

**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).

2012 IL App (4th) 111058-U

Filed 4/4/12

NO. 4-11-1058

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
CAROL S. WELLS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
and	)	No. 06D141
JEFF B. WELLS,	)	
Respondent-Appellant.	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

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JUSTICE APPLETON delivered the judgment of the court.  
Justices Cook and Knecht concurred in the judgment.

### ORDER

¶ 1 *Held:* Because other postdissolution matters remained pending, the trial court's denial of a postdissolution petition to modify visitation was not appealable absent a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 2 Respondent, Jeff B. Wells, appeals from an order in which the trial court denied his postdissolution petition to modify visitation. Because another postdissolution petition remains pending and the trial court made no finding pursuant to Rule 304(a), we dismiss this appeal for lack of subject-matter jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On September 13, 2007, the trial court entered a judgment dissolving the marriage of respondent and petitioner, Carol S. Wells. In its judgment, the court found that three children had

been born to the marriage: Andrew Wells, on July 16, 1999; Matthew Wells, on March 5, 2001; and Jonathan Wells, on August 21, 2003, and the court awarded sole custody of these children to petitioner, subject to respondent's right of reasonable visitation.

¶ 5 On October 29, 2009, respondent filed a petition to modify visitation, and on March 1, 2010, petitioner filed her own petition to modify visitation.

¶ 6 On March 22, 2011, petitioner also filed a "Petition for Modification of Judgment of Dissolution." In count I of her petition, she noted that, in the judgment of dissolution, the trial court awarded her \$900 less per month in child support than she otherwise should have received under statutory law and that the purpose of this "downward deviation" was to make up for the \$900 in maintenance to which respondent would have been entitled. She requested that, for tax purposes, the court modify the judgment so as to explicitly say that the "downward deviation" in the amount of \$900 per month was maintenance. In count II, she requested the court to increase the child support to 32% of respondent's net income.

¶ 7 On June 28, 2011, petitioner filed a motion to compel respondent to answer some standard matrimonial interrogatories and to comply with a request for production.

¶ 8 On October 28, 2011, the trial court entered an order denying both petitions for modification of visitation.

¶ 9 The trial court has not yet ruled, however, on petitioner's "Petition for Modification of Judgment of Dissolution" or on her motion to compel.

¶ 10 II. ANALYSIS

¶ 11 Petitioner contends that because her "Petition To Modify Judgment of Dissolution" and her motion to compel are still pending, the trial court's denial of the cross-petitions to modify

visitation was an interlocutory order, which is not appealable.

¶ 12 Respondent contends, on the other hand, that petitioner's "Petition To Modify Judgment of Dissolution" created an action separate and distinct from the action that the cross-petitions to modify visitation created and that, consequently, the order denying the cross-petitions to modify visitation was a final judgment, appealable under Illinois Supreme Court Rule 303(a) (eff. June 4, 2008). In support of this contention, respondent cites *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414 (1993), in which the Second District remarked that a "petition to modify a dissolution judgment" was "a new proceeding," according to "case law."

¶ 13 More recently, however, we addressed this issue, in a decision that neither party cites. In *In re Marriage of Guadio*, 368 Ill. App. 3d 153, 155-56 (2006), the respondent appealed from an order in which the trial court dismissed her postdissolution "petition to modify and/or set maintenance." At the time the respondent filed her notice of appeal, two other postdissolution petitions remained pending. *Id.* at 156. Because other postdissolution matters remained pending, we held that the order dismissing the respondent's postdissolution petition "was not immediately appealable without the required Rule 304(a) finding." *Id.* at 157.

¶ 14 In the present case, respondent does not dispute petitioner's observation that, at the time he filed his notice of appeal, the trial court had not yet ruled on her "Petition To Modify Judgment of Dissolution." The record does not appear to contain any such ruling. Further, the trial court's order of October 28, 2011, denying the cross-petitions to modify visitation contains no Rule 304(a) finding. It follows that, under *Guadio*, we lack subject-matter jurisdiction over this appeal.

¶ 15 III. CONCLUSION

¶ 16 For the foregoing reasons, we dismiss this appeal for lack of subject-matter

jurisdiction.

¶ 17 Appeal dismissed.