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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF KATHLEEN M. TABACZYK,)	Appeal from the Circuit Court of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 07-D-2219
)	
EDWARD J. TABACZYK,)	Honorable
)	James J. Konetski,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Reviewing court was without jurisdiction to consider appeal from trial court order finding husband in civil contempt where record does not demonstrate that husband's posttrial motion to vacate the contempt finding was resolved by the trial court; and (2) reviewing court was without jurisdiction to consider appeal from trial court order denying husband's petition to modify judgment of dissolution where record demonstrates that other postdissolution motions remain pending in the trial court and the trial court's ruling did not contain a Rule 304(a) finding.
- ¶ 2 Respondent, Edward J. Tabaczyk, appeals from separate orders of the circuit court of Du Page County (1) finding him in civil contempt of court for failing to comply with his child-support and maintenance obligations (appeal No. 2-11-0696) and (2) denying his petition to modify the

judgment of dissolution to reduce the amount of his support obligations (appeal No. 2-11-1209). We dismiss both appeals for lack of appellate jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 Respondent and petitioner, Kathleen M. Tabaczyk, were married on August 17, 1991. Three children were born of the marriage. On October 1, 2007, petitioner filed a petition for dissolution of marriage. Pursuant to a joint parenting agreement and order entered on May 14, 2009, the parties were awarded joint custody of the children, with petitioner named as the residential parent. On September 1, 2009, the trial court, in accordance with a letter opinion dated June 12, 2009, and a follow-up letter dated July 17, 2009, entered a judgment of dissolution of marriage. An agreed order modifying the September 1, 2009, judgment was entered on October 5, 2009. As modified, the judgment made provision for child support and maintenance as follows:

“Based upon [respondent’s] present gross earnings of \$500,000.00 per year, [respondent] shall pay [petitioner] the monthly sum of \$3,300.00 as and for maintenance, for 36 months, commencing on the 25th day of August and each and every 25th day of each month thereafter, until the 36th month, at which time, either party may file a petition requesting a review of said maintenance. [Respondent] shall pay \$7,200.00 per month as and for child support, said payments shall commence August 25, 2009, and each and every 25th day of each month until the children reach 18 years of age, or, if in high school, when [the] child reaches 19 years of age.”

The judgment also required respondent to maintain medical, optical, and dental insurance for the minor children with the parties equally sharing the cost of any unreimbursed medical, dental,

orthodontia, counseling, and optical expenses of the minors. In addition, the judgment required the parties to equally divide the cost of the minors' educational and extra-curricular expenses.

¶ 5 On May 13, 2010, respondent filed a two-count petition to modify the judgment of dissolution. Count I of the petition sought a decrease in respondent's child-support obligation. Count II sought a decrease in respondent's maintenance obligation. Respondent argued that a reduction in his support obligations was warranted based upon a substantial change in circumstances. See 750 ILCS 5/510(a)(1), (a-5) (West 2010). In particular, respondent alleged that his employment contract had not been renewed and that attempts to secure other employment had been unsuccessful. On August 30, 2010, the trial court entered an order providing that "pending the hearing [on respondent's petition to modify], it is hereby temporarily ordered that [respondent] shall pay \$7,750 for May 2010 and June 2010[;] thereafter, the sum of \$5,000 as [and] for child support and maintenance, this amount shall be allocated 2/3 child support [and] 1/3 maintenance."

¶ 6 Meanwhile, petitioner filed several postdissolution petitions. On September 28, 2010, petitioner filed a petition for a rule to show cause. Petitioner alleged that respondent failed to timely comply with certain provisions of the judgment of dissolution, including his support obligations. Petitioner calculated that respondent accumulated an arrearage of \$48,782.17 for unpaid child support and maintenance, \$814.54 for his share of unreimbursed medical and dental expenses, and \$2,566.56 for his share of the children's educational and extra-curricular expenses. On March 21, 2011, petitioner filed a petition for temporary relief pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), alleging that certain assets were marital but were not addressed as such in the judgment of dissolution. On April 19, 2011, petitioner filed another petition for a rule to show cause, alleging that respondent owed her \$5,000 for unpaid child support and

maintenance for the month of March 2010 and an additional \$500 for unreimbursed expenses related to the children. On May 10, 2011, petitioner filed a petition for contribution to college expenses for one of the parties' daughters. See 750 ILCS 5/513 (West 2010).

