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2022 IL App (3d) 200129-U

Order filed February 2, 2022

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2022

ANDREANO LAW, P.C., an Illinois Corporation, and HAMMEL LAW OFFICES, P.C., an Illinois Corporation,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
)	
Plaintiffs-Appellees,)	
)	
v.)	
)	
CASTLE LAW, LLC, an Illinois Limited Liability Company, and GARY DAVIDSON, Individually and as Managing Director of Castle Law, LLC,)	Appeal No. 3-20-0129 Circuit No. 16-MR-2209
)	
Defendants)	
)	
(Castle Law, LLC, an Illinois Limited Liability Company,)	
)	
Appellant).)	Honorable Roger D. Rickmon, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Daugherty and McDade concurred in the judgment.

ORDER

¶ 1

Held: We lack jurisdiction to consider the appeal.

¶ 2 Following dissociation from Castle Law (Castle), organized as an Illinois limited liability company (LLC), two of the firm’s partners commenced a suit seeking the dissolution of Castle. In response, Castle argued that the suit was time barred under the Limited Liability Company Act (Act) (805 ILCS 180/35 *et seq.* (West 2016)). A bench trial ensued after which the court denied a motion for a mistrial. The trial court interpreted the Act and found the suit was not time barred. Additionally, the court found that Castle violated the Act, calculated the dissociated partners’ distributional share, and awarded attorney fees and costs based on the violation of the Act. Further, the court found that the dissociated partners did not violate their fiduciary duty, awarded the dissociated partners funds from overpayment of a fellow partner, and awarded compensation to one of the dissociated partners for post-dissociation work. Castle appeals. We dismiss the appeal for a lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 A. Formation of Castle

¶ 5 In the beginning, there was Jim Brumund and Myles Jacobs practicing law as Brumund & Jacobs. Following negotiations, Ted Hammel and Gary Davidson joined Brumund & Jacobs to form Brumund, Jacobs, Hammel & Davidson. Frank Andreano joined the firm in 2006. This amalgamation of attorneys is colloquially referred to throughout this litigation as the Brumund Firm. Jim Brumund passed away in 2014, requiring the remaining members of the firm to purchase the distributional share from his estate. Andreano negotiated a purchase price for the distributional interest with the estate and the Brumund Firm carried on.

¶ 6 Castle was formed in September 2015 when the law firm Dystrup, Hoster & Jarot, P.C. (DHJ) merged with the Brumund Firm.¹ The shareholders of DHJ were Ed Jarot and Scott Hoster. The members of Castle failed to sign a new operating agreement controlling the arrangement. Instead, Castle operated under mutual agreements. Castle maintained offices in downtown Joliet, the west side of Joliet, and Homer Glen.

¶ 7 B. The Dispute

¶ 8 Hammel dissociated from Castle on April 30, 2016. Andreano followed in short order, dissociating on May 26, 2016. On August 25, 2016, Hammel and Andreano (hereinafter plaintiffs when referenced jointly) filed a four-count complaint against Castle. Relevant on appeal, counts I and II sought the dissolution of Castle pursuant to sections 35-1(D) and (E) of the Act. 805 ILCS 180/35-1(D), (E) (West 2016). Plaintiffs alleged Castle violated the Act by refusing to provide purchase offers for plaintiffs' distributional interests in Castle within 30 days of dissociation as specified in section 35-60(b), thereby providing grounds for judicial dissolution of the Castle pursuant to section 35-1(D). Plaintiffs also alleged that with respect to them, those in control of Castle were acting in an illegal, oppressive, or fraudulent manner, providing for judicial dissolution pursuant to section 35-1(E). Counts I and II contain identical prayers for relief seeking: (1) the dissolution of Castle, (2) an order for Castle to wind up its business, (3) an accounting for income, expenses, assets, and liabilities, (4) a determination of the fair value of plaintiffs' distributional interests and a money judgment for said interests, (5) an award for any additional sums due, including for services rendered, (6) attorney fees and costs, and (7) any other relief deemed just

¹ The merger did not create a new legal entity, instead the LLC took on the assumed name of Castle LLC.

and appropriate by the court. The complaint also requested damages for breach of fiduciary duty and the imposition of a constructive trust and the appointment of a receiver.

