2026 IL App (1st) 251587-U
No. 1-25-1587
Order filed November 20, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

GEORGE N. MANOS, as co-trustee of the CATHERINE N. MANOS DECLARATION OF TRUST U/T/A DATED SEPTEMBER 18, 1985, AS AMENDED AND RESTATED, Plaintiff-Appellant,

v.

EUSTATHIA M. WHITE, as co-trustee of the CATHERINE N. MANOS DECLARATION OF TRUST U/T/A DATED SEPTEMBER 18, 1985, AS AMENDED AND RESTATED, Defendant-Appellee

Appeal from the Circuit Court of Cook County.
Honorable Patrick J. Sherlock, Judge, Presiding.
No. 24-L-10163

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C.A. Walker and Donnelly concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal is dismissed where this court lacks jurisdiction to consider a nonfinal order granting defendant's section 2-615 (735 ILCS 5/2-615 (West 2024)) motion to dismiss where plaintiff maintained the right to replead, the dismissal was without prejudice, and the order did not include Rule 304 (eff. Mar. 8, 2016) language.

¶ 2 Plaintiff George N. Manos, as co-trustee of the Catherine N. Manos Declaration of Trust u/t/a dated September 18, 1985, as amended and restated, appeals the circuit court's grant of a section 2-615 (735 ILCS 5/2-615 (West 2024)) motion to dismiss in favor of defendant,

EUSTATHIA M. WHITE, as co-trustee of the Catherine N. Manos Declaration of Trust u/t/a dated September 18, 1985, as amended and restated. On appeal, plaintiff contends that the circuit court erred in granting defendant's motion to dismiss because: (1) plaintiff sufficiently alleged that defendant's conduct proximately caused injury to the Trust, and the fact that neither trustee invoked the trustee voting rights clause was not a superseding cause; (2) the circuit court did not address the many other reasons alleged as to why the trustee voting rights clause cannot insulate defendant from liability for her breaches of fiduciary duty; (3) the circuit court erred by dismissing Count VIII of plaintiff's first amended complaint that sought an accounting; and (4) the circuit court erred by dismissing plaintiff's claim for attorney fees. For the following reasons, we dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 The background factual information is taken from the circuit court's orders granting defendant's motion to dismiss plaintiff's initial complaint on March 5, 2025, and the first amended complaint on July 16, 2025.

¶ 5 Plaintiff and defendant are siblings and co-trustees of their mother's trust, the Catherine N. Manos Declaration of Trust u/t/a dated September 18, 1985, as amended and restated (the trust). Their mother Catherine is 93 years old and was adjudicated as incapacitated in May of 2021, and the parties became successor co-trustees at that time. The trust assets include various accounts at Morgan Stanley valued at over $7 million; a Fidelity account valued at over $3.8 million; Thomas White funds valued at an unknown amount, life insurance valued at $35,000; a 60% interest in the family farm valued at over $2.7 million; a cooperative apartment located at 1448 North Lake Shore Drive; and miscellaneous personal property.

¶ 6 Plaintiff alleged that when the parties became successor co-trustees of their mother's trust, defendant was presented with forms to allow the co-trustee to give direction to Morgan Stanley

regarding the investments in the accounts. Plaintiff alleged that defendant refused to execute the forms and as a result, the value of the assets in the Morgan Stanley accounts decreased. Plaintiff alleged malfeasance in connection with investments that were previously held in the Thomas White Funds, which are investment funds operated by defendant's husband, Thomas White. Plaintiff sought an accounting related to those funds. On March 8, 2021, Catherine executed a Fidelity power of attorney (POA) form granting defendant full control over the Fidelity account. However, plaintiff contended that Catherine lacked capacity to execute the POA. Fidelity subsequently froze the account in January 2023, and defendant made payments from the Fidelity account to the attorney in connection with the POA, Peter Goschi. Plaintiff also alleged that defendant did not perform duties relating to estate planning that would lower tax exposure, specifically gifts and medical expenses incurred by both plaintiff's and defendant's families.

