2022 IL App (3d) 200525-U

Order filed July 27, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2022

In re MARRIAGE OF DARIEN M. KRUSS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Petitioner-Appellee,	)	
	)	Appeal No. 3-20-0525
v.	)	Circuit No. 18-D-1433
	)	
SZILVIA I. KRUSS,	)	The Honorable Elizabeth D. Hoskins Dow,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE DAUGHERITY delivered the judgment of the court.
Presiding Justice O'Brien and Justice Hauptman concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a dissolution of marriage case, the appellate court held that it did not have appellate jurisdiction to review the merits of certain trial court orders that dismissed respondent's emergency motion to modify the parties' judgment for dissolution of marriage and compel return of inheritance money and imposed sanctions upon respondent's attorney. The appellate court, therefore, dismissed the appeal for lack of appellate jurisdiction.

¶ 2 In the context of a dissolution of marriage proceeding, respondent, Szilvia I. Kruss, filed an emergency motion in the trial court to modify the parties' prior judgment for dissolution of marriage and to compel the return of inheritance money. Petitioner, Darien M. Kruss,

respondent's ex-husband, filed a motion to dismiss respondent's emergency motion and requested sanctions. Following hearings, the trial court granted petitioner's motion to dismiss and imposed sanctions upon respondent's attorney. Respondent appealed. We dismiss the appeal for lack of appellate jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent were married in April 2004 and had one child together during the course of their marriage. In December 2015, petitioner filed for dissolution of marriage in Du Page County, Illinois. In August 2018, the Du Page County trial court entered a judgment for dissolution of the parties' marriage (the dissolution order) and transferred all future proceedings to Will County, Illinois, where both parties had relocated.[1]

¶ 5 In 2019, respondent filed an appeal in this court to challenge the trial court's orders quashing certain subpoenas that respondent had issued in the dissolution case relating to her claim that petitioner had abused the parties' child. *In re Marriage of Kruss*, 2021 IL App (3d) 190339, ¶¶ 2, 5-9.[2] In our February 2021 decision in that case, we found that the trial court's orders quashing the subpoenas were not final and appealable judgments and dismissed the appeal for lack of appellate jurisdiction. *Id.* ¶¶ 17-18, 30. In addition, we imposed monetary sanctions upon respondent and her attorney for filing a frivolous appeal. *Id.* ¶¶ 27-28, 30.

¶ 6 In August 2020, respondent filed in the Will County trial court an emergency motion to modify divorce decree and to compel return of inheritance money (referred to hereinafter as the

[1] In the order, the Du Page County trial court stated that it was retaining jurisdiction over any motions to vacate or reconsider the dissolution judgment. It is unclear from the record, however, whether that portion of the order was still in effect when respondent filed her emergency motion to modify in the present case.

[2] Although the decision in the 2019 appeal was an unpublished decision, the "-U" designation is missing from the end of the public domain number.

motion or the emergency motion). In the motion, respondent alleged, among other things, that: (1) she had received an early inheritance of $15,000 from her parents; (2) she gave that money to petitioner to be used as a down payment for the parties' marital home; (3) although there was testimony to that effect at trial in the dissolution case, the Du Page County trial court never addressed the matter in the dissolution order; and (4) petitioner had been awarded the marital home and had requested that respondent quitclaim her interest in the property to him but had refused to return respondent's inheritance money. Respondent sought to have the Will County trial court modify the dissolution order and require petitioner to return the $15,000 inheritance money to respondent in exchange for respondent signing the quitclaim deed for the property to petitioner.

¶ 7 The following month, petitioner filed a motion pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(1) (West 2020)) to dismiss respondent's emergency motion. In the motion to dismiss, petitioner alleged that: (1) respondent had stated in her emergency motion that the issue of inheritance money was addressed at trial but not addressed in the dissolution order; (2) respondent had filed in the Du Page County trial court a motion to reconsider and an amended motion to reconsider as to the dissolution order; (3) following a hearing on respondent's amended motion to reconsider, in December 2018, the Du Page County trial court specifically denied and/or dismissed respondent's claim regarding the inheritance money (a copy of that order was attached to petitioner's motion to dismiss); and (4) the Will County trial court did not have jurisdiction to rule upon respondent's emergency motion because the dissolution order had been entered more than two years earlier and because respondent's inheritance claim had already been ruled upon by the Du Page County trial court at the hearing on respondent's amended motion to reconsider. Petitioner asked the Will County

trial court to dismiss respondent's emergency motion and to impose Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) sanctions upon respondent and her attorney.