¶ 9 Castle responded by filing a combined motion to dismiss (735 ILCS 5/2-619.1 (West 2016)). Castle alleged that it was not able to present an offer to Hammel due to the removal of certain business assets from the firm upon his dissociation. Castle attached two letters from Hammel's counsel received 60 days after dissociation, describing furniture taken from the downtown Joliet office and a list of client matters Hammel took with him. Neither list contained values. Castle's position was that it could not prepare an offer within the time required by statute without a proposed value for the assets taken. Castle also alleged that at the time the combined motion to dismiss was filed, it was still unable to make an offer for Hammel's distributional interest due to a lack of proposed value of the taken assets. Regarding Andreano, Castle believed the issues clouding the valuation of Hammel's distributional share precluded a purchase offer for Andreano's distributional interest. Absent from the motion to dismiss is any mention of a 120-day waiting period required upon dissociation from an LLC or citation to the statutory section that contains such a requirement. See 805 ILCS 180/35-60(d) (West 2016). The court denied the motion to dismiss regarding counts I and II.

¶ 10 In January 2017, Castle filed an answer to the complaint, an affirmative defense, and a counterclaim. The affirmative defense alleged that pursuant to section 35-60(d) of the Act, plaintiffs failed to wait the required 120 days before filing suit. Hammel waited 116 days while Andreano waited 90. The counterclaim contained two counts against Hammel. Count I alleged conversion of assets in that Hammel took all of his physical client files and wiped his electronic files from Castle's server. As a result, no member of Castle could access these files. Records of accounts receivable on the files were still within the control of Castle on bookkeeping software

and were valued in an amount that exceeded \$140,000. Moreover, Hammel did not receive client consent forms before taking the files and failed to file substitution of counsel forms thereafter. Count II alleged that Hammel breached his fiduciary duty to Castle by appearing in cases before dissociating.

¶ 11 The counterclaim alleged three counts against Andreano. Counts I and II alleged a breach of fiduciary duty for working the entire month of May 2016 without billing, as well as creating a website called “Illinois Truck Accident Lawyer” without disclosure to Castle. Count III alleged unjust enrichment based upon Andreano’s work on a personal injury case referred to simply as “Blopleh,” diminishing Andreano’s ability to bring in fees, thereby causing him to be “overpaid for a period of three years.” There also was a separate count against both plaintiffs asserting a breach of fiduciary duty resulting from a distribution of the Brumund Firm’s capital account to plaintiffs and Davidson.

¶ 12 A three-day bench trial ensued beginning on November 13, 2017. Andreano, Hammel, Jarot, and Davidson testified, as well as Kathleen McHugh, the certified public accountant for the Brumund Firm, Dennis Madsen, the certified public accountant for Castle, and Sarah Veahy, an associate attorney at Castle.

¶ 13 B. Trial Court’s Rulings

¶ 14 In March 2018, the court ruled in the following manner. The court found that the gist of Castle’s affirmative defense was that by failing to wait 120 days following dissociation, plaintiffs forfeited the right to seek compensation for their distributional interest in Castle. The court rejected this notion due to a lack of supporting authority and the “illogical” result if the affirmative defense prevailed.

¶ 15 Castle was not operating under any formal operating agreement, but the evidence clearly established a “mutual and well-defined agreement between the parties” concerning distribution of income among its members. Hammel’s continued representation of clients was not a breach of a fiduciary duty and did not warrant forfeiture of his right to compensation for his distributional share of Castle. To the extent Hammel received fees post-dissociation for work performed before his dissociation, the court ordered that Hammel must return those fees to Castle. Hammel was also entitled to compensation for legal services performed after his dissociation but for which he received no compensation from Castle.

