

NOTICE

Decision filed 01/02/18. 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.

2018 IL App (5th) 160299-U

NO. 5-16-0299

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).

BOSSLET AND O'LEARY, LTD.,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	St. Clair County.
)	
v.)	No. 16-MR-46
)	
ILLINOIS BELL TELEPHONE COMPANY,)	Honorable
)	Christopher T. Kolker,
Respondent-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Where the respondent appeals from an order that was not final and appealable, this court lacks jurisdiction to consider the merits of the respondent's arguments.

¶ 2 The respondent, Illinois Bell Telephone Company (Illinois Bell), appeals from an order of the circuit court related to an Illinois Supreme Court Rule 224 (eff. May 30, 2008) petition (Rule 224 petition) filed by the petitioner, Bosslet and O'Leary, Ltd. (Bosslet), seeking pre-suit discovery. Illinois Bell contends that the court abused its discretion in allowing pre-suit discovery or, alternatively, by not limiting the scope of the discovery requests in Bosslet's Rule 224 petition. For those reasons, Illinois Bell asserts

that the court's order should be reversed and remanded. For the reasons that follow, we dismiss Illinois Bell's appeal.

¶ 3

BACKGROUND

¶ 4 On February 8, 2016, Bosslet filed a verified Rule 224 petition seeking pre-suit discovery from Illinois Bell. Bosslet's Rule 224 petition alleged that Illinois Bell, Bosslet's telecommunications and internet service provider, had increased the monthly charge from \$45 to \$75 by adding unwanted and unrequested services to Bosslet's account. Bosslet further alleged that the discovery sought was necessary to identify the responsible parties and requested that the circuit court issue an order requiring Illinois Bell to produce certain identifying information as requested in an exhibit attached to the Rule 224 petition. The attached exhibit consisted of 60 separate paragraphs requesting Illinois Bell to identify and produce certain information and documentation related to the identity of certain persons. A summons was issued by the clerk of the circuit court on February 18, 2016; however, the record contains no indication that this summons was served on Illinois Bell. Illinois Bell did not file a formal response to the Rule 224 petition.

¶ 5 On May 16, 2016, a special process server was appointed by the circuit court at Bosslet's request. The next day, counsel for Bosslet contacted counsel for Illinois Bell by e-mail as a follow-up to a telephone conversation. The initial e-mail purportedly included, as an attachment, the Rule 224 petition as requested by counsel for Illinois Bell during the telephone conversation. The e-mail also informed opposing counsel of Bosslet's intent to file a motion to compel as a result of Illinois Bell's disregard of the

Rule 224 petition. The e-mail stated that counsel for Bosslet would "serve" Illinois Bell's counsel with the motion to compel by e-mail. Illinois Bell's counsel replied to the e-mail by stating that Illinois Bell was working diligently to search for responsive documents and requested that Bosslet's counsel e-mail "whatever pleading" counsel filed with the court. Later that day, Bosslet filed a motion to compel the production of information and documents requested in the Rule 224 petition, as well as a notice of hearing. The notice stated that a hearing on the motion to compel would be held on June 7, 2016. Bosslet's counsel then informed Illinois Bell's counsel, by e-mail, of the motion to compel that had been filed with the court. This e-mail purportedly included, as an attachment, the documents filed with the court on that date.

¶ 6 On June 7, 2016, counsel for Illinois Bell filed their entry of appearance and a hearing was held on Bosslet's Rule 224 petition and motion to compel. At the hearing, Illinois Bell's counsel asserted that the Rule 224 petition was not in the proper form and had not been properly filed. Specifically, counsel stated that there had been no notice of a hearing and no summons for discovery. Illinois Bell's counsel also stated that it was necessary for the circuit court to enter an order for discovery and hold a hearing to determine whether the requests in the Rule 224 petition were appropriate. The court agreed with counsel's representations and ruled, by written order, on the date of the hearing that Bosslet was allowed to "proceed with discovery to identify potentially responsible parties" and set the matter for a status hearing on June 20, 2016.

¶ 7 On June 17, 2016, Illinois Bell filed a memorandum in opposition to Bosslet's motion to compel discovery, which listed objections to nearly all of the requests included

in the Rule 224 petition. At the hearing on June 20, 2016, the circuit court heard arguments on each of Illinois Bell's objections to the discovery requests. The court then entered a written order, which required Illinois Bell to respond to 48 of the 60 discovery requests within 30 days. The court denied discovery requests 29-32 at that time and took requests 41-46 and 53-54 under advisement, with the proviso that Bosslet could raise those requests "at a future date." There is no indication in the record that the court has ruled on the discovery requests taken under advisement.

¶ 8 On July 14, 2016, Illinois Bell filed both a motion for stay of proceedings pending appeal and a notice of appeal. There is no indication in the record that the circuit court has ruled on the motion to stay. This appeal followed.

¶ 9 ANALYSIS

¶ 10 Before addressing the merits of Illinois Bell's arguments, we find it necessary to determine whether this court has jurisdiction over the present appeal. Even where no party raises the issue, a court of review has " 'an independent duty to consider its jurisdiction' " and dismiss the appeal if jurisdiction is lacking. *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009) (quoting *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994)).

