

SIXTH DIVISION
May 15, 2015

No. 1-14-3201

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

LAW OFFICES OF ROBERT J. SHELIST, P.C.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 M1 129899
)	
COMMUNICATION CONCEPTS MIDWEST, INC.,)	
an Illinois Corporation, and ROSS BOGUE,)	Honorable
)	Jeffrey Lawrence,
Defendants-Appellees.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

- ¶ 1 *Held:* We dismissed this appeal from an order which is not final and appealable for lack of appellate jurisdiction as appellant did not comply with the requirements of Rule 308.
- ¶ 2 Plaintiff-appellant, the Law Offices of Robert J. Shelist, P.C., appeals from an order vacating a judgment entered in its favor pursuant to Illinois Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Jan. 1, 2015)). We dismiss this appeal, as plaintiff failed to comply with the provisions of that Rule.

¶ 3 On May 15, 2013, plaintiff filed suit against defendants-appellees, Communication Concepts Midwest, Inc., and its president, Ross Bogue, seeking the recovery of attorney fees for services performed by plaintiff in the amount of \$5,994. Defendants were served and appeared, but did not file an answer.

¶ 4 On January 28, 2014, with both sides present in court, the circuit court entered an order setting the case for trial on April 29, 2014, at 9:30 a.m. in courtroom 1106 of the Daley Center.

¶ 5 On April 29, 2014, the circuit court entered an order which stated that judgment was entered for plaintiff after trial for \$5,944, plus costs. The order indicated that plaintiff was in court but defendants were not. The order also stated that plaintiff's exhibits were admitted into evidence and returned to plaintiff.

¶ 6 On that same date, defendants filed a motion to vacate the April 29, 2014, judgment pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2012)). Therein, defendants stated that on April 29, 2014, due to a conflict caused by another case, their counsel was late arriving to courtroom 1106, and that defendant Bogue had been in the wrong courtroom. Defendants referred to the April 29, 2014, judgment as a default judgment. Plaintiff opposed the motion to vacate by filing a motion to strike the motion and for sanctions. Plaintiff argued that the April 29, 2014, judgment was entered after a trial and, therefore, there was no default judgment.

¶ 7 On May 9, 2014, a circuit court judge who had not heard the matter on April 29, 2014, denied defendants' motion to vacate "as being moot" in that "the judgment was entered after trial." The circuit court also denied plaintiff's motion to strike and for sanctions.

¶ 8 Defendants, on May 29, 2014, filed a verified motion to vacate judgment and to grant a new trial or, in the alternative, to modify the judgment pursuant to section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2012)). Therein, defendants argued that section 2-1203 provided them an opportunity to move to vacate the judgment and for a retrial and that their motion was timely filed within 30 days of the entry of judgment.

¶ 9 Plaintiff filed a motion on July 8, 2014, seeking to strike defendants' section 2-1203 motion to vacate on the basis that the circuit court lost subject-matter jurisdiction upon denial of defendants' initial motion to vacate on May 9, 2014, and, thus, could not consider defendants' second motion to vacate. Plaintiff sought sanctions pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)).

¶ 10 On July 29, 2014, a circuit court judge, who had not previously presided over the matter, denied defendants' motion to vacate but granted them leave to file an amended motion to vacate within 28 days.

¶ 11 On August 26, 2014, defendants filed a revised verified motion to vacate the April 29, 2014, judgment and grant new trial or, in the alternative, to modify the judgment under section 2-1203. Plaintiff then filed a motion to strike defendants' revised motion, again arguing that the circuit court had lost subject-matter jurisdiction over the case. Plaintiff's motion also sought sanctions against defendants under Rule 137 for the filing of a frivolous pleading.

¶ 12 The circuit court judge who had entered the judgment order of April 29, 2014, presided over the hearing on defendants' revised motion to vacate and plaintiff's motion to strike and for sanctions. On September 18, 2014, that judge granted defendants' revised motion to vacate and denied plaintiff's motions. The order stated:

"1. [T]hat the default judgment entered on 4/29/14 is vacated pursuant to the Revised 2-1203 Motion to Vacate Judgment, Grant a New Trial or in the Alternative Modify the Judgment."