¶ 16 Regarding Blopleh and other qualifying personal injury cases that Andreano settled post-dissociation, Castle was entitled to compensation from Andreano for predissociation legal services. Once Blopleh or any other qualifying case settled, Andreano had to compensate Castle for predissociation service. The court also found that Jarot received distributions from Castle in excess of what he was entitled to under the mutual agreements, while plaintiffs did not receive all the distributions to which they were entitled—namely, the April 2016 distribution for Hammel and the May 2016 distribution for Andreano. The court ordered a valuation of Andreano’s and Hammel’s distributional interest by a court-appointed appraiser with certain offsets. The court reserved jurisdiction over the issue of attorney fees and costs, as well as the issue of dissolution of Castle to be addressed at a later date.

¶ 17 The court subsequently appointed Howard Ellison of Wermer, Rogers, Doran & Ruzon to calculate a fair value of the distributional interests. Thereafter, the court held hearings to determine the value of plaintiffs’ interests in Castle, as well as consider plaintiffs’ request for attorney fees and costs. The court addressed these issues in its August 7, 2019, September 10, 2019, and November 14, 2019, orders, which were later incorporated into and modified by the court’s March

10, 2020, order. After considering the reports and testimony by the court-appointed accountant, Castle's certified public accountant, and considering various offsets, the trial court concluded that Andreano's distributional interest in Castle was \$117,299.93, and Hammel's distributional interest in Castle was \$240,236.27.

¶ 18 As to the amount owed to Hammel, the court found that "the accounting provided by HAMMEL is extensive, detailed, and reliable. It has basically gone unchallenged by [Castle]." Relying on Hammel's accounting, the court calculated an offset of \$33,550.26 for funds held in trust by Hammel that belonged to Castle, \$8,636.00 for fees collected by Hammel that were due to Castle, a \$4,325.00 offset for the furniture removed from Castle post-dissociation, and a credit of \$93,107.57 for funds held by Castle where Hammel provided the legal work post-dissociation.

¶ 19 The court's calculations also addressed the payment Jarot received beyond his distributional interest. The court found that Castle overpaid Jarot by \$37,195.50 and awarded Andreano and Hammel \$11,411.56 and \$2,054.03, respectively, for their share of that overpayment. The court also awarded plaintiffs attorney fees and costs under section 35-65(d) of the Act, finding that Castle failed to deliver a purchase offer to plaintiffs within 30 days of their dissociation. The court noted that "the record is absent any evidence that CASTLE ever made any effort to determine a fair value for [plaintiffs'] distributional share or any other effort to comply with the mandates of the [A]ct." Based on its review of the evidence, the court found "ample evidence that CASTLE acted arbitrarily, vexatious, and in bad faith in its dealings with [plaintiffs] post disassociation."

¶ 20 During a hearing on the motion to reconsider, the court opined that it was awarding attorney fees based on Castle's failure to make "any effort" to assess the value of plaintiffs' distributional interests. Specifically,

“But in looking at this thing *** part of the reason I awarded attorney’s fees, I don’t recall Mr. Matteson or any of your witnesses ever testifying there was any effort to determine what the appropriate distribution of their proportionate shares would have been. The discussions that took place between Mr. Baron and Mr. [Jarot], I thought were more along the lines of trying to work out the transition. But there was never any effort to say, ‘Here is what we should have paid.’ If that had been done, even if it had been inadequate, that would have been one thing. And then the rest of the stuff is a question of accounting.”

¶ 21 The court awarded Andreano \$77,647.86 and Hammel \$75,603.70 in reasonable attorney fees, expert fees, and costs. The March 10, 2020, order gave Castle the option of purchasing plaintiffs’ respective interests by March 17, 2020. In the event Castle did not purchase the interests, upon application of the plaintiffs, the court would order Castle to be dissolved and appoint a receiver to conduct the windup and dissolution. The court entered a 304(a) finding regarding only the award of attorney fees and costs. Castle purchased plaintiffs’ interests as valued by the circuit court, and plaintiffs signed releases transferring their distributional interests back to Castle.

