2019 IL App (1st) 171612-U
No. 1-17-1612
Order filed July 30, 2019

Second 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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

NITIN CHANDULAL BHANSARI, a/k/a NITIN BHANSALI,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	
DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for Carrington Mortgage Loan Trust, Series 2005-FRE I Asset-Backed Pass-Through Certificates, a New York Bank & Trust Co.; CARRINGTON MORTGAGE SERVICES, LLC, a Delaware corporation; CARRINGTON TITLE SERVICES, LLC, a Delaware corporation, f/k/a TELSI REAL ESTATE SOLUTIONS, LLC; FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation; CHICAGO TITLE INSURANCE COMPANY, a Nebraska Corporation; FIDELITY NATIONAL AGENCY SOLUTIONS, a California corporation; ATLANTIC AND PACIFIC SETTLEMENT SERVICES, LLC, a limited liability company; NEXUS DEBT SOLUTIONS, LLC, an Illinois limited company; AVNI B. SHAH, an Illinois Registered Attorney; BELL LAW, LLC, an Illinois limited liability company; ANTHONY J. TROTTO REAL ESTATE, an Illinois Real Estate Broker; and PETRA SESTAKOVA, an Illinois Real Estate Agent,	)	No. 16 L 8324 Honorable Thomas R. Mulroy, Judge, presiding.

	)
Defendants	)
	)
(Bell Law, LLC, and Avni B. Shah, Appellees).	)

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Where the circuit court entered an order that dismissed one of multiple counts and two of multiple defendants, but the record does not include a Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding, the dismissal, though granted with prejudice, was not an appealable final order. The appeal is dismissed for lack of jurisdiction.

¶ 2 Plaintiff Nitin Bhansari appeals *pro se* from the circuit court's denial of his motion to reconsider its granting of a motion to dismiss brought by, Bell Law, LLC, and an attorney employed by that firm, Avni B. Shah (collectively "Bell." On appeal, Bhansari contends that the circuit court erred in dismissing his legal malpractice action based on the expiration of the statute of limitations. He further contends that the circuit court should have allowed him an opportunity to file an amended complaint. Although Bell has not filed response briefs, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp*., 63 Ill. 2d 128, 133 (1976).

¶ 3 Background

¶ 4 On August 22, 2016, Bhansari filed a five-count complaint against numerous parties involved in a real estate transaction. The only count pertaining to Bell was Count 4, titled "Legal Malpractice." Bell moved to dismiss Count 4, asserting that Bhansari failed to state a cause of action for a legal malpractice claim and that his complaint was barred by a two-year statute of limitations, which began running either when Bhansari became aware of a lead paint issue in

2012, or when judgment was entered against him in March 2014. Bhansari filed a response, asserting that the statute of limitations began to run when Bell "caused the wrong deed to be recorded and in the wrong name on February 9, 2016," and requesting, in the alternative, that he be granted leave to amend his *pro se* complaint in an unspecified manner. Bhansari failed to appear at the hearing on the motion; the next day, the circuit court issued a written order granting Bell's motion to dismiss.

¶ 5 The trial court noted that an action for damages against an attorney arising out of an act or omission in the performance of professional services must be filed within two years from the time the plaintiff knew or reasonably should have known of the injury for which damages are sought. Finding that Bhansari knew in January 2012 that the apartment building had issues with lead-based paint and that a judgment was entered against him on March 19, 2014, the circuit court determined that the two-year statute of limitations expired on March 19, 2016. Because Bhansari did not file his complaint until August 22, 2016, the court dismissed Count 4 with prejudice, and dismissed Bell.

¶ 6 Bhansari filed a motion to reconsider, asserting that he arrived 15 minutes late for the hearing on the motion to dismiss. Bhansari argued that a quitclaim deed with his name spelled incorrectly, purporting to convey title to the apartment building, was not recorded until February 9, 2016, and that it was on this date that Bell became liable for legal malpractice, as the firm failed to "follow-up and follow-through to ensure the plaintiff received the benefits under the real estate contract terms." Bhansari argued that his lawsuit was filed well within the two-year statute of limitations. Alternatively, Bhansari renewed his request for leave to amend his *pro se* complaint. Again, he did not specify what those proposed amendments would be.

¶ 7 The circuit court denied the motion to reconsider, stating, "Plaintiff has not identified how the court erred in applying the law to the facts of this case."

¶ 8 Analysis

¶ 9 This court has an independent obligation to consider our jurisdiction and to dismiss an appeal when jurisdiction is lacking. *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 141576, ¶ 12. Resolving the issue of appellate jurisdiction requires consideration of Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016). *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997).

¶ 10 Rule 301 provides that every "final judgment" in a civil case is appealable as of right. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Our supreme court has defined a final judgment as "a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit" (*Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982)) and as an order that "resolve[s] every right, liability or matter raised" (*Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)). Usually, a dismissal with prejudice is considered a final judgment, including the dismissal of claims in a complaint. *Dubina*, 178 Ill. 2d at 502. This is because the "with prejudice" language indicates that the plaintiff will not be allowed to amend his complaint and that the litigation is terminated. *J. Eck & Son, Inc. v. Reuben H. Donnelley Corp.*, 188 Ill. App. 3d 1090, 1093 (1989). Generally, the controlling factor in determining the finality of an order involving multiple claims depends on whether the bases for recovery under the counts that were dismissed differ from those under the counts left standing. *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 5-6 (1993).

¶ 11 Even if "final," the dismissal of a claim with prejudice is not always immediately appealable. *Dubina*, 178 Ill. 2d at 502. Where, as here, the litigation involves multiple parties and multiple claims for relief, a final judgment may only be appealed if it complies with Rule 304(a):

> "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. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. *** 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." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

Without a written Rule 304(a) finding, a final order that disposes of fewer than all of the claims is not immediately appealable. *Dubina*, 178 Ill. 2d at 502-03. "Such an order does not become appealable until all of the claims in the multiclaim litigation have been resolved." *Id.* at 503. Similarly, a judgment disposing of the rights and liabilities of fewer than all the parties is not enforceable or appealable absent a written Rule 304(a) finding. *Boughton Trucking & Materials, Inc. v. County of Will*, 229 Ill. App. 3d 576, 577-78 (1992). Only when the entire action terminates does a final order become appealable under Rule 301. *Dubina*, 178 Ill. 2d at 503.

¶ 12 The circuit court's order of April 7, 2017, dismissed Count 4 with prejudice and dismissed Bell from the case. Count 4 was the only count alleging legal malpractice, a different basis for recovery than the remaining counts. Thus, the dismissal was a final judgment. *Coryell*, 245 Ill. App. 3d at 5-6. But, the dismissal pertained to fewer than all of the parties and fewer than all of the claims in the complaint. Accordingly, a written Rule 304(a) finding was required to render the dismissal order enforceable and appealable. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). No written Rule 304(a) finding appears in the record. So even though the dismissal with prejudice was a final judgment, it was not appealable. See *Dubina*, 178 Ill. 2d at 502-03; *Boughton Trucking*, 229 Ill. App. 3d at 577-78.

¶ 13 This court has no jurisdiction to review the order and we must dismiss Bhansari's appeal.

¶ 14 Appeal dismissed.