¶ 8 Respondent filed a response and opposed petitioner's motion to dismiss and the request for sanctions. In the response, respondent asserted that petitioner's argument about jurisdiction was incorrect because the two orders (the dissolution and reconsideration orders) that petitioner had relied upon in his argument were not final judgments since the two orders did not dispose of all pending matters at the time that both orders were entered. Respondent stated further that she had appealed those two orders to the Second District Appellate Court and that the appellate court had dismissed respondent's appeal for lack of appellate jurisdiction. According to respondent, the appellate court had specifically found in the prior appeal that the two orders were not final judgments because respondent still had claims pending in the trial court—her petitions for contempt and order of protection. Respondent attached to the response a copy of the Second District Appellate Court's decision from her prior appeal.

¶ 9 In October 2020, after full briefing by the parties, a hearing was held in the Will County trial court on petitioner's motion to dismiss and request for sanctions. During the hearing, the following conversation ensued between the trial court and the attorneys:

> "THE COURT: So what you were really seeking, Mr. Craddock [(respondent's attorney)], in your emergency motion was for yet another motion for reconsideration of both the judgment [(the dissolution order)] and Judge Douglas's December 19, 2018 order [(the reconsideration order)].
>
> MR. CRADDOCK: Yes. Yes. We want it to be reconsidered because we don't believe the [Du Page County trial] court adequately addressed it, and I

would invite the Court to make this a final order under 304(a) so that we don't get bounced back again by the appellate court if we try to go again.

THE COURT: Is there any reason that this case cannot be appealed at this point, Mr. Surinak [(petitioner's attorney)]?

MR. SURINAK: No.

THE COURT: No.

MR. CRADDOCK: It is. The second appeal was denied because of lack of jurisdiction.

* * *

MR. CRADDOCK: We had no final orders in this case, and we can't go anywhere.

THE COURT: I'm going to deny—I'm going to dismiss the emergency motion to modify divorce decree. I can't give you the relief that you're seeking, and I am going to impose Rule 137 sanctions against you, Mr. Craddock, because you failed to wholly set forth in that motion what it was that you were seeking.

So you keep re-saying, hey, Judge, we don't agree with these earlier rulings with regard to this court. Your client now has had two bites at this apple: In the initial trial and in the motion for reconsideration that Judge Douglas specifically stated in December of 2018, it's denied specifically with regard to the inheritance money.

I wouldn't impose the Rule 137 sanctions if, in fact, what you had done was outlined exactly what you had done in your response, which is, Judge, we really are looking for you to reconsider Judge Douglas's two bites at the apple,

right. Judge Douglas did it in the judgment, and then Judge Douglas did it with regard to the December 2018 order, December 19, 2018 order.

You could have outlined those things, and you could have said, Judge, we can't get relief from the Second District, which I think is a false statement at this present point in time. You do have a final order. If you look at what the Second District said with regard to the 304 language, that's correct. But what was existing out there now, there's nothing existing on this case. You could have appealed this now any time.

Anything further?

MR. CRADDOCK: I don't see anything in the Second District's order that would have allowed an appeal. We appealed all of these issues in the Second District, and they dismissed the appeal saying none of these are final. Nothing changed since then.

THE COURT: There is no longer the outstanding petition or contempt, the order of protection or contempt.

MR. CRADDOCK: Those are being appealed. I mean, there is an appeal pending in the Third District, which doesn't address these issues. But these issues were specifically appealed in the Second District, and the court said they are not final despite there being language, well, it was 304(b). It was supposed to have been 304(a).

THE COURT: So let me just be clear. You may have some difficulties with regard to where you are in the appellate basis, right. I am not your appellate lawyer. I will state that what you filed with me with regard to this emergency

motion was wholly incorrect in outlining exactly the basis of this motion. At no point in time did you say, hey, Judge, you know what I'm wanting to do is have the third bite at this apple that Judge Douglas has already decided twice. So could you actually be Judge Douglas's appellate court.

