2017 IL App (2d) 160262-U
Nos. 2-16-0262 & 2-16-0725 cons.
Order filed March 31, 2017

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) 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

In re MARRIAGE OF VISHAL MALHOTRA,	)	Appeal from the Circuit Court of Kane County.
Petitioner-Appellant,	)	
and	)	No. 11-D-1230
LAURA DINUNZIO, f/k/a LAURA MALHOTRA,	)	Honorable Rene Cruz,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justice Spence concurred in the judgment.
JUSTICE HUTCHINSON specially concurred with the judgment.

ORDER

¶ 1 *Held:* Since postdissolution petitions remain pending and neither of the orders appealed contains Supreme Court Rule 304(a) language, we lack jurisdiction over the appeals.

¶ 2 In Appeal No. 2-16-0262, petitioner, Vishal Malhotra, appeals *pro se* from the March 3, 2016, order in which the Circuit Court of Kane County denied petitioner's motion to reduce child support and, having previously ruled that respondent, Laura Denunzio, f/k/a Laura Malhotra, violated Supreme Court Rule 137 (eff. July 1, 2013), set sanctions against her. In Appeal No. 2-

16-0725, plaintiff appeals the trial court's July 25, 2016, order, which struck as untimely several petitions for rule to show cause concerning activity occurring before February 23, 2016, and declared that the petition of respondent to modify the joint parenting agreement would take precedence over all other pleadings. Two notices of appeal having been filed, we find it necessary to consolidate the appeals for review on our own motion, and before turning to the merits, we find it necessary to discuss our jurisdiction in this matter. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1043 (2007) (we have an independent duty to verify our jurisdiction and dismiss the appeal if we lack it).

¶ 3 Appeal No. 2-16-0262

¶ 4 As stated, petitioner appeals from the order of the trial court entered on March 3, 2016, in which the trial court denied petitioner's motion to reduce child support and, having previously ruled that respondent violated Rule 137, set sanctions against her. The order did not contain Rule 304(a) language. On March 31, 2016, petitioner filed his 5th through 10th petitions for rule to show cause. Petitioner filed a notice of appeal of the March 3, 2016, order on April 4, 2016. Because the petitions for rule to show cause were pending, the notice of appeal would not become effective under Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) until the last postjudgment motion was resolved. See *Knoerr*, 377 Ill. App. 3d at 1050.

¶ 5 In the interim, several new petitions were filed. On April 12, 2016, petitioner filed petitions for rule to show cause, numbers 12 through 17. On April 14, 2016, respondent filed a petition to modify the joint parenting agreement. The petitions for rule to show cause, numbers 5 through 12, were stricken on July 25, 2016. However, petitions 13 through 17 remain pending.

¶ 6 When multiple claims are present in an action, an appeal may be taken from a final judgment by one or more but fewer than all the claims only when the trial court has issued an

express written finding that there is no just reason to delay the appeal. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Our district has consistently held that post-decree motions are claims within the overall dissolution proceeding, and not individual actions that are final and appealable when disposed. Appeals that are filed without resolution of all pending motions or without the Rule 304(a) express written findings are premature. *See In Re Marriage of Schwieger*, 379 Ill. App. 3d 687, 689-90 (2008); *In Re Marriage of Duggan*, 376 Ill. App. 3d 723, 734-35 (2007); *Knoerr*, 377 Ill. App. 3d at 1049-50; *In Re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999-1001 (2003); *but see, e.g., In Re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1097-98 (3rd Dist. 2011) (finding that post-dissolution proceedings are new actions). Premature appeals do not confer jurisdiction on the appellate court. *See In Re Marriage of Marsh*, 138 Ill. 2d 458, 469 (1990). Here, since claims remain pending, we do not have jurisdiction over Appeal No. 2-16-0262, and it must be dismissed.