¶ 11 Illinois Bell asserts that "[t]his appeal is brought under Illinois Supreme Court Rules 301 and 303 from the Circuit Court's June 20, 2016 Order granting [Bosslet's] Motion to Compel discovery pursuant to a Rule 224 Verified Petition for Discovery." Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. Jan. 1, 2015) "govern appeals from [a] final order [that] has disposed of the entire controversy." *In re Adoption*

of *Ginnell*, 316 Ill. App. 3d 789, 791 (2000). Illinois Bell asserts that the June 20, 2016, order was final and immediately appealable. We disagree.

¶ 12 In support of its assertion that the order on appeal is final, Illinois Bell cites *Beale v. EdgeMark Financial Corp.*, 279 Ill. App. 3d 242, 245 (1996). In *Beale*, the court held "that a discovery order entered on a Rule 224 petition is final because it finally adjudicates the rights of the parties and terminates the litigation." *Id.* The *Beale* court noted that "[t]he filing of a Rule 224 petition creates an independent cause of action for discovery for the 'sole purpose of ascertaining the identity of one who may be responsible in damages' " and the "relief sought in that action is the entry of an 'order authorizing the petitioner to obtain *** discovery [of] the identification of responsible persons and entities.' " *Id.* (quoting Ill. S. Ct. R. 224). Thus, the *Beale* court determined that when the circuit court entered an order granting the petitioner's discovery request and ordered the respondent to turn over the documents at issue, the entry of that order terminated the proceedings as no other relief was permitted by a Rule 224 petition. *Id.* We find the facts of the present case distinguishable from *Beale* because the order on appeal in the present case did not terminate the proceedings as was the case in *Beale*.

¶ 13 In the present case, the circuit court held a hearing to address both Bosslet's Rule 224 petition and Bosslet's motion to compel. The court initially ruled, in a written order dated June 7, 2016, that Bosslet "may proceed with discovery to identify potentially responsible parties" and set the matter for hearing on June 20, 2016. Illinois Bell then filed written objections to specific requests contained in Bosslet's Rule 224 petition. The court addressed Illinois Bell's objections at the hearing held on June 20, 2016. The record

on appeal contains a written order dated June 20, 2016, as well as a transcript from the hearing that was held on that date.

¶ 14 The circuit court's June 20, 2016, written order—the sole order from which appeal is sought—required Illinois Bell to respond to 48 of the 60 discovery requests within 30 days, specifically, requests 3-28, 33-40, 47-52, and 55-60. Pursuant to the written order, the court took requests 41-46 and 53-54 "under advisement" and then explained that Bosslet "may raise at a future date." The court further ruled that requests "29-32 are denied at this time—but may be raised at a later time." The transcript from the June 20, 2016, hearing shows that the court denied requests 29-32, took 41-46 "under advisement," and "put it on [Bosslet] to bring that in a timely matter if they want to readdress it later on." The transcript also indicates that the court took requests 53-54 "under advisement." The court did not indicate when it intended to address the requests taken under advisement and Illinois Bell did not seek to clarify the court's ruling.

¶ 15 We agree with Illinois Bell that a Rule 224 petition constitutes an "independent action" for discovery and, as such, jurisdiction usually "exists immediately upon the entry of a Rule 224 discovery order because the order is final as it fully adjudicates the rights of the parties and terminates the litigation."¹ However, unlike the facts of *Beale*, it appears that the June 20, 2016, order, entered by the circuit court in the present case, did not grant Bosslet's Rule 224 petition in its entirety; instead, the court granted the Rule 224 petition in part and took the remaining discovery requests under advisement. The

¹It appears from the record that the circuit court did not strictly adhere to the procedural requirements set forth in Illinois Supreme Court Rule 224 (eff. May 30, 2008); however, we find it improper to address this issue where jurisdiction is lacking.

record on appeal is devoid of any indication that the court has ruled on the matters that were taken under advisement. Thus, the entry of the June 20, 2016, order did not fully adjudicate the rights of the parties where several of the discovery requests contained in Bosslet's Rule 224 petition remain pending in the circuit court. Therefore, we conclude that the court's June 20, 2016, order was not a final order, as required for appeals brought under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 16 During oral argument, Illinois Bell requested that this court address only the discovery requests that were ruled on by the circuit court in the June 20, 2016, order. However, the appellate court has no jurisdiction to review judgments, orders, or decrees that are not final unless specifically authorized by supreme court rules. See *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 106 (2004) (citing *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 349 (2002)). Illinois Bell failed to cite any Illinois Supreme Court rule in making this request and the court's June 20, 2016, order did not indicate reliance on any supreme court rule that would grant this court jurisdiction over a non-final order. Accordingly, we decline Illinois Bell's request.

¶ 17 CONCLUSION

¶ 18 For the aforementioned reasons, we conclude that the circuit court's June 20, 2016, order was not final and we dismiss the appeal for lack of jurisdiction.

¶ 19 Appeal dismissed.