

2014 IL App (1st) 133273-U  
No. 1-13-3273  
Order Filed June 30, 2014

SIXTH DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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JAFAR KALBASSI,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellant,	)	
	)	No. 13 M1 1142489
v.	)	
	)	
NOVAK & DELEON, LLC,	)	
	)	Honorable
Defendant-Appellee.	)	Cynthia Y. Cobbs,
	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Rochford and Justice P. Scott Neville concurred in the judgment.

**ORDER**

***HELD:*** The plaintiff's petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2) was denied, and the appeal was dismissed for lack of jurisdiction.

¶ 1 Pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011)<sup>1</sup>, the *pro se* plaintiff, Jafar Kalbassi, seeks leave to appeal from an order of the circuit court of Cook County transferring his breach of contract lawsuit against the defendant, Novak and Deleon, LLC, to Lake County, Illinois. On appeal, the plaintiff contends that the circuit court erred when it granted the defendant's motion to transfer venue. The defendant did not file a responsive brief, and we ordered the case taken on consideration of the record and the plaintiff's appellant's brief, which we have treated as a petition for leave to appeal because such appeals are permissive.

¶ 2 On July 30, 2013, the plaintiff filed a small claims complaint alleging that the defendant breached its contract with the plaintiff to provide legal services and only refunded \$900 of the \$3,750 in fees paid to it. The plaintiff sought the balance of the fees paid, together with interest and costs. On August 27, 2013, the defendant filed an appearance and a motion to transfer venue to Lake County. 735 ILCS 5/2-104(West 2012)). The motion was supported by the affidavit of attorney Paul Novak, who averred that the defendant's office was located in Lake County, that the defendant provided legal services to the plaintiff solely in Lake County, that all meetings with the plaintiff were in Lake County, and that the witnesses were located in Lake County.

¶ 3 On September 9, 2013, Circuit Court Judge Joseph Panarese ordered the plaintiff to file a written response to the defendant's motion to transfer venue. On September 10, 2013, Circuit Court Judge Cynthia Y. Cobbs entered an order dismissing the case for want of prosecution.

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<sup>1</sup> The plaintiff states that jurisdiction is based on Rule 306(a)(2), from an order denying or granting a motion to transfer based on *forum non conveniens*. However, Rule 306(a)(4) (Ill. S. Ct. R. 306(a)(4) (eff. Feb. 16, 2011)) provides jurisdiction for an appeal from an order granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county where the action was filed.

¶ 4 On September 16, 2013, the plaintiff filed a written response to the transfer motion. On October 7, 2013, Judge Cobbs granted the defendant's motion to transfer the case to Lake County. On October 16, 2013, Judge Cobbs denied the plaintiff's motion for reconsideration of the transfer order. On October 17, 2013, the plaintiff filed a notice of appeal from the order of October 7, 2013.

¶ 5 ANALYSIS

¶ 6 A reviewing court has a duty to consider, *sua sponte*, its jurisdiction and to dismiss an appeal if jurisdiction is lacking. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1025 (2003). As explained below, we conclude that appellate jurisdiction is lacking in this case because the order of September 10, 2013, dismissing the case for want of prosecution was never vacated and therefore, there was no valid transfer order from which an appeal could be taken.

¶ 7 After the entry of a dismissal for want of prosecution, further proceedings are unauthorized until the order is vacated and the cause reinstated to the court's docket. *Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 885 (2009). The analysis in *Kime* is instructive. In *Kime*, the case was scheduled for November 9, 2005, for presentation of the defendant's section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2004)). When neither party appeared on that date, the trial judge dismissed the case for want of prosecution. When the case appeared on the November 14, 2005 status call, neither party appeared. The same trial judge who had entered the dismissal for want of prosecution continued the case to November 29, 2005. On that date, only the defendant appeared, and the trial judge granted his section 2-615 motion to dismiss. 28 months later, the plaintiff moved to vacate both the November 9, 2005 dismissal for want of prosecution and the November 29, 2005 dismissal

order. The court granted the motion to vacate, and the defendant appealed. *Kime*, 396 Ill. App. 3d at 883-85.

¶ 8 On review, this court rejected the defendant's position that there was jurisdiction for the appeal under Illinois Supreme Court Rule 304(b)(3) (210 Ill. 2d R. 304(b)(3)) (interlocutory appeal from the grant or denial of relief sought in a petition pursuant to section 2-1401 of the Code of Civil Procedure). This court explained that the defendant's attempts to litigate a closed case were not effective because "until the court vacated the dismissal and reinstated the pleading, further proceedings regarding the merits of the pleading were unauthorized." *Kime*, 396 Ill. App. 3d at 886. The court further found that the doctrine of reinvestment was not applicable, *inter alia*, because the trial judge never lost jurisdiction. *Kime*, 396 Ill. App. 3d at 887 (since only 20 days lapsed between the dismissal orders, the court did not need to be "revested" with jurisdiction).

¶ 9 Since both the dismissal for want of prosecution order and the section 2-615 dismissal were interlocutory orders, the order appealed from did not grant relief from a final judgment. Therefore, Rule 304(b)(3) did not provide a basis for this court's jurisdiction, and we dismissed the appeal. *Kime*, 396 Ill. App. 3d at 890.

¶ 10 Similarly, in the present case, on September 10, 2013, Judge Cobbs dismissed the case for want of prosecution. On October 7, 2013, unaware apparently of her prior order dismissing the case, Judge Cobbs entered an order transferring the case to Lake County. Due to the entry of the dismissal for want of prosecution order, there was no longer a case to be transferred until the dismissal for want of prosecution was vacated.

¶ 11 In his brief before this court, the plaintiff maintains that "[t]he [c]ourt found '[t]hat dismissed for want of prosecution had no effect because the final order had already been

entered and there was no pending matter or the order vacating the dismissed stated that the judgment was 'to stand.' " While the plaintiff refers to a "motion to vacate the dismissed," there is nothing in the record on appeal indicating that the plaintiff moved to vacate the order dismissing his complaint for want of prosecution or that the dismissal order was vacated *sua sponte* by Judge Cobbs. <sup>2</sup>

¶ 12 Applying the analysis in *Kime* to the present case, the September 10, 2013, order dismissing the case for want of prosecution rendered Judge Cobbs' October 7, 2013, order transferring the case to Lake County ineffective since there was no longer a case to transfer. That left the plaintiff without a transfer order from which to appeal. The transfer order was the basis for this court's jurisdiction under Rule 306(a)(2). In the absence of an appealable order, the plaintiff's petition for leave to appeal must be denied, and the appeal dismissed.

¶ 13 CONCLUSION

¶ 14 This court has no jurisdiction under Rule 306(a) (2) to decide this appeal. Therefore, the appeal is dismissed.

¶ 15 Dismissed.

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<sup>2</sup> It is apparent from the plaintiff's brief that he is not entirely comfortable in the English language.