MR. CRADDOCK: With respect, we weren't asking you to be an appellate court. And also sanctions are to be brought when a motion is not brought in good faith. We did bring this in good faith, Judge. You seem to be saying we didn't use the correct language in the first one, but the response shows that we brought it in good faith, based on a good faith belief; and what the appellate court said was that this order that we were addressing was not final—

THE COURT: So, Mr. Craddock, I apologize. I cut you off. When you're asking this Court—you already have, again, two decisions by Judge Douglas. You have the judgment and you have a specific motion to reconsider this specific issue. What jurisdiction did I have to remotely hear your emergency motion?

MR. CRADDOCK: I'm sorry. I didn't hear the question.

THE COURT: The procedural posture of this case is that Judge Douglas considered the argument with regard to the $15,000 inheritance that was raised during the trial in his judgment and in Ms. Kruss's motion for reconsideration. So you have a reasonable inquiry responsibility, right.

Let me ask you this. What basis, what jurisdiction do I have to hear yet another motion for reconsideration of Judge Douglas's judgment and December 19, 2018 order?

MR. CRADDOCK: Again, as we said in our response, the basis for this motion that we filed was the Second District's order that this issue, among others, was not final.

THE COURT: You haven't responded as to what is the basis for my jurisdiction to again consider a motion for reconsideration of what is now the final judgment, and of Judge Douglas, and the 12/18/2019 [*sic*] order. What's my jurisdiction?

MR. CRADDOCK: Your jurisdiction is, again, the appellate court has decided that was not a final order, and this case was transferred here to this Court. So if the appellate court can't address it, the only other place we can go is this Court.

THE COURT: The appellate court can address it.

MR. CRADDOCK: They declined to.

THE COURT: They declined to at that time, right? I don't know when it became final, but it's definitely become final now.

MR. CRADDOCK: I don't see that it has. I don't see that it has. Again, there are still outstanding issues with respect to there was a custody judgment, and now that's not being honored. There's still outstanding issues in this case. I don't see how it's final anymore than it was before, I'm sorry, anymore than it wasn't before.

* * *

THE COURT: That's fine. So I will just note because I'm required to do so under Supreme Court Rule 137, 'The signature of an attorney or party

constitute and [*sic*] certificate by him that he has read the pleading, motion and other documents, that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and warranted by existing law.'

The Court is specifically finding that by existing law this Court has zero jurisdiction to do yet another motion for reconsideration of Judge Douglas's, and, again, I'm repeating myself ad nauseam, but judgment in this case, as well as his December 19, 2018 order.

Also the Court will note that the emergency motion, so far from not being an emergency since it had been well settled with regard to the alleged $15,000 and how that $15,000 inheritance should be addressed, it was addressed in the trial. It was addressed specifically under point two of Judge Douglas's 12/18/2019 [*sic*] order. And that if petitioner wanted to—I'm sorry, respondent, but petitioner in this case, had wanted to say to the judge, You know what? We are stuck betwixt and between because we don't believe we have a final judgment to take to the Second District or to the Third District at this present point because of the language that the Second District had sent us the last time that we appealed under 304(a) language, Judge, we think you're the only people [*sic*] who can actually address this. And based upon this case law, which I don't think exists, allowing me to have another reconsideration of Judge Douglas's two earlier decisions, you have the ability to do this. I don't think it exists. I don't think you did reasonable due inquiry of that. And clearly in the pleading that you filed, you did not set forth for this Court any of the background to know, hey, judge, we are actually asking you to do a reconsideration of the reconsideration.

For those reasons, the Court is imposing Rule 137 sanctions, as well as granting the 6-19 motion."

