2017 IL App (1st) 170807-U
Order filed: December 22, 2017

FIFTH DIVISION

No. 1-17-0807

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAGEN WILLIS, as Special Administrator of the Estate of Towanda Willis Plaintiff-Appellee, v. HIGHLAND MEDICAL CENTER, SOUTH SHORE HOSPITAL CORP., SOUTH SHORE HOSPITAL, and CHEN WANG, M.D., Defendants (South Shore Hospital Corp., Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 15 L 4664 Honorable Moira S. Johnson, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
PRESIDING JUSTICE REYES and JUSTICE LAMPKIN concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal from circuit court's order sanctioning defendant for its failure to comply with discovery order is dismissed for a lack of jurisdiction, where even if contempt finding was entered, that finding was not accompanied by the imposition of a judgment for sanctions.

¶ 2 Defendant-appellant, South Shore Hospital Corporation (South Shore), appeals from sanctions imposed for its failure to comply with a number of discovery orders, as well as the

underlying discovery orders themselves. For the following reasons, we dismiss this appeal for a lack of appellate jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed this medical negligence suit against defendants to recover for the allegedly improper medical treatment that decedent, Towanda Willis, received in 2013. During discovery, plaintiff sought production of a "credentialing file" held by South Shore with respect to defendant, Dr. Chen Wang. South Shore ultimately asserted that over 150 pages of this file were privileged and refused to produce them to plaintiff. Thereafter, the circuit court conducted an *in camera* inspection of these materials and, on October 13, 2016, ordered South Shore to produce dozens of pages for which South Shore had claimed a privilege. South Shore filed a motion to reconsider this order, which was denied in a written order entered on December 15, 2016. In the same order, the matter was continued to January 13, 2017, for status on South Shore's compliance with the court's discovery order.

¶ 5 Thereafter, South Shore filed a "Motion for Order of Friendly Civil Contempt." Therein, South Shore indicated that it respectfully disagreed with the circuit court's decision, refused to comply with the court's discovery order, and asked the circuit court to find it in friendly contempt and sanction it $50 for its refusal. South Shore asked for this course of action so that it could file an immediate appeal challenging the circuit court's discovery order. See Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016) (making "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty" immediately appealable as a final order); *Almgren v. Rush–Presbyterian–St. Luke's Medical Center*, 162 Ill. 2d 205, 216 (1994) (noting that when a party appeals contempt sanctions imposed for violating, or threatening to violate, a pretrial discovery order, the underlying discovery order is subject to review).

¶ 6 On January 13, 2017, the circuit court denied South Shore's motion in a written order that stated: "Defendant[']s motion for Friendly Civil Contempt is denied for the reasons stated in the record. The court[']s ruling is contained in the court reported transcript." A review of that transcript reveals that the circuit court denied South Shore's motion for friendly contempt after finding that South Shore's refusal to comply with the discovery order was "willful and contumacious." The circuit court therefore entered "sanctions against this defendant for failing to comply with this Court's order" pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002). The circuit court added that "[i]t will be a hundred dollar a day sanction pending further order of court."

¶ 7 South Shore indicated that it would like to appeal the circuit court's order, and the matter was continued to January 23, 2017, for status on that possibility. When South Shore inquired if the sanction would be held in "abeyance" until that date, the circuit court responded: "Well, yes it's a daily sanction. I haven't reduced it to a judgment. So I am not holding it in abeyance. It's an ongoing sanction. At some point, depending on what happens here, I may reduce it to a judgment. I haven't done that yet." Finally, the circuit court clarified that it had denied the motion for friendly contempt because it "entered a different kind of sanction," while also making statements seeming to indicate that it may have entered a finding of civil contempt.

¶ 8 Thereafter, South Shore filed a "Motion for Clarification, Reconsideration, and to Vacate [the] Order entered on January 13, 2017." Therein, South Shore asserted that the nature of the circuit court's January 13, 2017, order was unclear, with South Shore further indicating its understanding that the circuit court had denied the motion for friendly contempt and imposed discovery sanctions pursuant to Supreme Court Rule 219(c). South Shore therefore requested that the circuit court reconsider and: (1) grant the motion for friendly contempt, and (2) vacate

the order imposing sanctions upon South Shore for a discovery violation. Alternatively, South Shore asked the circuit court to certify for interlocutory appeal, pursuant to Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Feb. 26, 2010)), the question of the propriety of the circuit court's discovery rulings.

¶ 9 South Shore's motion was denied in a written order entered on February 23, 2017, in which the circuit court again indicated that its reasoning was contained in the transcript of a hearing held the same day. Therein, the circuit court repeatedly indicated that it had imposed a discovery "sanction" under Rule 219(c), and the circuit court further indicated its understanding that the Supreme Court Rules envisioned that South Shore would have an opportunity to appeal from that decision. Thus, the circuit court repeatedly refused to "double that [sanction] now with an additional contempt" or "hold [South Shore] in contempt again." Explaining further, the circuit court stated:

> "Well, what I did was [I] entered a daily sanction which I am not going to vacate. That's still going forward.
>
> I have not reduced it to a judgment because my understanding is the purpose for entering such sanctions is not to penalize but to encourage you to respond.
>
> I don't see anything in the rules that says I have to reduce the $100 daily fine which continues to a judgment in order for you to ask for relief under 304(b)(5)."