¶ 7 On May 23, 2011, the trial court entered an order scheduling the following matters for hearing on June 22, 2011: (1) petitioner's rule to show cause filed on September 28, 2010; (2) petitioner's rule to show cause filed on April 19, 2011; (3) respondent's petition to modify the judgment of dissolution filed on May 13, 2010; (4) petitioner's section 2-1401 petition filed on March 21, 2011; and (5) petitioner's petition for contribution to college expenses filed on May 10, 2011. At the conclusion of the June 22, 2011, hearing, the trial court found respondent in civil contempt of court "for his failure to pay child support, maintenance, and other expenses." The trial court determined that the amount of child support and maintenance outstanding was \$25,855.01. The trial court entered a mittimus for contempt and placed respondent in the custody of the Du Page County Sheriff "unless the Respondent shall purge himself *** of the said contempt by paying to the Clerk of the Circuit Court" the amount of the arrearage. The trial court also announced that it would take under advisement respondent's petition to modify the judgment of dissolution and that both the petition for contribution to college expenses and the section 2-1401 petition would be continued to a later date. The record indicates that respondent purged the contempt on June 22, 2011, by tendering the purge amount to the Du Page County Sheriff.

¶ 8 On June 27, 2011, the trial court entered an order providing in relevant part as follows:

1. That Respondent's Petition to Modify *** is denied; Respondent did not provide sufficient proof of his current income; as a result it is impossible to determine

whether a substantial change of circumstances has occurred since the last Order of Support herein;

2. That Petitioner's Petition for Rule to Show Cause (September 28, 2010) was granted and Respondent was found in Civil Contempt of Court (per separate Order) all other matters: (1) the calculation of child support and maintenance arrearages; and (2) unreimbursed medical and dental expenses; are set for hearing on July 22, 2011 at 9:30 a.m. in court room 3009 without further notice;
3. That Petitioner's petition for Rule to Show cause (April 19, 2011) was withdrawn;
4. That Petitioner's Petition for Contribution to College Expenses (May 10, 2011) is set for hearing on July 22, 2011 at 9:30 a.m. in court room 3009 without further notice."

¶ 9 On July 12, 2011, respondent filed a "Motion to Vacate Civil Contempt Ruling, Order, and Mittimus." On the same date, respondent also filed a motion to reconsider the denial of his petition to modify the judgment of dissolution. On July 21, 2011, respondent filed a notice of appeal pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. June 4, 2008). Respondent purported to appeal from (1) the mittimus for contempt entered on June 22, 2011, and (2) paragraph two of the order entered on June 27, 2011, granting petitioner's rule to show cause. We docketed this appeal as No. 2-11-0696.

¶ 10 On September 28, 2011, the trial court entered an order scheduling the following matters for hearing on October 24, 2011: (1) respondent's motion to reconsider the denial of his petition to modify the judgment of dissolution; (2) petitioner's petition for contribution to college expenses; (3) petitioner's section 2-1401 motion; (4) respondent's motion to vacate contempt; and (5) "completion of rule." At the hearing on October 24, 2011, respondent argued both his motion to reconsider the

denial of his petition to modify the judgment of dissolution and his motion to vacate contempt. At the conclusion of the hearing, the trial court entered an order setting a hearing on December 2, 2011, for “balance of rule, college expenses under 513 [and] 2-1401 motion.” Although the same order states that “the court has taken the motion to reconsider under advisement,” it does not reference the status of the motion to vacate. In an order dated November 4, 2011, and file stamped November 7, 2011, the trial court denied respondent’s motion to reconsider its ruling on his petition to modify the judgment of dissolution of marriage. On November 29, 2011, pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008), respondent filed a notice of appeal from the trial court’s order entered June 27, 2011, denying his petition to modify the judgment of dissolution of marriage and from the trial court’s order entered on November 4, 2011, denying his motion to reconsider the June 27, 2011, order. We docketed respondent’s second appeal as No. 2-11-1209. We subsequently allowed respondent’s motion to consolidate appeal No. 2-11-1209 with appeal No. 2-11-0696.

¶ 11 Meanwhile, a hearing was apparently held on December 2, 2011. Although a transcript of that hearing is not included in the record on appeal, an order entered that date provides in relevant part that the parties “shall equally share in their daughter[’s] *** college education for Fall 2011 [and] Spring 2012.” Also on December 2, 2011, the trial court (1) denied petitioner’s section 2-1401 petition and (2) continued for status to January 25, 2012, petitioner’s rule to show cause filed on April 19, 2011.