¶ 10 As indicated above, at the conclusion of the hearing, the trial court granted petitioner's motion to dismiss respondent's emergency motion and granted petitioner's request for sanctions. The case was set for a hearing date the following month to give the petitioner's attorney time to file an affidavit and billing statements in support of his request for sanctions and to give respondent's attorney time to respond to those documents. Following the November 2020 hearing, the trial court imposed Rule 137 sanctions upon respondent's attorney in the amount of approximately $3500. No sanctions were imposed upon respondent personally. Neither the October nor the November 2020 rulings of the Will County trial court contained an Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding. Respondent appealed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent raises two contentions. First, respondent argues that the trial court erred in granting petitioner's motion to dismiss respondent's emergency motion to modify the dissolution judgment and to compel petitioner to return respondent's inheritance money. More specifically, respondent asserts that the trial court had jurisdiction to rule upon respondent's emergency motion because neither the Du Page County trial court's dissolution order nor the Du Page County trial court's reconsideration order was a final judgment since the orders did not dispose of all pending matters at the time the orders were executed. Thus, respondent contends that, contrary to what the trial court implicitly found, the two orders could be modified by the trial court at any time. Second, respondent argues that the trial court erred in imposing Rule 137 sanctions upon respondent. Respondent asserts that sanctions were unwarranted because respondent's emergency motion was not frivolous. Instead, respondent maintains, her motion

was based upon a good faith belief that the two Du Page County trial court orders were not final judgments since the Second District Appellate Court had made a specific finding to that effect and had dismissed respondent's appeal for lack of appellate jurisdiction. For those reasons, respondent asks that we reverse the Will County trial court's dismissal and sanctions orders and that we remand this case for further proceedings on respondent's emergency motion.

¶ 13 In response to those contentions, petitioner argues first that this appeal should be dismissed because this court lacks appellate jurisdiction to review the merits of respondent's arguments. More specifically, petitioner contends that appellate jurisdiction is lacking in this case because: (1) the Will County trial court's November 2020 ruling did not resolve all of the pending claims between the parties; (2) respondent failed to file her notice of appeal within 30 days after the trial court ruled upon respondent's emergency motion (if this court treats respondent's emergency motion as a petition brought pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2020))); and (3) respondent has no standing to challenge Rule 137 sanctions that were imposed upon her attorney only and not upon her. Second, and in the alternative, petitioner argues that if this court determines that appellate jurisdiction exists, it should find that the dismissal of respondent's emergency motion was proper because respondent failed to plead any of the elements necessary to establish a claim for relief under section 2-1401 (if this court treats respondent's emergency motion as a section 2-1401 petition) or to articulate a single basis for further reconsideration of the Du Page County trial court's ruling (if this court treats respondent's emergency motion as a motion to reconsider). Instead, petitioner maintains, respondent was merely forum shopping for a different result since this case had been transferred to a different county. Finally, as to the merits of the trial court's sanctions ruling, petitioner asserts that sanctions were properly imposed upon respondent's attorney because the record in

this case shows that respondent's emergency motion lacked a cogent legal basis. Rather, according to petitioner, the emergency motion was simply an attempt to relitigate, for a third time, issues upon which respondent had previously been unsuccessful. Therefore, for all the reasons set forth, petitioner asks this court to dismiss the appeal for lack of appellate jurisdiction or, in the alternative, to affirm the trial court's rulings. In addition, petitioner requests that we impose sanctions upon respondent and her attorney for filing another frivolous appeal over which this court lacks jurisdiction.

¶ 14 It is well settled that the appellate court has a duty to determine if jurisdiction to hear an appeal exists and to dismiss the appeal if jurisdiction is lacking. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). Absent a supreme court rule exception, the jurisdiction of the appellate court is limited to reviewing appeals from final judgments. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22. A final and appealable judgment is one that determines the litigation on the merits of the parties' claim or some definite part thereof so that the only remaining action to be taken is to proceed with execution of the judgment. See *id.* ¶ 23; *In re Estate of French*, 166 Ill. 2d 95, 101 (1995). However, when multiple parties or multiple claims for relief are involved in an action, a final judgment that has been entered as to one or more but fewer than all of the parties or claims is generally only appealable if the trial court has made an express written finding pursuant to Supreme Court Rule 304(a) that there is no just reason for delaying either enforcement or appeal or both. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *In re Marriage of Gutman*, 232 Ill. 2d 145, 150-51 (2008).

