2026 IL App (1st) 251608-U

SECOND DIVISION
November 3, 2026

No. 1-25-1608

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID SMITH and DIANA SMITH,	)	Appeal from
	)	the Circuit Court
Plaintiffs-Appellants,	)	of Cook County
	)	
v.	)	20L11275
	)	
JOHN BRONSKI and KAREN BRONSKI,	)	Honorable
	)	Catherine A. Schneider
Defendants-Appellees.	)	and John J. Tully, Jr.,
	)	Judges Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice Van Tine concurred in the judgment.

O R D E R

¶ 1 Held: Plaintiffs' appeal from order granting summary judgment against their complaint and order denying reconsideration of the ruling was dismissed for lack of jurisdiction while defendants' amended counterclaim remains pending in the circuit court.

¶ 2 After David and Diana Smith bought John and Karen Bronski's four-bedroom home in Chicago's Norwood Park community, they sued the Bronskis, claiming the sellers had falsely represented that the home had no issues with water infiltration or termites. The Bronskis filed a counterclaim for negligent spoliation of evidence, which they amended, with allegations that the buyers had changed the basement to such an extent that defense evidence was inaccessible. After three years of litigation and the close of discovery, the Bronskis sought summary judgment on the

Smiths' claims, which the circuit court granted. Within a day of each other, the Bronskis petitioned to recoup their attorney fees from the Smiths because they had "prevailed" and the Smiths asked the court to reconsider the summary judgment order because it was erroneous. The court denied both of the postjudgment motions. This appeal followed in which the Smiths request reversal of the summary judgment and reconsideration orders. The Bronskis' separate appeal, *Smith v. Bronski*, 1-25-1612, concerns the denial of their attorney fees. The appeals have been fully briefed and are seemingly ready for review. However, because the record before us indicates that the Bronskis' amended counterclaim for spoliation is still pending in the circuit court, we must dismiss both appeals for lack of jurisdiction. See *Daewoo International v. Monteiro*, 2014 IL App (1st) 140573, ¶ 72 (appellate court has a duty to consider its jurisdiction, regardless of whether the parties raised it as an issue).

¶ 3 The Smiths filed a notice of appeal on August 15, 2025, in which they cited the summary judgment order entered by Judge Catherine A. Schneider on January 7, 2025 and the denial of the reconsideration order entered by Judge John J. Tully, Jr. on July 17, 2025. The Smiths purported to appeal as a matter of right from a final judgment pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017).

¶ 4 Rule 301 governs civil appeals, establishing that every final judgment from a circuit court in a civil case can be appealed as a matter of right. Ill. S. Ct. R. 301.

¶ 5 Rule 303(a) concerns the timing and procedures for appealing from a final judgment. Ill. S. Ct. R. 303(a).

¶ 6 To confer jurisdiction on an appellate court, a notice of appeal typically must be filed within 30 days of a final and appealable judgment, with certain exceptions. See Ill. S. Ct. R. 303(a)(1).

An order or judgment is final and appealable for purposes of Rule 303(a)(1) if it terminates litigation between parties on the merits or disposes of the rights of parties on the entire controversy. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 791 (2000) (Rule 303 governs appeals "from cases in which the final order has disposed of the entire controversy" such that no issue within the case remains pending and undetermined).

¶ 7 When a judgment is final, the circuit court has " 'decide[d] the controversy between the parties on the merits and fixe[d] their rights, so that, if the judgment is affirmed, nothing remains for the trial court to do but to proceed with the execution.' " *Pempek v. Silliker Laboratories, Inc.*, 309 Ill. App. 3d 972, 978 (1999) (quoting *Tyler v. Tyler*, 230 Ill. App. 3d 1009, 1011 (1992)).

¶ 8 However, a posttrial motion that is directed against the judgment creates an exception to the 30-day filing limitation. See 735 ILCS 5/2-1203 (West 2022); Ill. S. Ct. R. 274 (eff. July 1, 2019). A notice of appeal must be filed within 30 days of the resolution of the last properly pending posttrial motion. Ill. S. Ct. R. 303(a)(1). The "rules governing appellate jurisdiction and procedure are designed to avoid inefficient and piecemeal appeals." *Pempek*, 309 Ill. App. 3d at 977.

¶ 9 The Smiths were trying to conform to Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1)), by filing their notice of appeal on August 15, 2025, within 30 days of the order entered on July 17, 2025 which resolved their motion for reconsideration of the summary judgment ruling. However, the precedent cited above indicates that because the Bronskis' counterclaim was still pending in the circuit court, the entire controversy was not resolved and the Smiths' Rule 303(a) notice of appeal was ineffective. It did not convey jurisdiction from the circuit court to the appellate court and without jurisdiction, we cannot address the merits of the Smiths' arguments. When the circuit court resolves the counterclaim, the Smiths' appeal can proceed under Rule 303(a)(1). Ill. S. Ct. R.

303(a)(1).

¶ 10 We also point out that Rule 303(a)(1) is not the only avenue of appeal. When a circuit court issues a final judgment regarding a separate part of a controversy, but as to less than all of the claims or parties, Rule 304(a) can confer jurisdiction on the appellate court provided that the circuit court enters "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). See *Stasko v. City of Chicago*, 2013 IL App (1st) 120265 (where summary judgment was entered and counterclaim was still pending, without 304(a) language, the appellate court had no jurisdiction). The entry of Rule 304(a) language would authorize the Smiths to proceed with an interlocutory appeal as to the Smiths' claims, even while the Bronskis' amended counterclaim remains pending.

¶ 11 Therefore, if the Smiths wish to proceed with an appeal from the grant of summary judgment entered against them, they must return to the circuit court to obtain an order that either (1) resolves the Bronskis' counterclaim and any other pending claims in this matter, or (2) includes a Rule 304(a) finding with respect to the orders granting summary judgment against the Smiths' action and denying reconsideration. If the Smiths obtain the first type of order, they will be immediately poised to take an appeal from a final judgment order pursuant to Rule 303(a)(1). Ill. S. Ct. R. 303(a)(1). If they obtain the second type of order, they will be immediately poised to take an interlocutory appeal pursuant to Rule 304(a). Ill. S. Ct. R. 304(a). An appeal from a final order as a matter of right is preferable over an intermediate appeal so as to avoid the expense and delay of piecemeal litigation. See *Pempek*, 309 Ill. App. 3d at 977.

¶ 12 The parties do not need to wait for this court to remand the case to the circuit court. "It is well settled that the filing of a notice of appeal prematurely from an order or judgment which is

not yet a final and appealable order neither deprives the trial court of jurisdiction to proceed with the case nor vests the appellate court with jurisdiction to consider it." *Noland v. Steiner*, 213 Ill. App. 3d 611, 616 (1991).

¶ 13 For these reasons, we conclude that a final and appealable order has not been presented for disposition by this court and that the Smiths' appeal must be dismissed.

¶ 14 Appeal dismissed.