2015 IL App (1st) 142658-U

SIXTH DIVISION
February 20, 2015

No. 1-14-2658

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALAN KIRKPATRICK, Plaintiff-Appellant, v. THE VILLAGE OF ROSEMONT, a Municipal Corporation, Defendant-Appellee (Bomark Cleaning Service Corporation, and Event Venue Services, Inc., Defendants).	)	Appeal from the Circuit Court of Cook County. No. 13 L 5224 Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed, where order dismissing one count of amended complaint did not contain language sufficient to confer appellate jurisdiction pursuant to Illinois Supreme Court Rule 304(a).

¶ 2 Plaintiff-appellant, Alan Kirkpatrick, was injured while attending a concert at the Allstate Arena, which is located in, and owned, operated, and maintained by, defendant-appellant, the

Village of Rosemont (Village). Plaintiff brought suit against the Village and defendants, Bomark Cleaning Services Corporation (Bomark) and Event Venue Services, Inc. (Event Venue), seeking damages for his injuries.

¶ 3 In his fourth amended complaint, the operative pleading, plaintiff named the Village in a willful and wanton count (count I), and Bomark (count II) and Event Venue (count III) in negligence counts. Bomark and Event Venue answered the fourth amended complaint and Bomark filed a cross-claim for contribution against Event Venue. Bomark and Event Venue are not parties to this appeal.

¶ 4 The Village moved to dismiss count I of plaintiff's fourth amended complaint pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2012). A briefing schedule on the motion was set, and a hearing was scheduled for July 29, 2014. On the date of the hearing, the circuit court entered an order which stated that the "Village of Rosemont's 2-615 [m]otion to [d]ismiss 4th [a]mended [c]omplaint is granted with prejudice & Rule 304(a) finding." The order further provided that the Village was dismissed with prejudice, while plaintiff's claims against Bomark and Event Venue remained pending. A case management conference was set for September 17, 2014. The record does not include a transcript from the July 29, 2014, proceedings.

¶ 5 On August 27, 2014, plaintiff filed a notice of appeal from the July 29, 2014, order of the circuit court which stated that "a Rule 304(a) finding was made by the Court."

¶ 6 On appeal, plaintiff contends that the circuit court erred in dismissing count I of his fourth-amended complaint against the Village with prejudice. However, and despite the fact that the issue has not been raised by the parties, we find we are without jurisdiction to address

plaintiff's appeal. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006) (court has a duty to *sua sponte* determine whether it has jurisdiction to decide the issues presented).

¶ 7 Except as specifically provided by Supreme Court Rule 301, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb.1, 1994), *et seq.*; *Almgren v. Rush-Presbyterian–St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is 'final' if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997).

¶ 8 However, a final judgment or order is not necessarily immediately appealable. Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides that "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. * * * In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties."

¶ 9 The order dismissing the Village with prejudice obviously did not resolve plaintiff's claims against Bomark and Event Venue, or Bomark's cross-claim against Event Venue. Therefore, the order dismissing the Village with prejudice resulted in a final order that adjudicated fewer than all the rights and liabilities of all parties and did not resolve all the claims.

¶ 10 Pursuant to Illinois Supreme Court Rule 304(a), the July 29, 2014, order was, therefore, not appealable in the absence of 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. Feb. 26, 2010). Here, the only language that could possibly pass for the finding required by Rule 304(a) is that portion of the written order which states that the Village's motion to dismiss was granted "with prejudice & Rule 304 finding."

¶ 11 In *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011), this court stated:

> "The rationale underlying Rule 304(a) is that it allows appeals to be taken before the final disposition of a case where the circuit court considers an immediate appeal to be appropriate. [Citation.] Thus, Rule 304(a) allows a circuit court to limit piecemeal appeals yet still allow early appeals when, in its discretion, doing so 'would have the effect of expediting the resolution of the controversy, would be fair to the parties, and would conserve judicial resources.' [Citation.] A circuit court's declaration that an order is 'final and appealable,' without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates. [Citation.] Instead, absent some other indication from the record that the court intended to invoke Rule 304(a) [citation], a circuit court's declaration that an order is 'final and appealable' amounts to nothing more than a non-binding interpretation. [Citation.]"

The language contained in the written order in this matter did not contain a declaration that it was final and appealable, nor did it contain any reference to immediate appealability or the

justness of delay. Thus, even though the order does reference Rule 304(a), that alone is insufficient to confer jurisdiction upon this court. See *Burnham Management Co. v. Davis*, 302 Ill. App. 3d 263, 269-70 (1998) ("The required written finding under Rule 304(a) is sufficient to establish appellate jurisdiction only if it refers to either the judgment's immediate enforceability or its immediate appealability or both, depending on the type of relief involved.").

¶ 12 Moreover, there is no other indication in the record reflecting that the circuit court, or the parties intended to invoke Rule 304(a). The Village, in its motion to dismiss, sought a dismissal of the count against it with prejudice, but did not seek a Rule 304(a) finding. In his response to the motion, plaintiff did not seek a Rule 304(a) finding should the motion to dismiss be granted. We are without a transcript from the proceedings on July 29, 2014, or suitable substitute under Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)). Thus, we are not informed as to: (1) whether a motion for a Rule 304(a) finding was made, (2) by whom, (3) what, if any arguments were made in support or against a Rule 304(a) finding, (4) or the circuit court's reasoning for any exercise of its discretion as to the applicability of Rule 304(a) to this case.

¶ 13 Because the July 29, 2014, order plaintiff seeks to appeal from does not contain the requisite finding under Rule 304(a), we must dismiss his appeal for lack of jurisdiction.

¶ 14 Appeal dismissed.