

No. 1-12-3732

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DENISE HICKS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
TANVI DHERE, M.D., Individually and as Agent of)	
Northwestern Memorial Hospital, FLAVIA CASTELINO,)	10 L 3767
M.D., Individually and as agent of Northwestern Memorial)	
Hospital, MICHAEL KORNFELD, M.D., Individually and)	
as agent of Northwestern Memorial Hospital, and)	
NORTHWESTERN MEMORIAL HOSPITAL, an Illinois)	
not-for-profit corporation,)	Honorable
)	William E. Gomolinski,
Defendants-Appellants.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* A notice of appeal referencing an order denying a motion to stay a hearing on a motion for summary judgment does not divest the circuit court of jurisdiction because the order denying the motion to stay regulates only the procedural details of the litigation and it does not affect the rights of the parties outside of the litigation and, as a consequence, is not an

appealable interlocutory injunctive order.

¶ 2 Plaintiff, Denise Hicks, filed a complaint alleging medical malpractice against the defendants, Northwestern Memorial hospital and three doctors, Tanvi Dhere, Flavia Castelino and Michael Kornfeld, individually and as agents of Northwestern Memorial hospital. The defendants filed a motion for summary judgment, but before the circuit court could rule on the motion, the complaint was dismissed for want of prosecution (DWP) on April 29, 2009. Hicks refiled her complaint on March 26, 2010. When the 2010 case was reassigned to the circuit court judge who presided over the 2006 case for a ruling on the motion for summary judgment, Hicks filed a motion to stay the hearing on the motion for summary judgment in order to challenge the reassignment of the case. On May 20, 2010, the circuit court denied Hicks' motion to stay the proceedings and Hicks filed a notice of appeal. On May 21, 2010, the day after Hicks filed her notice of appeal, the circuit court entered an order granting the defendants' motion for summary judgment. The defendants filed a motion to dismiss Hicks' appeal in the 2010 case and on August 18, 2010, the appellate court found that it did not have jurisdiction and granted the motion.

¶ 3 On May 18, 2012, Hicks filed a section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)) which requested that the circuit court vacate the May 21, 2010, order granting defendants' motion for summary judgment. On December 12, 2012, the circuit court found that it did not have jurisdiction to enter the May 21, 2010, order that granted defendants' motion for summary judgment and it vacated the order.

¶ 4 In this appeal, defendants argue that Hicks' May 20, 2010, notice of appeal did not divest the

circuit court of jurisdiction on May 21, 2010, to rule on defendants' motion for summary judgment because the May 20, 2010, order appealed from in the May 20, 2010, notice of appeal was not a final order or an interlocutory order appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). We find that the circuit court's May 20, 2010, order, which denied Hicks' motion to stay the hearing on the defendants' motion for summary judgment, was not a final order under Supreme Court Rule 301 (eff. Feb. 1, 1994) or an appealable interlocutory order under Rule 307. Therefore, we hold that the circuit court had jurisdiction on May 21, 2010, to grant defendants' motion for summary judgment. Accordingly, we reverse the circuit court's order granting Hicks' section 2-1401 petition.

¶ 5 Background

¶ 6 The 2010 Appeal

¶ 7 On February 3, 2006, Hicks filed a complaint (case No. 2006 L 001288) against the defendants alleging medical malpractice for the loss of hearing in her left ear. On April 3, 2008, the defendants filed a joint motion for summary judgment. On March 10, 2009, Judge Egan granted Hicks leave to take the deposition of Dr. Bell, Hicks' primary care physician, and ordered that the deposition be presented to the court by April 15, 2009. At the hearing on the motion for summary judgment on April 24, 2009, Judge Egan granted Hicks an extension to complete Dr. Bell's deposition and continued the hearing until May 29, 2009, for the issuance of a written ruling on defendants' motion for summary judgment. Before the court ruled on the summary judgment motion, the case appeared above the line on the "Black Line Trial Call" and was dismissed on April 29, 2009, for want of prosecution.

¶ 8 Hicks refiled her case on March 26, 2010, (case No. 2010 L 003767) and the case was assigned to Judge Flanagan. On April 30, 2010, the defendants filed a motion asking the court to enter an order adopting all responsive pleadings, discovery, motions and orders entered in the 2006 case, to close fact discovery, and to transfer the matter to Judge Egan for a ruling on the motion for summary judgment. First, on May 7, 2010, Judge Flanagan entered an order, over Hicks' objection, that closed all fact discovery and transferred the case to Judge Maddux, the presiding judge of the law division, "for reassignment to calendar call X [Judge Egan] for final ruling on [the] summary judgment motion filed in [the] original action." Second, on May 7, 2010, Judge Maddux entered an order stating that because Judge Egan had heard arguments on defendants' motion for summary judgment prior to the entry of the DWP in the 2006 case, all pleadings, discovery, motions, and orders entered in the 2006 case were to be adopted in the 2010 case and the case was reassigned to Judge Egan for a ruling on the defendants' motion for summary judgment that was filed in the 2006 case. Finally, on May 7, 2010, Judge Egan entered an order setting a hearing for defendants' motion for summary judgment on May 20, 2010.

