hearing *de novo* before an administrative agency; or
- (7) from an order of the circuit court granting a motion to

disqualify the attorney for any party;

(8) from an order of the circuit court denying or granting certification of a class action under section 2-802 of the Code of Civil Procedure (735 ILCS 5/2-802); or

(9) from an order of the circuit court denying a motion to dispose under the Citizen Participation Act (735 ILCS 110/1 *et seq.*)." Ill. S. Ct. R. 306 (eff. Jan. 1, 1967).

The order for which Oruta seeks review does not fall under any of these categories. Since the trial court's order for which Oruta seeks review is neither a final order nor an order appealable under Illinois Supreme Court Rules 306 and 307, we have no jurisdiction to hear an appeal of the order and we therefore dismiss this appeal.

¶ 19

II. The Dismissal Order

¶ 20 Defendant Budget also argues that we should "affirm the trial court's decision to dismiss [Budget] with prejudice."³ However, we lack the jurisdiction to review this order.

¶ 21 First, the trial court's January 14, 2013, order dismissing the case with prejudice was entered after the notice of appeal, and therefore is not addressed in the notice of appeal. "The filing of a notice of appeal 'is the jurisdictional step which initiates appellate review.'" *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011) (quoting *People v. Smith*, 228 Ill. 2d 95, 104 (2008)). "A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors*, 242 Ill. 2d

³ Oruta, the appellant, does not seek review of the order.

No. 1-12-3541

at 176. Since the dismissal order was not specified in the notice of appeal, we lack jurisdiction to review the order.

¶ 22

CONCLUSION

¶ 23 Oruta filed a notice of appeal concerning a non-appealable non-final order. As a result, we lack the jurisdiction to hear this appeal and must dismiss for lack of appellate jurisdiction.

¶ 24 Dismissed.