¶ 7 In November 2021, Goschi prepared a proposal to revise Catherine's estate that plaintiff concluded would divest him of his rights. Plaintiff alleged that when he refused to sign off on the revision, defendant threatened to withhold his annual gift and then defendant unilaterally met with representatives from Northern Trust and shared trust information. Plaintiff alleged defendant took the position that Northern Trust should be made successor trustee which plaintiff opposed because he believed the fees were exorbitant. Plaintiff further alleged that defendant improperly delayed in selling the Lake Shore Drive condominium that had been empty since 2021.

¶ 8 Plaintiff filed a single count complaint for breach of fiduciary duty on September 13, 2024, and defendant filed a section 2-615 (735 ILCS 5/2-615 (West 2024)) motion to dismiss on December 12, 2024. In its March 5, 2025, written order, the circuit court noted that the parties owed a fiduciary duty to each other in administration of the trust as co-trustees. Plaintiff argued that such duty was breached by defendant through several of her actions and inactions: (1)

defendant ignored repeated requests to execute administrative forms after they were made co-trustees for Morgan Stanley to have proper direction for investments; (2) defendant refused to provide information relating to the Thomas White Funds and an accounting; (3) defendant caused their mother to execute a power of attorney relating to one fund when their mother was incapacitated; (4) defendant refused to implement certain strategies to minimize taxes as the trust allowed; (5) defendant hired Goschi to act on her behalf in conflict with the trust's interests and inappropriately paid him out of trust funds; (6) the trust and plaintiff sustained damages as a result of the alleged breaches through a dissipation of the trust assets; (7) defendant's failure to minimize tax exposure; and (8) defendant's failure to provide accounting of the various assets.

¶ 9 In response, defendant argued that the complaint was inadequately pled because plaintiff had not alleged that he satisfied a condition precedent to the filing of a suit. The court noted that performance was an element of a breach of contract claim and not an element of a breach of fiduciary duty; however, it found that plaintiff was hard pressed to allege facts in support of causation.

¶ 10 Defendant contended that courts frequently dismissed claims because certain conditions were not met prior to filing suit and directed the court to cases where administrative remedies or alternative dispute resolution avenues must be established prior to bringing suit. The circuit court indicated that it would review the trust through that lens. In doing so, the circuit court restated defendant's argument as follows: plaintiff could have followed the trust provisions and avoided all of the purported damages he claimed to have suffered. Defendant's decisions not to execute the Morgan Stanley documents, list the cooperative apartment for sale, etc. may have been well-informed decisions or they may have been spiteful decisions. Either way, the trust allowed plaintiff a means to avoid deadlock, and plaintiff did not follow the provisions of the trust.

¶ 11 The circuit court accordingly granted plaintiff leave to amend his complaint to allege additional facts to support each of the elements of his cause of action, including specific causation that "but for" the breach, he would not have suffered damages. The court noted that plaintiff must plead facts and not merely legal conclusions that the breach was the proximate cause of the alleged damages. The court granted defendant's section 2-615 (735 ILCS 5/2-615 (West 2024)) motion to dismiss with leave to replead. Plaintiff was given until March 28, 2025, to file an amended complaint and defendant had until April 21, 2025, to answer or otherwise plead.

¶ 12 Plaintiff subsequently filed his nine-count first amended complaint on March 28, 2025: Count I- Breach of Fiduciary Duty, Morgan Stanley accounts; Count II- Breach of Fiduciary Duty, Thomas White Fund accounts; Count III- Breach of Fiduciary Duty, Fidelity POA; Count IV- Refusing to attend to gifting for tax avoidance; Count V- Refusal to permit plaintiff to be compensated for work managing the trust real estate; Count VI- Lake Shore Drive Condominium; Count VII- Declaration of Invalidity of Article X(4); Count VIII- Demand for Accounting; and Count IX- Attorneys' Fees.