¶ 22 Castle appeals.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Castle argues: (1) the trial court erred in its interpretation of section 35-60 of the Act, (2) the court erred in finding Castle violated the Act when it failed to present a purchase offer for plaintiffs’ distributional interests, (3) plaintiffs breached their fiduciary duties and forfeited their right to their distributional interests, (4) Jarot did not receive a distribution in excess of what he was entitled, (5) Hammel was not entitled to compensation from Castle for post-

dissociation work, (6) the court erred in awarding attorney fees and costs to plaintiffs, and (7) the court should have granted Andreano's motion for a mistrial.

¶ 25 We note that Castle's briefing is poorly drafted as it cites to minimal case law; it claims case law does not exist on certain subjects when, in fact, it does; it repeatedly fails to cite a standard of review in violation of this court's rules; it advances arguments not presented in the lower court; and it claims error on one basis in its opening brief, only to advance a different basis in its reply brief. Nonetheless, these deficiencies do not impede our review of this matter as we find a singular dispositive issue controls Castle's claims.

¶ 26 A. Jurisdiction

¶ 27 On appeal, plaintiffs filed a motion to dismiss, arguing that we lack jurisdiction to review the lower court's judgment valuing the distributional interests owing to the fact that it was not a final judgment. Rather, plaintiffs assert that the court only rendered a valuation of the distributional interests, there was no executable judgment, and Castle voluntarily bought out the distributional shares in accordance with the court's valuation. Castle responded that it paid the distributional valuation to avoid dissolution and liquidation. The payment was compulsory and made under threat of a court order. This court denied the motion to dismiss the appeal.

¶ 28 The parties reiterate the jurisdictional arguments in their briefing. This court's jurisdiction is limited to review of appeals from final judgments unless otherwise permitted by statute or Illinois Supreme Court Rules. *In re Marriage of Morgan*, 2019 IL App (3d) 180560, ¶ 9. Whether this court has jurisdiction to entertain an appeal is a question of law reviewed *de novo*. *In re A.H.*, 207 Ill. 2d 590, 593 (2003).

¶ 29 Castle argues the judgment before this court is final in nature. A judgment 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. *In re Michael D.*, 2015 IL 119178, ¶ 13; *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 47; *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). “The question of finality must be considered with reference to the particular facts and circumstances of each case.” *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 350 (2002). When an order leaves the matter pending, it is not a final order for purposes of appeal. See *Argonaut-Midwest Insurance Co. v. E.W. Corrigan Construction Co.*, 338 Ill. App. 3d 423, 426 (2003) (“A final judgment in a civil case is entered where the last order closes the case and leaves no issues to be decided.”). The general rule in civil cases is that when a judgment has been voluntarily paid or the benefits from that judgment accepted, the issue becomes moot. *Cook County v. Malysa*, 39 Ill. 2d 376, 379 (1968). An actual controversy is essential for appellate jurisdiction. *In re Lance H.*, 2014 IL 114899, ¶ 12.

¶ 30 Castle argues that “ ‘it is well established that the payment or satisfaction of a money judgment by a judgment debtor does not bar the prosecution of a writ of error or an appeal by such judgment debtor.’ ” (quoting *Pinkstaff v. Pennsylvania R.R. Co.*, 31 Ill. 2d 518, 523 (1964)). Castle asserts that the payment of the lower court’s valuation of the distributional interests to plaintiffs was compulsory and under threat of a court order. Plaintiffs argue the lower court merely provided a valuation of their distributional shares when faced with a complaint requesting the dissolution of Castle. The court provided a valuation of the distributional interests, giving Castle a choice to purchase the distributional interests.

¶ 31 A money judgment is defined as a judgment for damages subject to immediate execution. See JUDGMENT, Black’s Law Dictionary (11th ed. 2019). In all of the cases cited by Castle for support, there was an enforceable money judgment entered by the court without the need for further proceedings for the judgment creditor to begin enforcement. See *Northbrook Bank & Trust Co. v. Abbas*, 2018 IL App (1st) 162972; *Long v. Tranka*, 146 Ill. App. 3d 428 (1986); *In re Marriage of*

Sobieski, 2013 IL App (2d) 111146. In one of the cases, the judgment creditor had already begun collection proceedings and filed citations to discover assets. See *Abbas*, 2018 IL App (1st) 162972, ¶ 28. That is not the case here as the court order set a valuation. The valuation of the interests was not an enforceable money judgment.