¶ 12 On January 25, 2012, petitioner filed another petition for a rule to show cause, alleging that respondent has continued to refuse to pay the correct amount of support, thereby accruing an arrearage in the amount of \$123,000 as of December 25, 2011. The petition also provided that “[r]espondent’s non-payment of his previous portion (prior to April 3, 2011) of non-reimbursed

medical, dental and extra-curricular expenses on behalf of the minor children are [*sic*] pending appeal.” Petitioner further alleged that for the period from April 3, 2011, through December 31, 2011, respondent owes her \$2,917.90 for his 50% share of the children’s unreimbursed medical, dental, and extra-curricular expenses. The January 25, 2012, petition for a rule to show cause was set for status on March 13, 2012.

¶ 13

II. ANALYSIS

¶ 14 At the outset, we note that petitioner has not filed an appellee’s brief. In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), our supreme court stated that if the record on appeal is simple and the claimed errors are such that a reviewing court can easily decide the issues without the benefit of an appellee’s brief, the reviewing court should proceed to the merits of the appeal. Nevertheless, before deciding whether this appeal fits within the parameters of *Talandis*, we have a duty to consider our jurisdiction and to dismiss an appeal if jurisdiction is wanting, even if neither party has raised the issue. *In re Estate of Rosinski*, 2012 IL App (3d) 110942, ¶ 19; *In re Marriage of Schwieger*, 379 Ill. App. 3d 687, 688 (2008). For the reasons set forth below, we conclude that we do not have jurisdiction to consider either of respondent’s two appeals.

¶ 15

A. Appeal No. 2-11-0696

¶ 16 In appeal No. 2-11-0696, respondent challenges the trial court’s June 22, 2011, contempt finding. In his jurisdictional statement and notice of appeal, respondent states that we have jurisdiction over appeal No. 2-11-0696 pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010). Rule 304 governs appeals from final judgments that do not dispose of an entire proceeding. Illinois Supreme Court Rule 304 (eff. Feb. 26, 2010). Rule 304(b)(5) makes

immediately appealable, despite the pendency of other matters, “[a]n order finding a person *** in contempt of court which imposes a monetary or other penalty.” Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010); see *In re Marriage of Gutman*, 232 Ill. 2d 145, 153 (2009) (noting that only contempt judgments that impose a penalty are final, appealable orders). For purposes of Rule 304(b)(5), a “penalty” is a “[p]unishment imposed on a wrongdoer, esp. in the form of imprisonment or fine.” Black’s Law Dictionary 1153 (7th ed. 1999); see also *Schwieger*, 379 Ill. App. 3d at 688 (and cases cited therein) (citing identical definition); *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1026 (2003) (noting that in order for the appellate court to assume jurisdiction under Rule 304(b)(5), the contempt order must impose sanctions of some kind upon the contemnor). In this case, respondent was remanded to the custody of the Du Page County Sheriff for failing to timely comply with certain obligations imposed upon him pursuant to the judgment of dissolution. He was only released from jail after tendering the purge amount. Since respondent was incarcerated, a penalty was imposed in accordance with the requirements of Rule 304(b)(5).

¶ 17 However, Rule 304(b) also provides that “[t]he time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303.” Illinois Supreme Court Rule 304(b) (eff. Feb. 26, 2010). Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) provides that the notice of appeal must be filed “within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order.” In this case, respondent was found in contempt on June 22, 2011. On July 12, 2011, respondent filed a timely motion to vacate the finding of contempt. A motion to vacate is a posttrial motion for purposed of Rule 303. See 735 ILCS 5/1203 (West 2010)

(providing a party with 30 days after the entry of judgment to file “a motion for rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief”); see also *In re Marriage of Valkiunas*, 389 Ill. App. 3d 965, 968 (2008). On July 21, 2011, respondent filed a notice of appeal from the trial court’s finding of contempt. At that time, respondent’s postjudgment motion remained pending in the trial court. Further, there is no evidence that respondent abandoned or withdrew his motion to vacate. To the contrary, he expressly argued the motion before the trial court at the hearing on October 24, 2011, more than three months after he filed his notice of appeal.