¶ 13 Plaintiff's first amended complaint again alleged various failings on defendant's part in connect with the trust assets. Specifically, plaintiff alleges that defendant repeatedly failed to execute necessary forms relating to accounts so plaintiff and defendant could give directions to Morgan Stanley and Fidelity. Plaintiff contended that because plaintiff and defendant were not empowered to give direction to the fund managers, investment opportunities were lost and caused depreciation in value. Plaintiff alleged that his mother executed a POA to defendant over the Fidelity account and defendant and her husband moved funds from the Thomas White Funds account to the Fidelity account in order for defendant to have full control. Plaintiff contended that his mother lacked capacity to execute the POA. Fidelity froze the account in January 2023, and

defendant made payments from the Fidelity account to the attorney in connection with the POA, Peter Goschi. Plaintiff alleged that defendant did not perform duties relating to estate planning that would lower tax exposure, specifically gifts and medical expenses incurred by both plaintiff's and defendant's families. Plaintiff further alleged that Goschi made proposals to revise the estate which defendant would not sign off on. Plaintiff contended that defendant unilaterally met with representatives from Northern Trust, shared trust information with them and suggested that Northern Trust should be the sole successor trustee. Plaintiff alleged that he had not been compensated for managing the family farm and that defendant improperly delayed selling the Lake Shore Drive co-op for her personal benefit resulting in a loss of value.

¶ 14 Defendant again filed a section 2-615 (735 ILCS 5/2-615 (West 2024)) motion to dismiss, attacking the legal sufficiency of the complaint, on April 25, 2025.

¶ 15 In its July 16, 2025, written order, as an initial matter, the circuit court determined that Counts IV through VI were not, as labeled, independent causes of action. Rather, each of those counts asserted claims for mismanagement of trust assets by defendant and sounded in breach of fiduciary duty, which is the theory applied by the circuit court to determine their adequacy. The court noted that there was no dispute that the parties owed a fiduciary duty to each other, and plaintiff adequately alleged that defendant's actions and non-actions amounted to a breach of that fiduciary duty. The court further noted that in its prior order dismissing plaintiff's original single-count complaint for breach of fiduciary duty, it advised plaintiff that to survive a motion to dismiss, he would need to allege additional facts to support the causation element of his claim by pleading that "but for" the breach, plaintiff would not have suffered harm. Despite additional facts and counts that broke each action and inaction into individual counts, plaintiff did not clear the hurdle of pleading proximate causation of his alleged damages.

¶ 16 The circuit court determined that the trust explicitly provided the mechanism for resolving conflicts related to the trust. It found that Counts I through VI of the first amended complaint were governed by the terms of the trust, which plainly and unambiguously provided the mechanism for resolution of a conflict or deadlock. Article X of the trust provides:

> "(4) **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by unanimous vote of the Trustees. In the event the Trustees cannot reach a unanimous decision **on any action**, then the Trustees **shall** seek the vote of the next named successor trustee as provided hereinabove, and a majority vote of the three Trustees shall control; provided, however, any dissenting Trustee shall not be held accountable for any action taken hereunder he or she did not vote in favor of. (Emphasis added by the Court)."

¶ 17 The circuit court examined each count of plaintiff's first amended complaint.

¶ 18 Count I, Morgan Stanley Accounts, alleged that defendant ignored requests to execute administrative forms after they were made co-trustees for Morgan Stanley to have proper direction for investments and that they lost value as a result. The court found that defendant's failure to execute the documents, for whatever reasons, was an action that could be and can be challenged using the mechanism provided for in the trust.

¶ 19 Count II, Thomas White Funds, alleged that in December 2020, defendant caused her mother's investment in the Thomas White Funds to be sold and the proceeds deposited in a Fidelity account owned by the trust. Plaintiff also alleged that defendant divested herself personally from the Thomas White Funds prior to divesting the trust funds yet failed to provide any explanation for the timing of the divestment, opining that the delay in divesting the trust from the Thomas White Funds resulted in a loss in excess of $600,000. The court found that since the parties were

not trustees until Catherine was adjudicated to be incapacitated in May of 2021, no breach of fiduciary duty could be sustained for either of those actions.

¶ 20 Count III, Fidelity Power of Attorney (POA), alleged that defendant caused Catherine to execute a POA relating to the Fidelity accounts when she was incapacitated on March 8, 2021. Despite Catherine's adjudication on May 3, 2021, plaintiff alleged that it was plain that Catherine was not competent the prior year. The court found that plaintiff might have grounds for a different cause of action, but that he could not prevail on a fiduciary duty claim. With respect to plaintiff's request for an accounting for all transactions within the Fidelity accounts, plaintiff claimed damages as a result of the fraudulently acquired POA resulting in investment opportunity costs, increased costs of administration and unnecessary attorneys' fees. The court found once again that those actions and inactions could have been compelled had the parties come to an impasse using the mechanism provided in the trust.