¶ 32 We also do not agree with Castle that the payment was made under the threat of a court order nor was it compulsory. Again, Castle cites to the cases mentioned above for this proposition. However, a review of the cases reveals that the compulsion discussed emanated from the final and enforceable nature of the orders and the threat of collection proceedings upon those enforceable money judgments. Again, plaintiffs could not collect on this valuation.

¶ 33 Moreover, the order from which Castle appeals did not terminate the litigation on the merits. In their complaint, plaintiffs sought the dissolution of Castle and a money judgment for their interests. The court order appealed from provides neither. The order was not self-executing and left the cause pending in contemplation of further proceedings. The circuit court provided Castle an escape route to avoid dissolution, and Castle accepted the fruits of the nonfinal order. Additional support for the finding that the lower court's order is not final in nature comes from the circuit court's own acknowledgement that the order was not final. If the court believed the order was final, it would not have included the 304(a) language in the award of attorney fees and costs.

¶ 34 **B. Attorney Fees & Costs**

¶ 35 While the lower court's judgment was not final in nature, the court entered 304(a) language regarding only the award of attorney fees and costs. Nonetheless, "it is well-settled law that the inclusion of Rule 304(a) language in a nonfinal order does not make the order appealable under supreme court rules." *Morgan*, 2019 IL App (3d) 180560, ¶ 14.

¶ 36 Whether the 304(a) language provides jurisdiction depends on whether the lower court’s award of attorney fees and costs disposed of a “claim” separate from and unrelated to plaintiffs’ dissolution claims or merely resolved an “issue” part of or ancillary to those claims. *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 18. Our supreme court has noted “a clear distinction between judgments that dispose of ‘separate, unrelated claims,’ which are immediately appealable under Rule 304(a), and orders that dispose only of ‘separate issues relating to the *same* claim,’ which are not immediately appealable under Rule 304(a).” (Emphasis in original.) *Id.* ¶ 15 (quoting *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983)).

¶ 37 Here, the court awarded attorney fees and costs pursuant to section 35-65(d) of the Act for a failure to deliver purchase offers for the plaintiffs’ distributional interests. Of course, this is the same basis plaintiffs alleged to compel the dissolution of Castle. A review of this finding would necessarily involve deciding the crux of plaintiffs’ claim for dissolution. This issue is a “part of” and “relating to the *same* claim” that remained pending. (Emphasis in original.) *Id.* ¶¶ 15, 18. Had Castle not availed itself to the payment of the distributional interests, plaintiffs would have incurred additional attorney fees and costs in the subsequent proceedings. The award of attorney fees and costs was subject to adjustment. Permitting a separate appeal of such an order promotes precisely the type of piecemeal appeals Rule 304(a) was designed to discourage. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 27.

¶ 38 Plaintiffs request attorney fees and costs on appeal, arguing that as long as the result in this court is the same as below, statutorily they are entitled to fees. See 805 ILCS 180/35-65(d) (West 2016). We decline to award fees on appeal. Plaintiffs did not initiate this action simply to determine the fair value of their distributional interest in Castle pursuant to section 35-60 of the Act. They sought the judicial dissolution of Castle pursuant to sections 35-1(D) and (E). Had

plaintiffs sought only a valuation and money judgment for their interests pursuant to section 35-60(b), the order at issue would have been final in nature, and we would entertain the request for fees. That is not the case. On appeal, multiple contentions of error not focusing on the valuation of plaintiffs' distributional interests are presented. Additionally, we are neither affirming nor reversing the lower court's judgment, as we lack jurisdiction.

¶ 39

III. CONCLUSION

¶ 40

For the foregoing reasons, we dismiss the appeal from the judgment of the circuit court of Will County.

¶ 41

Appeal dismissed.