¶ 7 Appeal No. 2-16-0725

¶ 8 In Appeal No. 2-16-0725, petitioner appeals the trial court's July 25, 2016, order, in which the trial court struck his 5th through 12th petitions for rule to show cause as untimely and declared that respondent's petition to modify the joint parenting agreement would take precedence over all other pleadings. Petitioner included the trial court's August 9, 2016, order denying his motion to reconsider the July 25, 2016, order in the notice of appeal (which was filed on September 2, 2016, with an amended notice of appeal filed on September 29, 2016). However, as set forth above, the 13th through the 17th petitions for rule to show cause, which petitioner had filed on April 12, 2016, as well as respondent's petition to modify the joint parenting agreement, which had been filed on April 14, 2016, remain pending, and neither the

July 25, 2016, nor the August 9, 2016, orders contain language pursuant to Rule 304(a). Accordingly, we lack jurisdiction over Appeal No. 2-16-0725, and it too must be dismissed.[1]

¶ 9 We take this opportunity to reiterate the particular challenges that the issue of appellate jurisdiction presents in the postdissolution context. Those challenges are chiefly the product of the fact that, as the supreme court has held, postdissolution petitions do not initiate separate actions, but instead raise claims in the same, continuing dissolution action. See *In re Marriage of Kozloff*, 101 Ill. 2d 526, 531 (1984). As a result, the pendency of multiple postdissolution petitions—that is, the pendency of multiple claims in the same action—subjects an appeal to the strictures of Rule 304(a). When the trial court issues a final judgment on one such petition, a party may not appeal until (1) the trial court enters a finding of immediate appealability as to the judgment, or, if no such finding is entered, (2) the petitions still pending are resolved.[2]

¶ 10 Importantly, however, to be "pending" for purposes of Rule 304(a), a petition need not be pending when the final judgment on another petition is entered; it is sufficient if it is filed within 30 days thereafter, or even if it is filed while a timely motion directed against the judgment is pending. See *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 341-42 (2001). In either event, the trial court retains jurisdiction of the action. And absent a Rule 304(a) finding, if the trial court retains jurisdiction of the action, we cannot accept jurisdiction of any part of it.

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[1] Other petitions also appear to remain pending. These include petitioner's amended motion for perjury/direct contempt filed on May 19, 2016, petitioner's second motion for sanctions filed on May 24, 2016, petitioner's third motion for sanctions, and his second motion for perjury/direct contempt filed on June 14, 2016.

[2] Of course, if the judgment is one under Rule 304(b) (eff. Mar. 8, 2016), a party may appeal immediately, without a finding to that effect and despite the pendency of other petitions.

¶ 11 What makes this a particularly substantial hurdle in postdissolution cases is the fact that, uniquely, parties may file postdissolution petitions at any time, ad infinitum. See *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 745 (2007). Thus, theoretically, the parties could pile petitions on top of petitions, never allowing the trial court's jurisdiction to lapse, and thus never allowing us to take jurisdiction to review the judgment on any of them. This is why Rule 304(a) findings are particularly valuable in the postdissolution context. We acknowledge that the grant or denial of a Rule 304(a) finding is within the trial court's discretion. See *Lozman v. Putnam*, 328 Ill. App. 3d 761, 771 (2002). We further acknowledge that, even in the postdissolution context, claims can be so intertwined as to make such findings inappropriate. However, where such findings are appropriate, we strongly recommend that trial courts add them to their postdissolution judgments, on parties' motions or even on their own. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Indeed, we note that a trial court may do so as to one judgment even when no other petition is then pending. See *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 9 (1998). In that event, should such a petition be filed thereafter, the finding will protect the appealability of the judgment.

¶ 12 In these appeals, we lack jurisdiction because, according to the records, postdissolution petitions are pending and the trial court did not enter a Rule 304(a) finding as to either of the judgments appealed. Thus, pursuant to *Knoerr*, 377 Ill. App. 3d at 1050, we dismiss both appeals. The appellant now has the following options. If the trial court's jurisdiction has not lapsed since the judgments appealed were entered, the appellant must file a timely notice of appeal. *Id*. In other words, he must file a notice of appeal within 30 days after (1) a Rule 304(a) finding as to the judgment appealed, or, if no such finding is entered, (2) the final judgment on the last pending claim. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). (Unless, in either event, a

timely postjudgment motion is filed, in which case he must file his notice of appeal within 30 days after the ruling on that motion. See *id*.)

¶ 13 If, however, the trial court's jurisdiction lapsed after the judgment appealed was entered, such that it is now too late to file a timely notice of appeal, the appellant may invoke the saving provisions of Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015). *Knoerr*, 377 Ill. App. 3d at 1050. Under that rule, we may give effect to the appellant's premature notice of appeal upon the resolution of the last pending claim. Thus, if he cannot file a timely notice of appeal, the appellant may move within 21 days to establish our jurisdiction by supplementing the record to show both the rulings on any pending claims and the absence of any claims still pending. Should the appellant's motion be well founded, we will grant it, vacate this opinion, and proceed to the merits.[3]

¶ 14 Due to our lack of jurisdiction over petitioner's appeals, all pending motions taken with the case are dismissed.