¶ 9 On May 19, 2010, Hicks filed a motion to stay the hearing on defendants' motion for summary judgment until she got a ruling on (1) her pending motion before Judge Flanagan to reconsider the May 7, 2010, order transferring the case to Judge Maddux for reassignment, and (2) her pending motion before Judge Maddux to recall the May 7, 2010, order reassigning the case to Judge Egan.

¶ 10 On May 20, 2010, Judge Egan entered the following order:

- “1. Plaintiff’s Motion to Stay Proceedings is denied; and
2. [C]ause continued to May 21, 2010, at 11:00 a.m. for delivery of court’s written ruling on the [defendants’] motion for summary judgment.”

Later that day, Hicks filed a notice of appeal from Judge Egan's order denying her motion to stay the proceedings. On May 21, 2010, Judge Egan granted defendants' motion for summary judgment.

¶ 11 On July 28, 2010, defendants filed a motion in the appellate court to dismiss Hicks' appeal (1) for want of prosecution because Hicks failed to file her docketing statement or the record by the deadline date, and (2) for lack of appellate court jurisdiction because the circuit court's May 20, 2010, order was not a final order appealable under Illinois Supreme Court Rule 303 (eff. May 30, 2008) or an injunctive order appealable under Rule 307(a)(1) (eff. Feb. 26, 2010).

¶ 12 On August 18, 2010, this court granted defendants' motion to dismiss Hicks’ appeal "for Want of Prosecution and Alternatively for Lack of Jurisdiction." *Hicks v. Dhere*, No. 1-10-1409. Hicks filed a motion for reconsideration and clarification to determine the specific grounds for the order dismissing her appeal. Although her docketing statement had designated Rule 303 as the basis of her appeal, Hicks argued in her motion that the May 20, 2010, order should be considered a denial of injunctive relief properly appealable under Rule 307(a)(1). On September 23, 2010, this Court entered an order stating that "this cause was dismissed for lack of jurisdiction." *Hicks v. Dhere*, No. 1-10-1409 (2010).

¶ 13 The Section 2-1401 Appeal

¶ 14 On May 18, 2012, Hicks filed a section 2-1401 petition to vacate (1) Judge Flanagan's May

7, 2010, order transferring the case to Judge Maddux for reassignment to Judge Egan and closing all fact discovery, and (2) Judge Egan's May 21, 2010, order granting defendants' motion for summary judgment.

¶ 15 On November 9, 2012, Judge Gomolinski held a hearing on Hicks' section 2-1401 petition and ordered the parties to prepare supplemental briefs on the issue of whether Hicks' filing of a notice of appeal on May 20, 2010, divested the circuit court of jurisdiction. In her supplemental brief, Hicks argued that the circuit court was divested of jurisdiction once she filed her notice of appeal and that the circuit court's denial of her motion to stay was in the nature of an injunctive order.

¶ 16 On November 29, 2012, Judge Gomolinski found that Hicks' motion to stay was a request for injunctive relief and that the circuit court:

"was divested of jurisdiction to make a substantial ruling based upon a proper notice of appeal filed by plaintiff's counsel in this matter prior to that ruling. And until that appeal was either ruled upon by the Appellate Court or dismissed, which it subsequently was in August of that year, this Court didn't have jurisdiction to enter the motion for summary judgment, therefore, the case is a live case pending before this Court."

Accordingly, on December 12, 2012, Judge Gomolinski entered an order that granted Hicks' section 2-1401 motion and vacated the May 21, 2010, order for lack of jurisdiction. Defendants filed this appeal.

¶ 17

Analysis

- ¶ 18 In this case, the circuit court granted Hicks' section 2-1401 petition after reviewing the pleadings and supporting documents, but it did not hold an evidentiary hearing; therefore, we review the circuit court's order granting Hicks' section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 17-18 (2007).
- ¶ 19 When deciding Hicks' section 2-1401 petition, the circuit court found that the May 20, 2010, order, which denied Hicks' motion to stay a hearing on defendants' motion for summary judgment, was an interlocutory order subject to review under Rule 307(a)(1). The circuit court also found that it was divested of jurisdiction when Hicks filed the May 20, 2010, notice of appeal.
- ¶ 20 Article VI of the Illinois Constitution provides that final judgments may be appealed as a matter of right from the circuit court to the appellate court. Ill. Const. 1970, art. VI, § 6. There is no constitutional right to appeal from interlocutory orders of the circuit court. *Department of Transportation ex rel. People v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 478 (2004). We note that article VI, section six empowers the supreme court to provide by rule for appeals to the appellate court from other than final judgments of the circuit courts. Ill. Const. 1970, art. VI, § 6. Pursuant to its rule making authority to provide for appeals from other than final judgments, the supreme court promulgated Rule 307(a)(1), which provides that "[a]n appeal may be taken to the Appellate Court from an interlocutory order of court *** granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).
- ¶ 21 The defendants argued in their motion to dismiss Hick's 2010 appeal that the May 20, 2010,