The circuit further stated "I don't see anything in here that prevents the Appellate Court from reviewing this sanction that is in effect contempt."

¶ 10 South Shore filed a notice of appeal on March 22, 2017, purporting to appeal from an order holding it in contempt and imposing a sanction for its discovery violations, as well as the discovery orders underlying that contempt finding, pursuant to Supreme Court Rule 304(b)(5).

¶ 11 II. ANALYSIS

¶ 12 On appeal, neither party has questioned this court's appellate jurisdiction. 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).

¶ 13 Except as specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) (*et seq*.); *Almgren*, 162 Ill. 2d at 210. "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). Thus, because discovery orders are not final, they are not ordinarily appealable. *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981); *Lewis v. Family Planning Management, Inc*., 306 Ill. App. 3d 918, 921 (1999).

¶ 14 However, it is well settled that the correctness of a discovery order may be tested through contempt proceedings, as a final order entered in a contempt proceeding that imposes a fine or other penalty is appealable. *Eskandani v. Phillips*, 61 Ill. 2d 183, 194 (1975); Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016). When a party appeals contempt sanctions imposed for violating, or threatening to violate, a pretrial discovery order, the discovery order is subject to review. See *Almgren*, 162 Ill. 2d at 216. This is because review of the contempt finding necessarily requires review of the order upon which it is based. *Waste Management, Inc. v. International Surplus Lines Insurance Co*., 144 Ill. 2d 178, 189 (1991).

¶ 15 While South Shore contends that its appeal is proper under Rule 305(b)(5), as an appeal from contempt sanctions imposed for a discovery violation, it is not entirely clear from the

record that the circuit court ever actually found South Shore in contempt. Rule 219(c) (eff. July 1, 2002) empowers a circuit court to enforce its discovery orders both by the imposition of sanctions, including a monetary penalty for willful misconduct, as well as through the use of contempt proceedings. Here, the circuit court repeatedly refused to grant South Shore's motion for a finding of friendly contempt and indicated that, rather, it had "entered a different kind of sanction" pursuant to Rule 219(c). It also repeatedly refused to "double that [sanction] now with an additional contempt" or "hold [South Shore] in contempt again." To the extent that the circuit court simply entered a monetary penalty against South Shore as a discovery sanction, that order was interlocutory and was not appealable. *Lewis*, 306 Ill. App. 3d at 924.

¶ 16 Moreover, even if we concluded that the circuit court did in fact find South Shore in contempt, we would still lack jurisdiction over this appeal.

¶ 17 Rule 304(a)(5) (eff. Mar. 8, 2016) only provides for the immediate appeal from a final order "finding a person or entity in contempt of court which imposes a monetary or other penalty." As our supreme court has explained, the "imposition of a sanction for contempt is final and appealable because, although occurring within the context of another proceeding and thus having the appearance of being interlocutory, it is an original special proceeding, collateral to and independent of, the case in which the contempt arises. [Citations.] It is the end of the proceeding begun against the [contemnor]. There is nothing left to be done but enforce the judgment." *Silverstein,* 87 Ill. 2d at 172. In contrast, a " 'contempt order that does not impose sanctions is not final and not reviewable.' " *Pedigo v. Youngblood*, 2015 IL App (4th) 140222, ¶ 17 (quoting *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1026 (2005)); *Valencia v. Valencia*, 71 Ill. 2d 220, 228 (1978) (same).

¶ 18 Here, it is *possible* to read the record before us and conclude that the circuit court found South Shore in contempt. However, it is *impossible* to read it and conclude that the circuit court also entered a final judgment imposing sanctions upon South Shore for that contemptuous behavior. While the circuit court certainly *announced* what the sanction *would be—i.e.*, $100 per day for South Shore's noncompliance with the order to produce portions of the credentialing file of Dr. Wang—the circuit court also repeatedly refused to enter a judgment actually imposing that sanction. Therefore because the circuit court never actually imposed a penalty against South Shore for contempt, no final order—one leaving nothing to be done in the contempt proceeding but enforce the judgment—was entered in the contempt proceeding. We have no jurisdiction to review such interlocutory orders. *Fidelity Financial Services, Inc. v. Hicks*, 267 Ill. App. 3d 887, 890 (1994) ("A contempt order is interlocutory, and thus, non-appealable, unless the court imposes a sanction for any contemptuous act.").

¶ 19 We do note that there is some indication in the record that the circuit court intended to provide South Shore with a pathway to seek appellate review of its discovery order. However, without a judgment containing both an explicit finding of contempt for South Shore's refusal to comply with the discovery order and the actual imposition of a resulting monetary or other penalty, we are simply without jurisdiction to undertake any such review.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we dismiss this appeal for a lack of appellate jurisdiction.

¶ 22 Appeal dismissed.