¶ 18 Illinois Supreme Court Rule 303(a)(2) (eff. June 4, 2008) provides that “[w]hen a timely postjudgment motion has been filed by any party *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered.” The problem in this case is that, based on the record before us, we are unable to determine whether the trial court ever ruled on respondent’s motion to vacate the finding of contempt. See *Valkiunas*, 389 Ill. App. 3d at 968 (noting that when unresolved postjudgment motions remain, the notice of appeal does not become effective until the trial court resolves the pending motions); *Chand v. Schlimme*, 138 Ill. 2d 469, 475-77 (1990) (holding that timely filed postjudgment motion filed on same day as notice of appeal rendered notice of appeal premature). Accordingly, we conclude that respondent’s notice of appeal was premature and that we therefore lack jurisdiction to consider appeal No. 2-11-0696. We presume that respondent can timely file a notice of appeal upon the trial court’s resolution of the pending postjudgment motion in this matter. However, as we have noted in other cases, if the postjudgment motion has been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows respondent to establish the effectiveness of the present notice of appeal. See

Schwieger, 379 Ill. App. 3d at 689-90; *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007).

In the latter event, respondent may file a petition for rehearing and supplement the record, thereby establishing our jurisdiction to address the merits.

¶ 19 B. Appeal No. 2-11-1209

¶ 20 In appeal No. 2-11-1209, respondent challenges the denial of his petition to modify the judgment of dissolution to decrease his child-support and maintenance obligations. In his jurisdictional statement and notice of appeal, respondent asserts that we have jurisdiction over appeal No. 2-11-1209 pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008).

¶ 21 Subject to statutory or supreme court rule exceptions, our jurisdiction is limited to reviewing appeals from final judgments. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989); see also Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) (“Every final judgment of a circuit court in a civil case is appealable as of right.”); Illinois Supreme Court Rule 303 (eff. June 4, 2008) (setting forth the procedure for perfecting an appeal from a final judgment of the circuit court in a civil case). A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Verdung*, 126 Ill. 2d at 553. One of the exceptions referenced in *Verdung* is found in Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Rule 304(a) provides in relevant part that if multiple claims 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 claims only if the trial court makes an express written finding that there is no just reason to delay enforcement, appeal, or both. Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). A claim is “ ‘any right, liability or matter raised in an action.’ ” *Gutman*, 232 Ill. 2d at 151 (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 464

(1990)). Our supreme court has held that without a Rule 304(a) finding, a final order disposing of fewer than all the claims is not an appealable order and does not become appealable until all of the claims are resolved. *Marsh*, 138 Ill. 2d at 464. In doing so, the court noted that the purposes behind Rule 304(a) were to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy. *Marsh*, 138 Ill. 2d at 465, citing *Ariola v. Nigro*, 13 Ill. 2d 200, 207 (1958).

¶ 22 In *In re Marriage of Leopando*, 96 Ill. 2d 114 (1983), the supreme court addressed the appealability of a custody order in a dissolution proceeding. In that case, the trial court awarded permanent custody of the parties' minor child to the husband. The trial court reserved for future consideration the issues of maintenance, property division, and attorney fees. The custody order contained a written finding in accordance with Rule 304(a) that there was no just reason to delay enforcement or appeal of the order. On appeal, the supreme court addressed whether the trial court's order was final and appealable. The court held that a petition for dissolution of marriage advances a single claim—a request for an order dissolving the parties' marriage. *Leopando*, 96 Ill. 2d at 119. Thus, the court reasoned, the numerous other issues raised in a dissolution proceeding, including custody, are not separate claims; they are merely ancillary to the principal cause of action. *Leopando*, 96 Ill. 2d at 119-20. Since a dissolution proceeding constitutes only one claim, a ruling on any issue ancillary to the principal claim is not appealable under Rule 304(a), which applies only when multiple claims exist. *Leopando*, 96 Ill. 2d at 119-20. The *Leopando* court emphasized that its holding furthered the purpose behind Rule 304(a), *i.e.*, discouraging piecemeal appeals. *Leopando*, 96 Ill. 2d at 119-20.

