

FIRST DIVISION
March 29, 2013

No. 1-12-0553

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE FORMER MARRIAGE OF:)	Appeal from the
)	Circuit Court of
PAULA MATWICHUK, a/k/a,)	Cook County.
PAULA KWAINS,)	
)	
Petitioner-Appellee,)	No. 98 D 7766
)	
and)	
)	
MYRON MATWICHUK,)	Honorable
)	Veronica B. Mathein,
Respondent-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed for lack of appellate jurisdiction where the order appealed from, the trial court's denial of respondent's motion for summary judgment, was not final and appealable.

¶ 2 In this post-decree dissolution of marriage case, petitioner, Paula Kwains, filed a petition to modify and extend rehabilitative maintenance. Respondent filed a petition to terminate petitioner's rehabilitative maintenance and then filed a motion for summary judgment. On January 17, 2012, the trial court entered an order denying respondent's motion for summary judgment and setting a hearing

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date of March 28, 2012, for hearing on the parties' respective petitions. The trial court also found that, pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), there was no just reason for delaying appeal or enforcement of the order denying respondent's motion for summary judgment. Respondent appeals. We dismiss for lack of appellate jurisdiction.

¶ 3 On April 28, 1973, petitioner and respondent were married. On May 12, 1998, petitioner filed a petition for legal separation of marriage. Respondent, thereafter, filed a counter-petition for dissolution of marriage. On July 20, 2000, the trial court entered a judgment for dissolution of marriage, divided the marital assets, and awarded petitioner rehabilitative maintenance in the amount of \$1,500 per month for four years, "to be reviewed at the end of four years."

¶ 4 Four years later, on July 6, 2004, respondent filed a petition to review and terminate petitioner's rehabilitative maintenance. On July 16, 2004, petitioner filed petitions to increase and extend her rehabilitative maintenance. On February 3, 2005, the trial court ordered that petitioner's rehabilitative maintenance be extended for six years.

¶ 5 A little over six years later, on March 9, 2011, petitioner filed a motion to modify and extend her rehabilitative maintenance. On March 11, 2011, respondent filed a petition to terminate petitioner's rehabilitative maintenance. On October 25, 2011, respondent filed a motion for summary judgment on his petition to terminate petitioner's rehabilitative maintenance.

¶ 6 On January 17, 2012, the trial court entered an order denying respondent's motion for summary judgment, setting a hearing date of March 28, 2012, for hearing on the parties' respective petitions and finding, under Rule 304(a), no just reason to delay enforcement or appeal.

¶ 7 Respondent appeals the January 17, 2012, order denying his motion for summary judgment.

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Petitioner has not filed an appellee's brief, but we find we may decide this case based on the record and on respondent's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 Before reaching the merits, we must first address the threshold question of appellate jurisdiction, despite this issue not being raised by the parties. See *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006) (noting that reviewing court has a duty to consider jurisdiction *sua sponte*).

¶ 9 "Jurisdiction of appellate courts is limited to reviewing appeals from final judgments, subject to statutory or supreme court rule exceptions." *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). "A judgment is considered final 'if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.'" *In re Curtis B.*, 203 Ill. 2d 53, 59 (2002) (quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)).

¶ 10 Respondent here is appealing an order denying his motion for summary judgment; however, "[o]rdinarily, the denial of summary judgment is not appealable, because such an order is interlocutory in nature." *Clark v. Children's Memorial Hospital*, 2011 IL 108656, ¶ 119. The supreme court noted exceptions to this rule when "the parties have filed cross-motions for summary judgment and one party's motion is granted and the other party's denied," and when the case is otherwise "properly before a reviewing court from a final judgment and no trial or hearing has been conducted." *Id.* Neither exception is applicable here.

¶ 11 We note the trial court made a Rule 304(a) finding. Rule 304(a) provides that "[i]f multiple

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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." (Emphasis added.) Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). However, as discussed, the denial of summary judgment is not final (*Clark*, 2011 IL 108656, ¶ 119), and "the mere presence of Rule 304(a) language cannot make a nonfinal order final and appealable." *People ex rel. Block v. Darm*, 267 Ill. App. 3d 354, 356 (1994).

¶ 12 For the foregoing reasons, we dismiss for lack of appellate jurisdiction.

¶ 13 Dismissed.