¶ 21 Count IV, Refusing to attend to gifting for tax avoidance, alleged that defendant refused to implement certain strategies to minimize taxes as the trust allowed and defendant hired Goschi to act on her behalf in conflict with the trust's interests and inappropriately paid him out of trust funds. Plaintiff further alleged that the parties had conflicting proposals for administration of the trust funds and who would or should be trustee. The court found that it was clear from the allegations and the emails of the ongoing dispute relating to those payments that the parties were at odds and should have availed themselves of the conflict resolution provision in the trust. Moreover, the court found that plaintiff could not have suffered any damages as a result of that purported impropriety because Catherine is still alive and no estate or gift tax can be due.

¶ 22 Count V, Refusal to permit plaintiff to be compensated for work managing the trust real estate, alleged that plaintiff had managed the farm without compensation since 2006. The court

found this to be an issue that involves administration of the assets of the trust and could have been brought to a vote of the trustees and named successor trustee in the event the parties could not agree. The court determined that plaintiff's allegation that defendant unjustly profited from his labor through her receipt of 20% of the farm's profits and as beneficiary of the trust potentially sounded in something other than a fiduciary duty claim.

¶ 23 Count VI, Lake Shore Drive Cooperative Apartment, alleged that the trust sustained a loss due to the prolonged delay in the sale of the condominium, and plaintiff took issue with defendant listing the unit for $1.65 million without a broker. Plaintiff ultimately obtained an appraisal for $900,000, and the unit sold for $800,000. Plaintiff alleged malfeasance by defendant with the delay of the sale. The court concluded, once again, that this was a trust asset and any disagreement on how to market and sell the unit could have been set to a vote; thus, plaintiff could not allege the causal connection to any damages.

¶ 24 Count VII, Declaration of Invalidity of Article X(4), sought a declaration that the trustee voting rights provision of the trust was invalid. However, the circuit court found that it had already determined that there was a mechanism in place in the event of deadlock, thus there was no actual controversy at issue, which was required to seek a declaratory judgment. The court concluded that a declaratory judgment action was improper when plaintiff had already initiated a suit, and even if plaintiff had adequately pled claims for breach of fiduciary duty, he alleged actions that have already happened in contravention of the rust agreement resulting in the instant litigation and thus, a declaration would not help to end the earlier controversy.

¶ 25 Count VIII, Demand for Accounting, sought an accounting in equity. The court reiterated that plaintiff failed to adequately allege proximate causation of damages to sustain a breach of fiduciary duty claim. Therefore, an accounting claim similarly failed. However, pursuant to the

trust, as defendant conceded, plaintiff as co-trustee was entitled to an annual accounting. The court noted that plaintiff had an adequate remedy at law by making a demand and triggering the impasse/deadlock provision of the trust. Plaintiff argued that he requested an accounting, but the sole allegation in the complaint on this issue vague requested an accounting of the Thomas White Funds based on actions that were prior to the parties becoming co-trustees and triggering the accounting requirement.

¶ 26 With respect to Count IX, Attorneys' Fees, the circuit court found that a demand for attorneys' fees was a remedy and not an independent cause of action and dismissed the count outright.

¶ 27 The circuit court subsequently granted defendant's motion to dismiss the complaint pursuant to section 2-615 (735 ILCS 5/2-615 (West 2024)). The order further stated that "[u]nless plaintiff can allege that he complied with the terms of the Trust, the Court will not allow further amendments." Plaintiff's notice of appeal was later filed on August 14, 2025.

¶ 28 II. ANALYSIS

¶ 29 On appeal, plaintiff contends that the circuit court erred in granting defendant's motion to dismiss his breach of fiduciary complaint because: (1) plaintiff sufficiently alleged that defendant's conduct proximately caused injury to the Trust, and the fact that neither trustee invoked the trustee voting rights clause was not a superseding cause; (2) the circuit court did not address the many other reasons alleged as to why the trustee voting rights clause cannot insulate defendant from liability for her breaches of fiduciary duty; (3) the circuit court erred by dismissing Count VIII of plaintiff's first amended complaint that sought an accounting; and (4) the circuit court erred by dismissing plaintiff's claim for attorney fees.