¶ 15 As other courts have recognized, a postdissolution proceeding presents an unusual circumstance in civil practice because the trial court enters a final judgment resolving all issues at the time of dissolution, but that judgment may be subsequently modified, sometimes

repeatedly, at the request of the parties. See, *e.g.*, *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 735 (2007). At the time this appeal was filed, there was a split in the appellate districts as to whether separate postdissolution petitions constituted new actions or only new claims within the original dissolution proceeding. *In re Marriage of Crecos*, 2021 IL 126192, ¶ 20. The distinction made a difference because if a postdissolution petition was a new action, a trial court's final judgment on that action could be appealed without a Rule 304(a) finding having been made. See *id.* ¶ 21. If, however, a postdissolution petition was only a new claim, a trial court's final judgment on that claim could not be appealed without a Rule 304(a) finding, if other postdissolution claims were still pending. See *id.* In *Crecos*, our supreme court resolved the split in appellate districts and held that for the purpose of appellate jurisdiction, unrelated postdissolution petitions/matters constituted separate claims within the dissolution proceeding and not new actions, so that a final order disposing of one of several postdissolution petitions could not be appealed without the trial court making a Rule 304(a) finding. *Id.* ¶ 45. The supreme court explained its reasoning for that decision as follows:

> " 'Where a party files one postdissolution petition, several more are likely to follow. Allowing or requiring parties to appeal after each postdissolution claim is resolved would put great strain on the appellate court's docket and impose an unnecessary burden on those who would prefer not to appeal until the trial court resolves all pending claims. To be sure, justice may on occasion require that a final order disposing of a claim be immediately appealed, rather than held at bay until another pending postdissolution claim is resolved. Yet, Rule 304(a) accommodates those circumstances: the trial court need only enter a Rule 304(a)

finding.' " *Id.* ¶ 44 (quoting *In re Marriage of Teymour & Mostafa*, 2017 IL App (1st) 161091, ¶ 39).

¶ 16 In the present case, after reviewing the record before us and considering the case law in this area, we find that appellate jurisdiction is lacking in this appeal. Our conclusion in that regard is based upon the following two points. First, the Will County trial court's orders dismissing respondent's emergency motion and imposing sanctions upon respondent's attorney were final judgments because those orders resolved separate postdissolution claims regarding respondent's request to modify the dissolution order and compel the return of inheritance money and petitioner's request for sanctions. See *id.* ¶ 45; *Blumenthal*, 2016 IL 118781, ¶ 23; *French*, 166 Ill. 2d at 101. Second, although the Will County trial court's orders were final judgments, they were not appealable judgments because those orders did not dispose of all of the pending postdissolution claims between the parties and the trial court did not make a Rule 304(a) finding as to those orders. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *Crecos*, 2021 IL 126192, ¶¶ 21, 45; *Blumenthal*, 2016 IL 118781, ¶ 22; *Gutman*, 232 Ill. 2d at 150-51. Indeed, there seems to be no dispute in this case that other postdissolution claims, such as respondent's petitions for contempt and order of protection and her motion for parenting time, remain pending in the trial court. Respondent's attorney acknowledged as much at the hearing in the Will County trial court on petitioner's motion to dismiss. Because we have found that appellate jurisdiction is lacking in this case, we are obligated to dismiss respondent's appeal. See *Archer Daniels Midland Co.*, 103 Ill. 2d at 539.

¶ 17 As a final matter, however, we must address petitioner's request that we impose sanctions upon respondent and her attorney in this appeal. Although sanctions were imposed by the trial court as to the current claims and by this court as to the prior appeal, we do not believe that

sanctions are warranted on appeal here. The record before us is replete with indications of confusion among the attorneys and the Will County trial court as to whether the trial court's dismissal and sanctions orders would be final and appealable judgments (with or without Rule 304(a) findings) and as to whether the prior orders of the Du Page County trial court were final and appealable judgments. No doubt some of that confusion was caused by the case law in this area and by the previous split that existed among the appellate districts on the finality and appealability of postdissolution matters, a split which our supreme court has since resolved (see *Crecos*, 2021 IL 126192, ¶¶ 20, 45). Although the prior confusion in this area of the law justifies our decision not to impose sanctions in this appeal, it does not allow us to find appellate jurisdiction where appellate jurisdiction does not exists. See *Archer Daniels Midland Co.*, 103 Ill. 2d at 539.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we dismiss this appeal for lack of appellate jurisdiction.

¶ 20 Appeal dismissed.