2. [T]hat Plaintiff's Motion to Strike [Defendants'] Motion for relief is denied."

¶ 13 On that same date, yet another circuit court judge entered an order granting plaintiff's "oral motion for a Rule 308 finding contesting subject matter jurisdiction." Specifically, the circuit court certified the following question: "whether the court had jurisdiction to vacate the April 29, 2014 judgment order." The case was stayed pending appeal.

¶ 14 Plaintiff filed a notice of appeal on October 16, 2014, appealing the circuit court's September 18, 2014, order which vacated the April 29, 2014, judgment. Plaintiff did not file an application for leave to appeal pursuant to Illinois Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Jan. 1, 2015)).

¶ 15 Although plaintiff has raised issues as to the circuit court's jurisdiction to enter the order vacating the April 29, 2014, judgment, neither plaintiff nor defendants have questioned the jurisdiction of this court. However, we have a duty to *sua sponte* determine whether we have jurisdiction to decide the issues presented. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 16 Except as specifically provided by Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994); see also Ill. S. Ct. R. 301 *et seq.* (eff. Feb. 1, 1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if

affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 17 Plaintiff appeals from the September 18, 2014, order granting defendants' motion to vacate the April 29, 2014, judgment and setting the matter for new trial. However, that order is not a final and appealable order. See *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 106 (2004). Thus, as plaintiff appeals from an order which is not final and appealable, we would have jurisdiction, only if an exception found in Illinois Supreme Court Rules allowing interlocutory appeals applied here.

¶ 18 Plaintiff's jurisdictional statement in its opening brief asserts that the trial court certified an issue for appeal pursuant to Rule 308. Rule 308(a)(b) provides procedures governing permissive interlocutory appeals, and states, in part:

"(a) Requests. When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

(b) How Sought. The appeal will be sought by filing an application for leave to appeal with the clerk of the Appellate Court within 14 days after the entry of the order in the trial court or the making of the prescribed statement by the trial court, whichever is later. An

original and three copies of the application shall be filed." (Bold in original.) Ill. S. Ct. R. 308(a)(b) (eff. Jan. 1, 2015).

¶ 19 The circuit court did certify the question—"whether the court had jurisdiction to vacate the April 29, 2014 judgment order"—under Rule 308, but did not make the requisite findings that "there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2015).

¶ 20 Further, even if the order certifying the question as to the circuit court's subject-matter jurisdiction met the requirements of Rule 308, plaintiff did not file an application for leave to appeal within 14 days of that order. Instead, plaintiff filed a notice of appeal almost 30 days later. "Illinois courts have repeatedly held that where the parties failed to file an application for leave to appeal within 14 days, as required by Rule 308, the appellate court lacked jurisdiction to address the merits of the appeal." *People ex rel. Pressol GmbH and Co. KG v. Pressl*, 328 Ill. App. 3d 274, 276 (2002). Thus, we do not have jurisdiction under Rule 308.

¶ 21 We understand that plaintiff argues the September 18, 2014, order is void for lack of subject-matter jurisdiction, and that "a void order may be attacked at any time or in any court, either directly or collaterally." *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). However, "the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts." *Id.* This court does not possess the supervisory authority "to consider the merits of a case merely because the dispute involves an order or judgment that is, or is alleged to be, void." *Id.* (citing *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 504 (1999)). Plaintiff has not raised his

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voidness challenge to the September 18, 2014, order in a proper context and we are without authority to consider this claim.

¶ 22 In that plaintiff appeals from an order which is not final and appealable, and has failed to comply with the provisions of Rule 308, we do not have jurisdiction to consider the issues presented.

¶ 23 For the foregoing reasons, we dismiss the instant appeal for lack of jurisdiction.

¶ 24 Appeal dismissed.