¶ 23 Of course, we are not dealing with a petition for dissolution of marriage in this case. The judgment of dissolution of marriage was entered in September 2009 and was long ago final for purposes of appeal. This case involves the appealability of a ruling in a postdissolution proceeding. In *In re Custody of Purdy*, 112 Ill. 2d 1 (1986), the supreme court addressed such an issue. In *Purdy*, custody of the parties' minor child was awarded to the mother. The father subsequently filed a petition for change of custody. After a hearing, the trial court entered an order granting the petition. The order also provided the mother with reasonable visitation on alternating weekends and holidays, but reserved ruling on summer visitation. In accordance with Rule 304(a), the order also stated that there was no just reason to delay its enforcement or appeal. Relying on *Leopando*, the appellate court dismissed the mother's appeal on the ground that the trial court order was not final and appealable. However, the supreme court pointed out that *Leopando* did not involve a postdissolution petition. *Purdy*, 112 Ill. 2d at 4-5. The court then explained:

“Unlike the situation in *Leopando* in which the cause of action was a petition for dissolution of marriage and only the issue of custody had been decided, here the cause of action is a petition for a change of custody and *all* related claims have been decided except for the extent of the mother's summer visitation, a matter that is always subject to revision. Thus, the kind of piecemeal litigation that the decision in *Leopando* was intended to prevent cannot occur in this context.” (Emphasis in original.) *Purdy*, 112 Ill. 2d at 5.

Thus, the supreme court held that the father's postdissolution petition for change of custody constituted a separate cause of action and was therefore a final and appealable order. *Purdy*, 112 Ill. 2d at 5.

¶ 24 Since *Purdy* was decided, two divergent lines of cases have developed regarding the timing of an appeal from postdissolution proceedings. The First and Third districts of this appellate court hold that a postdissolution petition is a new action and is therefore independently appealable upon its resolution even if other postdissolution matters are pending and the trial court did not certify the matter pursuant to Rule 304(a). See, e.g., *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶¶ 26-38; *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1097-98 (2011); *In re Marriage of Carr*, 323 Ill. App. 3d 481 (2001). This district and the Fourth district of this appellate court hold that a postdissolution petition is a new claim within the original dissolution proceeding and therefore, in the absence of a Rule 304(a) finding, is appealable only when all pending postjudgment motions or separate claims are resolved. See, e.g., *Schwieger*, 379 Ill. App. 3d at 689-90; *Knoerr*, 377 Ill. App. 3d at 1043-50; *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 734-45 (2007); *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 157-58 (2006); *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999-1001 (2003).

¶ 25 *Alyassir* is instructive. There, a judgment of dissolution of marriage was entered in 1993. In May 2001, the wife filed a two-count postdissolution petition. Count I sought an increase in the husband's child-support obligation. Count II requested a rule to show cause why the husband should not be held in contempt for failing to pay medical bills that were his responsibility under the judgment of dissolution of marriage. After the trial court ruled on count I, the wife filed a notice of appeal. At that time, count II of her petition remained pending. Citing to *Marsh*, 138 Ill. 2d at 464, we noted that when an action involves multiple claims for relief, an order that finally resolves only one claim is not immediately appealable unless the trial court includes in its order a Rule 304(a) finding. *Alyassir*, 335 Ill. App. 3d at 999. In *Alyassir*, the order from which the wife appealed

resolved only one of the two claims in her petition and the trial court never made a Rule 304(a) finding. *Alyassir*, 335 Ill. App. 3d at 999. Thus, we dismissed the wife's appeal for lack of jurisdiction. *Alyassir*, 335 Ill. App. 3d at 999-1001.

¶ 26 In doing so, we discussed the wife's reliance on *Carr*, 323 Ill. App. 3d 481. In *Carr*, the husband petitioned in 1998 to modify a child-support obligation set by a 1989 dissolution judgment. After the trial court granted the petition, both parties moved to reconsider and the wife filed a petition for contribution to attorney fees. On August 27, 1999, the trial court granted the husband's motion to reconsider. Apparently, that order did not contain a Rule 304(a) finding. On March 9, 2000, the trial court ruled on the wife's request for attorney fees. Thereafter, the wife filed a notice of appeal, challenging the trial court's modification of child support. The *Carr* court dismissed the wife's appeal. *Carr*, 323 Ill. App. 3d at 485-86. The court reasoned that the wife could have appealed within 30 days of the ruling of August 27, 1999, which finally disposed of the husband's petition to modify child support. *Carr*, 323 Ill. App. 3d at 485. In *Alyassir*, we acknowledged that *Carr* appeared to support the *Alyassir* wife's claim that the ruling on count I of her petition was appealable. *Alyassir*, 335 Ill. App. 3d at 1000. However, we concluded that *Carr* was unsound for two reasons. *Alyassir*, 335 Ill. App. 3d at 1000-01. First, the *Carr* court failed to consider that even if the claims were separate, that only meant that an order that finally resolved fewer than all of them could be made immediately appealable by including a written Rule 304(a) finding. *Alyassir*, 335 Ill. App. 3d at 1000. Second, *Carr* removed the exercise of discretion given to the trial court to decide if a piecemeal appeal best served judicial economy. *Alyassir*, 335 Ill. App. 3d at 1001.

