2026 IL App (1st) 251612-U

SECOND DIVISION
November 3, 2026

No. 1-25-1612

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-Appellees,	)	of Cook County
	)	
v.	)	20L11275
	)	
JOHN BRONSKI and KAREN BRONSKI,	)	Honorable
	)	John J. Tully, Jr.,
Defendants-Appellants.	)	Judge 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: Defendants' appeal from order denying attorney fees was dismissed for lack of jurisdiction while defendants' amended counterclaim remains pending in the circuit court.

¶ 2 We described the background of this case and governing legal principles in an order we entered in a related appeal: *Smith v. Bronski*, 2026 IL App (1st) 251608-U. Therefore, we will set forth only the details necessary for an understanding of this separate appeal.

¶ 3 The litigants are John and Karen Bronski and David and Diana Smith. The Bronskis sold a single-family home to the Smiths in a transaction that closed in 2020. The Smiths' suit claimed that the Bronskis had knowingly failed to disclose material defects in the residential real estate. The Bronskis counterclaimed for negligent spoliation of evidence because the Smiths made

changes to the property that allegedly made evidence for the defense inaccessible.

¶ 4 Even without that evidence, the Bronskis sought and were granted summary judgment on the Smiths' action. Then the Bronskis sought their attorney fees on the basis of a statute and contract language about prevailing parties; and the Smiths filed a motion to reconsider summary judgment. In a single order entered on July 17, 2025, the circuit court denied both of the posttrial requests.

¶ 5 The Smiths filed an appeal from the summary judgment ruling entered against them, purportedly appealing pursuant to Illinois Supreme Court Rules 301 and 303(a) from a final order. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. July 1, 2017). See *Smith*, 2026 IL App (1st) 251608-U. However, there was no final and appealable order because the Bronskis' amended counterclaim was unresolved. *Smith*, 2026 IL App (1st) 251608-U. Neither side has cited an order which disposes of the Bronskis' amended counterclaim for negligent spoliation of evidence. Accordingly, the Smiths' notice of appeal could not and did not divest the circuit court of jurisdiction and we dismissed the premature appeal. *Id.*

¶ 6 Nevertheless, the Bronskis are appealing from the order denying their attorney fees. The two separate appeals have been simultaneously briefed over the course of the past year. The Bronskis state on page 2 of their opening brief that their "amended counterclaim remains pending and undetermined." The Bronskis' appeal was purportedly based on a different rule. Instead of Rules 301 and 303(a), the Bronskis' notice of appeal cited Illinois Supreme Court Rule 304(a). Ill. S. Ct. R. 301; Ill. S. Ct. R. 303; Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Rule 304(a) permits an interlocutory appeal from a judgment resolving a separate part of the controversy when 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). However, the Bronskis' notice of appeal relied on the same order that the Smiths' notice of appeal cited which denied the two posttrial motions, and that order does not include Rule 304(a) language. Ill. S. Ct. R. 304(a). Furthermore, there is no order in the record on appeal that incorporates Rule 304(a) language. Ill. S. Ct. R. 304(a).

¶ 7 In the absence of either a final and appealable order that disposes of the "entire controversy" between the parties including the Bronskis' amended counterclaim, or a final order that incorporates Rule 304(a) language (Ill. S. Ct. R. 304(a)), the Bronskis' notice of appeal was premature and did not divest the circuit court of jurisdiction. See *Smith*, 2026 IL App (1st) 251608-U.

¶ 8 For these reasons, we find that we lack jurisdiction and dismiss the Bronskis' appeal.

¶ 9 Appeal dismissed.