

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
SECOND DISTRICT

RESERVE OF ELGIN HOMEOWNERS' ASSOCIATION,)	Appeal from the Circuit Court
)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-LM-2095
)	
SCOTT WALLIS,)	Honorable
)	John G. Dalton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed defendant's appeal for lack of jurisdiction: although the trial court's order gave plaintiff possession of defendant's condominium, such an order does not terminate proceedings under the Condominium Property Act and thus is not final and appealable.

¶ 2 Defendant, Scott Wallis, appeals the trial court's order vacating a previous order awarding defendant possession of a condominium unit. Defendant contends that (1) the court lacked jurisdiction to enter the second order, as no pleading or motion requesting that relief was pending; (2) the order was improperly entered *sua sponte* and *nunc pro tunc*; (3) the order

deprived defendant of his due process rights; and (4) the order resulted from improper *ex parte* communications. We dismiss the appeal.

¶ 3 In 2011, plaintiff, Reserve of Elgin Homeowners' Association, sued defendant for unpaid condominium assessments and related charges. The trial court found for plaintiff, which subsequently took possession of the unit. Plaintiff did not immediately lease the unit, although it was statutorily authorized to do so. See 735 ILCS 5/9-111.1 (West 2012).

¶ 4 More than two years later, plaintiff noticed a motion for February 20, 2014, requesting an additional 13 months to lease the unit. However, plaintiff's counsel inadvertently failed to file the motion with the circuit clerk. Thus, on the scheduled hearing date, plaintiff withdrew its motion, and the trial court ordered plaintiff to return possession of the unit to defendant.

¶ 5 On February 25, 2014, the trial court entered a *sua sponte, nunc pro tunc* order restoring possession of the unit to plaintiff. Defendant moved to reconsider, and plaintiff properly filed and noticed its motion for additional time to lease the premises. Following a hearing on both motions, the court granted plaintiff's motion and denied defendant's motion. Defendant filed a notice of appeal the same day.

¶ 6 Initially, we consider whether we have jurisdiction of this appeal. Although neither party questions our jurisdiction, we must nevertheless consider our jurisdiction even if the parties do not do so. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985). Generally, our jurisdiction is limited to appeals from final orders, unless an exception provided by the supreme court rules applies. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A final judgment is one that fixes absolutely and finally the rights of the parties in the lawsuit; it is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982).

¶ 7 We conclude that we lack jurisdiction of this appeal because the order purportedly being appealed is not final. To explain why, we begin with a brief overview of the unique statutory scheme at issue here.

¶ 8 Sections 9(g)(1) and 9(h) of the Condominium Property Act (the Act) provide that, if a unit owner fails to make timely payment of common expenses, the amount due shall constitute a lien on the interest of the unit owner in the property, which may be foreclosed upon by the board of managers of the condominium association. 765 ILCS 605/9(g)(1), (h) (West 2012); *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 455 (2002). Section 9.2 of the Act provides that, in the event of a default by a unit owner, the board of managers shall have the right to maintain an action for possession against the unit owner pursuant to the forcible entry and detainer procedures. 765 ILCS 605/9.2(a) (West 2012). Accordingly, the Code of Civil Procedure (the Code) gives the board of managers of a condominium association the authority to maintain a forcible entry and detainer action against a defaulting unit owner. 735 ILCS 5/9-102(a)(7) (West 2012). If the unit owner pays the amount due, he or she may move to vacate the order of possession. 735 ILCS 5/9-111(a) (West 2012). Further, the board may lease the unit while it is temporarily in possession, collecting the rent therefrom until the amount owed by the unit owner is satisfied. 735 ILCS 5/9-111.1 (West 2012).

¶ 9 This statutory scheme clearly contemplates that the court's jurisdiction will continue while the unit owner is dispossessed. The court's jurisdiction continues until either the board forecloses its lien or the unit owner successfully moves to vacate the order of possession. Neither of those things happened here following the trial court's entry of the order of February 25, 2014, restoring possession of the unit to plaintiff. Both the court's order restoring plaintiff to possession and its later order extending the time to lease the premises did little more than

maintain the status quo. It cannot be said that either of these orders “determine[d] the litigation on the merits” (*Flores*, 91 Ill. 2d at 112). Thus, there was no final order from which defendant may appeal.

¶ 10 Defendant’s jurisdictional statement contends that the appeal is proper under Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010), which makes immediately appealable an order granting or denying relief under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). This contention fails because, quite simply, this case does not involve a section 2-1401 petition. Section 2-1401 provides a mechanism to collaterally attack a prior judgment. *People v. Partee*, 125 Ill. 2d 24, 35 (1988). As the trial court still had jurisdiction under the original complaint, plaintiff’s motion could not have been a collateral attack. Moreover, the motion did not attack the prior order, but sought further relief pursuant to that order. Thus, Rule 304(b)(3) does not provide a basis for jurisdiction here. We have found no other rule or statutory provision that would make the order immediately appealable.

¶ 11 Defendant contends that the order was void because no complaint seeking that relief was pending. As noted, however, the trial court still had jurisdiction pursuant to the original complaint. Moreover, defendant appears to concede that the court had jurisdiction to enter the order granting him possession. It is well settled that a trial court retains jurisdiction for 30 days after the entry of an order. *Brewer v. National R.R. Passenger Corp.*, 165 Ill. 2d 100, 105 (1995). Thus, the court unquestionably retained jurisdiction to modify the order five days later. Accordingly, we must dismiss the appeal.

¶ 12 Appeal dismissed.