¶ 27 Following *Alyassir*, this court decided *Duggan*, 376 Ill. App. 3d 725. In *Duggan*, the mother filed a postdissolution petition to increase the father's child support. Eventually, the parties agreed

to the entry of a support order. Thereafter, the father filed (1) a timely motion to vacate the agreed order and (2) a petition for visitation. On December 21, 2005, the trial court entered an order granting the motion to vacate in part. At that time, the court did not rule on the father's petition for visitation, and the court's order did not contain a Rule 304(a) finding. On January 18, 2006, the father filed a notice of appeal. On May 23, 2006, the trial court entered an order resolving the father's petition for visitation. On appeal, we addressed our jurisdiction to consider the father's appeal. Relevant here, we held that an approach that treats postdissolution petitions as new claims within the dissolution action was proper. *Duggan*, 376 Ill. App. 3d at 734. We reasoned that such an approach "enables the trial court to better serve the needs of families caught up in the often-painful aftermath of divorce by considering all of the relevant pre- and post dissolution proceedings together, rather than in isolation." *Duggan*, 376 Ill. App. 3d at 734. Ultimately, we concluded that the father's appeal, although premature, was "saved" by Rule 303(a)(2). *Duggan*, 376 Ill. App. 3d at 734.

¶ 28 More recently, the supreme court decided *Gutman*, 232 Ill. 2d 145. In *Gutman*, the husband and the wife each filed a postdissolution petition with respect to maintenance. Subsequently, the wife filed a petition for indirect civil contempt, alleging that the husband stopped making maintenance payments despite a prior order requiring him to do so. The trial court entered a rule to show cause against the husband and set the matter for a hearing on the rule, together with the pending maintenance petitions. The wife failed to appear at the hearing, so the trial court granted the husband's petition to terminate maintenance and dismissed the wife's petition to continue and modify maintenance. The trial court's order did not address the contempt petition, and it did not contain a finding pursuant to Rule 304(a). The wife appealed. The supreme court held that the

postdissolution order granting the petition to terminate maintenance was not final and appealable without a Rule 304(a) finding because the wife's civil contempt petition remained pending. The court explained that a pending contempt petition is not "a separate claim independent of the dissolution action." *Gutman*, 232 Ill. 2d at 153-54. Rather, the contempt petition and two maintenance petitions raised "claims for relief in the same action." *Gutman*, 232 Ill. 2d at 156. Thus, although the order terminating maintenance was final, it was final as to fewer than all claims in the action because the contempt petition remained unresolved. *Gutman*, 232 Ill. 2d at 156. Further, the order did not contain Rule 304(a) language. *Gutman*, 232 Ill. 2d at 156. As such, the supreme court concluded that the wife's appeal, filed before the resolution of her contempt petition, was premature. *Gutman*, 232 Ill. 2d at 156.

¶ 29 The courts in *Demaret* and *A'Hearn*, while acknowledging *Gutman*, stated that it did not resolve the conflict in authority. *Demaret*, 2012 IL App (1st) 111916, ¶ 35; *A'Hearn*, 408 Ill. App. 3d at 1096. We agree that *Gutman* did not expressly address the conflict in authority. Nevertheless, *Gutman* tacitly did so in that it supports the line of cases that hold that a postdissolution petition is a new claim within the original dissolution proceeding and therefore, in the absence of a Rule 304(a) finding, is appealable only when all pending postjudgment motions or separate claims are resolved. We see no reason to depart from *Gutman* or from *Alyassir*, *Duggan*, and their progeny. As such, we continue to hold that, in the absence of a Rule 304(a) finding, a ruling on a postdissolution petition is final only when all pending petitions or other separate claims have been resolved. See *e.g.*, *Valkiunas*, 389 Ill. App. 3d at 966-69; *Schwieger*, 379 Ill. App. 3d at 689-90; *Knoerr*, 377 Ill. App. 3d at 1043-50; *Duggan*, 376 Ill. App. 3d at 734-45; *Gaudio*, 368 Ill. App. 3d at 157-58; *Alyassir*, 335 Ill. App. 3d at 999-1001.