¶ 15 Respondent's appeals of the judgment of the circuit court of Kane County are dismissed for lack of jurisdiction.

¶ 16 Appeal No. 2-16-0262: dismissed.

¶ 17 Appeal No. 2-16-0725: dismissed.

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[3] In *Knoerr* and several subsequent cases, we stated that an appellant may pursue this course via a petition for rehearing. *Knoerr*, 377 Ill. App. 3d at 1050. However, because the appellant, in pursuing this course, does not raise any error in our decision, a petition for rehearing is technically inappropriate. See Ill. S. Ct. R. 367(b) (eff. Mar. 8, 2016). Thus, a simple motion is the correct vehicle.

¶ 18 JUSTICE HUTCHINSON, specially concurring.

¶ 19 We dismiss these appeals on jurisdictional grounds. Our basis for doing so is consistent with how post-dissolution appeals are handled in this appellate district, as set out in decisions such as *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042 (2007), and *In re Marriage of Duggan*, 376 Ill. App. 3d 725 (2007).

¶ 20 As the majority notes, however, not all of Illinois' appellate courts follow the same approach. Other appellate districts take the view that each post-decree petition presents a separate claim, and thus an order resolving that claim is separately appealable. See *supra* ¶ 7 (citing *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1097-98 (3d Dist. 2011)); see also *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 35. I believe that approach has at least some wisdom where, as here, a party is appealing from an order concerning one post-decree issue that has no direct bearing on the matters that remain pending in the trial court. That is, all of Vishal's remaining rules to show cause relate to alleged acts of interference with his parental responsibilities and parenting time, while Laura's pending motion concerns the future allocation of parental responsibilities and parenting time. Under any appellate district's approach, on the present record, the pendency of those motions would, logically, prevent us from treating as "final" any order concerning parental responsibility or parenting time. See, *e.g.*, *In re Marriage of Carrillo*, 372 Ill. App. 3d 803, 813 (1st Dist. 2007); *In re Marriage of Knoerr*, 377 Ill. App. 3d at 1049. However, nothing pending in the trial court would interfere with our direct review of the trial court's child-support order as a final order—except for our district's view that matters unrelated to that order are also issues ancillary to the same basic claim, as opposed to distinct claims or actions. See *Duggan*, 376 Ill. App. 3d at 744.

¶ 21 Moreover, I note the concession made by Laura in her appellate brief that the trial court's March 3, 2016, order concerning child support incorrectly states the amount of Vishal's monthly support—it should be $1,133.00 per month, not $1,333.00 per month. Laura's statement to that effect is a binding judicial admission (see *Abruzzo v. City of Park Ridge*, 2013 IL App (1st) 122360, ¶ 49), and consistent with that admission, the trial court could correct the child-support order if it has not done so already.

¶ 22 What is interesting here, however, is that we cannot grant Vishal any relief, even the relief Laura *concedes* he is *entitled* to, because our prior decisions dictate that we lack appellate jurisdiction and therefore cannot act. This is truly the tail wagging the dog. I fail to see how this state of affairs either promotes the "efficient use of judicial resources" ((internal quotation marks omitted) *In re Marriage of Duggan*, 376 Ill. App. 3d at 737) or discourages "piecemeal litigation" ((internal quotation marks omitted) *id.* at 749 (O'Malley, J., specially concurring)). Now, to the extent Vishal wishes to persist in his appeal of the child-support order, he and Laura must have resolved all of their parental-responsibility/parenting-time litigation in the trial court (which is doubtful given what is shown by the record). Otherwise, Vishal must now go back to the trial court and obtain a Rule 304(a) finding on an order issued more than a year ago. Another anomaly in our district's caselaw assures him he can do this (see *In re Marriage of Valkiunas & Olsen*, 389 Ill. App. 3d 965, 969 (2008)) despite the fact that trial courts generally lose jurisdiction to modify or vacate final orders after the lapse of 30 days. See *VC&M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 43.

¶ 23 In my view, the prolixity of our district's post-decree rules has become an obstacle to litigants' "Access to Justice" Ill. S. Ct. R. 10-100 (eff. Nov. 28, 2012), especially litigants who are *pro se* and are unlikely to grasp these nuances. Unfairness is inherent in the notion that a

post-decree order is final and appealable in one appellate district while in another district that same order is merely "final." *Cf. The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶¶ 17-19. With that said, I specially concur.