

NOTICE

Decision filed 04/01/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130242-U

NO. 5-13-0242

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> APPLICATION FOR TAX DEED)	Appeal from the
)	Circuit Court of
(Raven Securities, Inc., Petitioner-Appellee,)	St. Clair County.
v. Nancy Traiteur and/or Unknown)	
Occupants, Illinois Secretary of State,)	No. 13-TX-1
Bob Delaney, St. Clair County Clerk, Unknown)	
Owners or Parties Interested, and Nonrecord)	Honorable
Party Claimants, Defendants (Belleville News-)	Brian Babka,
Democrat, Appellant)).)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* A newspaper's petition to intervene in a tax sale proceeding in order to enforce the publication requirement is dismissed for lack of appellate jurisdiction where no express finding was made under Supreme Court Rule 304(a) and jurisdiction does not lie under Supreme Court Rule 304(b) where the proceeding is not similar to those mentioned in the rule.

¶ 2 The Belleville News-Democrat (the newspaper) appeals from the denial of its petition to intervene in a delinquent property tax sale proceeding in which Raven Securities, Inc. (Raven Securities), had filed a petition for a tax certificate of title to several properties located in and around municipalities in St. Clair County. Raven Securities had published the statutorily required notice in the St. Louis Post-Dispatch but

not in the Belleville News-Democrat. Section 22-20 of the Property Tax Code (35 ILCS 200/22-20 (West 2006)) requires that notice of the proceeding be published in "some newspaper published in the municipality" or "some newspaper in the county" in which the property is located. Arguing that the St. Louis Post-Dispatch is published in St. Louis, Missouri, and not in the municipality or county where any of the properties are located, the Belleville News-Democrat sought to intervene in the tax sale proceeding for the purpose of "requesting compliance with the statutory notice by publication requirement."

¶ 3 Contemporaneously with its petition to intervene, the Belleville News-Democrat filed a petition suggesting defective publication asking the court to set aside all actions taken in reliance on the improper publication notice and to require Raven Securities to publish notice in newspapers published in the municipalities or county where the properties are located.

¶ 4 Raven Securities objected to the petition to intervene, arguing that the Belleville News-Democrat did not have standing to intervene. Raven Securities also argued that the notice by publication had not been defective and that the Belleville News-Democrat's petition suggesting defective publication should be denied.

¶ 5 After hearing argument and allowing the submission of written briefs, the circuit court entered an order on May 3, 2013, denying the Belleville News-Democrat's petition to intervene. The court held that the Belleville News-Democrat did not have a sufficient interest in the tax sale proceeding in that it did not stand to gain or lose by the direct legal operation and effect of a judgment in the proceeding. See *People ex rel. Birkett v. City of*

Chicago, 202 Ill. 2d 36, 57-58 (2002) (although a party need not have a direct interest in the pending suit, it must have an interest greater than that of the general public, so that the party may stand to gain or lose by the direct legal operation and effect of a judgment in the case). The court found that the newspaper's petition to intervene was not based on a desire to defend the public's constitutional right to access to court records and proceedings. Finally, the court held that the notice published in the St. Louis Post-Dispatch was adequate and met the statutory requirements. Accordingly, the court denied the Belleville News-Democrat's petition to intervene.

¶ 6 The Belleville News-Democrat appeals. In its opening brief, the newspaper claims that appellate jurisdiction exists pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008), which allows appeals from final judgments. However, in its brief, Raven Securities points out that according to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), if multiple parties or multiple claims for relief are involved in an action, an appeal may only be taken from a final judgment as to one or more but fewer than all of the parties or claims if the circuit court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Raven Securities asserts that this case falls under Supreme Court Rule 304(a), and that the circuit court did not make the required express written finding. Accordingly, Raven Securities argues, this court does not have jurisdiction over the newspaper's appeal and the newspaper must wait until termination of the entire litigation to appeal the denial of its petition to intervene. In its reply brief, the newspaper abandons its claim of jurisdiction under Supreme Court

Rule 303, apparently concedes that jurisdiction does not exist under Supreme Court Rule 304(a), but argues that jurisdiction exists under Illinois Supreme Court Rule 304(b) (eff. Feb. 26, 2010), which allows appeals from certain types of cases without the express written finding required by paragraph (a) of the rule.

¶ 7 We dismiss this appeal for lack of jurisdiction. The weight of authority dictates that an order denying leave to intervene is not immediately appealable in the absence of a finding, pursuant to Supreme Court Rule 304(a), that there is no just reason for delaying enforcement or appeal. See *Northern Trust Co. v. Halas*, 257 Ill. App. 3d 565, 573-74 (1993); *Village of Long Grove v. Austin Bank of Chicago*, 234 Ill. App. 3d 376, 377-80 (1992). Both this district of the appellate court (*Stevenson v. Hawthorne Elementary School*, 200 Ill. App. 3d 991, 994 (1990)) and our supreme court (*Board of Trustees of the University of Illinois v. Timpone*, 28 Ill. 2d 255 (1963)), have so held. The Belleville News-Democrat does not dispute this point. Instead, the Belleville News-Democrat argues that this court can exercise jurisdiction under Supreme Court Rule 304(b)(1) or (2):

"Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

(1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.

(2) A judgment or order entered in the administration of a receivership, rehabilitation, liquidation, or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a)." Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010).

¶ 8 The Belleville News-Democrat acknowledges that the instant proceeding is neither an estate nor a liquidation proceeding, but argues that it is a sufficiently "similar proceeding" as to allow jurisdiction under Rule 304(b)(1) or (2). While the newspaper cites to one case which found jurisdiction under Rule 304(b) for appeal from the denial of a petition to intervene (*In re Estate of Mueller*, 275 Ill. App. 3d 128 (1995)), we note that that case was a proceeding for the administration of a decedent's estate and therefore explicitly within the purview of Rule 304(b)(1). Quoting *Estate of Mueller*, 275 Ill. App. 3d at 139, the Belleville News-Democrat argues that, "Rule 304(b)(1) promotes efficiency and provides certainty by allowing appeal as to some issues as those issues are resolved during the lengthy procedure of estate administration," and that that same level of efficiency and certainty is necessary in a lengthy tax sale proceeding.

¶ 9 We do not agree that a delinquent tax sale proceeding is "similar" to an estate or guardianship proceeding, or to a receivership, rehabilitation, or liquidation proceeding. Had that been the intent of the rule, we believe that language of a more general nature would have been used. Instead, the rule refers specifically to certain types of proceedings, none of which is similar to a delinquent tax sale proceeding. A delinquent tax sale proceeding bears little resemblance to an estate or liquidation proceeding.

Accordingly, appellate jurisdiction does not lie under Supreme Court Rule 304(b).

¶ 10 For the foregoing reasons we dismiss the appeal for lack of jurisdiction.

¶ 11 Appeal dismissed.