¶ 30 Turning to the present case, we note that neither the June 27, 2011, order denying respondent's motion to modify the judgment of dissolution nor the November 4, 2011, order denying respondent's motion to reconsider the same contains Rule 304(a) language. Further, it is unclear from the record before us whether, at the time of its rulings on respondent's motion to modify the judgment of dissolution, the trial court finally disposed of all pending postdissolution motions. For instance, in its June 27, 2011, order, the trial court noted that it had granted petitioner's September 28, 2010, petition for a rule to show cause and found respondent in civil contempt of court for failing to comply with his support obligations. Yet, in the same order, the court set a hearing on the petition to determine the amount of respondent's child-support and maintenance arrearages and to address the issue of unreimbursed medical and dental expenses. Further, on September 28, 2011, the trial court entered an order setting a hearing on October 24, 2011, for "completion of the rule." Following the hearing on October 24, 2011, the trial court set a hearing on December 2, 2011, to consider the "balance of the rule." A transcript of the December 2, 2011, hearing is not included in the record on appeal, and we find no other indication in the record of the status of the balance of petitioner's September 28, 2010, petition for a rule to show cause. Thus, based on the record before us, it appears that on November 29, 2011, when respondent filed the notice of appeal at issue, petitioner's September 28, 2010, petition for a rule to show cause had not been fully resolved. The pendency of this petition rendered the trial court's ruling on respondent's postdissolution petition to modify nonfinal and respondent's notice of appeal premature. See *Schwieger*, 379 Ill. App. 3d at 689.

¶ 31 Further, we cannot determine from the record whether petitioner's April 19, 2011, petition for a rule to show cause has been resolved. The trial court's June 27, 2011, order, provides that the

April 19, 2011, rule to show cause was withdrawn. Yet, in an order entered on December 2, 2011, the trial court continued for status to January 25, 2012, petitioner's petition for a rule to show cause filed on April 19, 2011. As noted above, the record before us does not establish what occurred at the December 2, 2011, proceeding. In addition, we note that on January 25, 2012, petitioner filed another petition for a rule to show cause, which was set for status on March 13, 2012. The record before us does not indicate whether the January 25, 2012, petition for a rule to show cause has been finally resolved. The uncertain resolution of these postdissolution petitions also compels us to conclude that we lack jurisdiction to consider the appeal from the trial court's ruling on respondent's petition to modify the judgment of dissolution. See *Valkiunas*, 389 Ill. App. 3d at 967-68 (2008) (holding that notice of appeal in postjudgment matter takes effect only when all pending claims, even those filed after the notice of appeal, have been resolved).

¶ 32 Accordingly, we conclude that respondent's notice of appeal was premature and that we therefore lack jurisdiction to consider appeal No. 2-11-1209. As such, respondent has two options. First, he can obtain a Rule 304(a) finding with respect to his petition to modify the judgment of dissolution of marriage. See *Valkiunas*, 389 Ill. App. 3d at 968-69. Second, he can obtain an order or orders resolving any pending postdissolution motions or other claims in this matter. See *Valkiunas*, 389 Ill. App. 3d at 968-69. We presume that respondent can timely file a notice of appeal once the trial court certifies its ruling on the petition to modify pursuant to Rule 304(a) or it resolves any pending postdissolution motions or separate claims in this matter. However, as noted previously, if all such matters have been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows respondent to establish the effectiveness of the present notice of appeal by filing a petition for rehearing and supplementing the record, thereby establishing our

jurisdiction to address the merits. See *Schwieger*, 379 Ill. App. 3d at 689-90; *Knoerr*, 377 Ill. App. 3d at 1050.

¶ 33

III. CONCLUSION

¶ 34 For the reasons set forth above, we dismiss both of respondent's appeals.

¶ 35 No. 2-11-0696: Appeal dismissed.

¶ 36 No. 2-11-1209: Appeal dismissed.