¶ 30 Before considering the merits of an appeal, it is the duty of this court to consider whether it has jurisdiction to hear the appeal even though this issue was not raised by the parties. *O'Hara v. State Farm Mutual Automobile Insurance Co.*, 137 Ill. App. 3d 131, 133 (1985). Jurisdiction of this court to hear an appeal is confined to reviewing appeals from final judgments unless it comes within one of the exceptions for interlocutory orders specified by our Supreme Court Rules. *Id.* A judgment or decree is final and reviewable if it either terminates the litigation between the parties, either on the entire controversy or some definite part thereof, so that, if affirmed, the trial court has only to proceed with execution. *Id.* Where an order of the court leaves a cause still pending and undecided, it is not a final order. *Id.*

¶ 31 In this case, plaintiff's jurisdictional statement included in his brief indicates that this appeal was brought pursuant to Illinois Supreme Court Rule 301. Rule 301 provides that:

> "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994).

¶ 32 However, the specific issue we must address here is the effect on appealability of the following wording in the circuit court's order granting defendant's motion to dismiss:

> "Defendant's motion to dismiss the complaint pursuant to 735 ILCS 5/2-615 is granted. Unless plaintiff can allege that he complied with the terms of the Trust, the Court will not allow further amendments."

The order does not specify that the dismissal was with or without prejudice, nor was Rule 304(b) (eff. Mar. 8, 2016) language used in the order. Rather, the disposition left the option open for plaintiff to file another amended complaint if he alleged that he complied with the terms of the trust.

¶ 33 Rule 304(b) applies to judgements and orders appealable without special finding. Those judgments and orders covered by this section of the rule are: (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)[1]; (3) a judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure; (4) a final judgment or order entered in a proceeding under section 2-1402 of the Code of Civil Procedure; (5) an order finding a person or entity in contempt of court which imposes a monetary or other penalty; and (6) a custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq.*). Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016).

¶ 34 It is clear that none of those types of judgments or orders were entered in this case, so Rule 304 is not an appropriate basis for jurisdiction. Here the circuit court simply entered an order granting defendant's section 2-615 motion to dismiss. Generally, an order striking a complaint or granting a motion to dismiss is not final and appealable unless it indicates it is "with prejudice." *O'Hara*, 137 Ill. App. 3d at 133. While this language is not essential to a determination of what

[1] Rule 307(a) governs interlocutory appeals as of right from orders (1) granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction; (2) appointing or refusing to appoint a receiver or sequestrator; (3)giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed; (4) placing or refusing to place a mortgagee in possession of mortgaged premises; (5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets; (6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5); and (7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act, but the procedure for appeal. Ill. S. Ct. 307(a) (eff. Nov. 1, 2017).

constitutes a final and appealable order, the terms are indicative of the fact that plaintiff will not be allowed to plead over and that the litigation is terminated. *Id.*

¶ 35 The record reveals that defendant 's motion to dismiss was filed pursuant to section 2-615 (735 ILCS 5/2-615 (West 2024)). Motions under section 2-615 attack only the legal sufficiency of the complaint, and when the motion is granted, a plaintiff is permitted to amend his complaint or plead over. *Id.* at 134.

¶ 36 In this case, the circuit court's order is not ambiguous; it specifically indicated that plaintiff could file another amended complaint as long as he alleged that he complied with the terms of the trust. The dismissal was not entered with prejudice nor was Rule 304 language included. However, rather than amend his complaint, plaintiff instead filed his notice of appeal on August 14, 2025. The record reveals that plaintiff did not seek Rule 304(a) language from the circuit court prior to filing his appeal, and his notice of appeal, like his opening brief, indicate that his appeal is filed pursuant to Rule 301 based on a final judgment entered on July 16, 2025. That was improper as the July 16, 2025, order was not a final judgment. Thus, plaintiff's reliance on Rule 301 for this court's jurisdiction is misplaced.

¶ 37 As such, we must conclude that we lack jurisdiction to hear this appeal as there was no final judgment entered by the circuit court and the order appealed from did not include language that dismissed plaintiff's complaint with prejudice or Rule 304 language. Accordingly, the appeal is dismissed.

¶ 38 III. CONCLUSION

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

¶ 40 Appeal dismissed.