order denying Hicks' motion to stay the circuit court's hearing on the motion for summary judgment was not a final order. Rule 301 provides for appeals from final judgments of the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); *Gardner v. Mullins*, 234 Ill. 2d 503, 510 (2009). A final judgment is one that "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 A.H.*, 207 Ill. 2d 590, 594 (2003). Here, the May 20, 2010, order denying Hicks' motion to stay the hearing on defendants' motion for summary judgment was not a final order because all claims were still pending against all the defendants and it did not fully and finally dispose of the rights of any party in the medical malpractice action. *In re A.H.*, 207 Ill. 2d at 594.

¶ 22 After the appellate court found that it did not have jurisdiction to hear Hicks' 2010 appeal, Hicks filed a motion for reconsideration and or clarification in which she argued that the May 20, 2010, order appealed from was in the nature of an injunctive order appealable pursuant to Rule 307(a)(1).

¶ 23 When determining whether an order constitutes an appealable injunctive order under Rule 307(a)(1), we look to the substance of the action, not its form. *In re A Minor*, 127 Ill. 2d 247, 260 (1989). Actions of the circuit court having the force and effect of injunctions are still appealable even if called something else. *In re A Minor*, 127 Ill. 2d at 260. An injunction is a judicial process operating in personam and requiring a person to do or refrain from doing a particular thing. *In re A Minor*, 127 Ill. 2d at 261. However, not every nonfinal order of a court is appealable, even if it compels a party to do or not to do a particular thing. *In re A*

Minor, 127 Ill. 2d at 261-62.

¶ 24 Here, to determine the substance of the circuit court's action, we examine the May 20, 2010, order to determine the effect the order had on the parties. See *In re A Minor*, 127 Ill. 2d at 260. We note that Hicks' motion to stay requested that Judge Egan postpone the hearing on defendants' motion for summary judgment (1) until Judge Flanagan ruled on Hicks' motion to reconsider the May 7, 2010, order transferring the case to Judge Maddux for reassignment to Judge Egan, and (2) until Judge Maddux ruled on Hicks' motion to recall the May 7, 2010, order reassigning the case to Judge Egan. Judge Egan entered an order that denied Hicks' motion to stay on May 20, 2010, and on May 21, 2010, the judge granted defendants' motion for summary judgment.

¶ 25 Case law in Illinois establishes that orders of the circuit court granting or denying motions to stay are appealable under Supreme Court Rule 307(a)(1). See *Marsh v. Illinois Racing Board*, 179 Ill. 2d 488, 490-97 (1997) (holding that circuit court's order staying the board's order revoking a horse-racing license was injunctive in nature and appealable under Rule 307); *Beard v. Mount Carroll Mutual Fire Insurance Co.*, 203 Ill. App. 3d 724, 727 (1990) (holding that a denial of a motion to stay proceedings and to compel compliance with the appraisal provision of a fire policy was in the nature of an injunction).

¶ 26 However, orders of the circuit court which can be properly characterized as ministerial or administrative because they regulate only the procedural details of litigation before the court cannot be the subject of an interlocutory appeal. *In re A Minor*, 127 Ill. 2d at 262. The circuit court possesses the inherent authority to control its own docket and the course of

litigation. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 195-96 (2007). Therefore, the determination of the judge who will hear a particular case is generally an administrative matter. *People v. Gray*, 363 Ill. App. 3d 897, 901 (2006).

¶ 27 Here, Hicks' motion to stay requested that Judge Egan postpone the hearing on defendants' motion for summary judgment until Hicks could challenge the orders which reassigned her case to Judge Egan. Supreme Court Rule 21(c) provides that the chief judge of each circuit may enter general orders in exercise of his or her general administrative authority, including orders providing for assignment of judges, general or specialized divisions, and times and places of holding court. Ill. S. Ct. R. 21(c) (eff. Dec. 1, 2008). Pursuant to the administrative authority conferred by Rule 21(c), the chief judge of the circuit court of Cook County promulgated General Order 13 which provides that the "Presiding Judge of each Division of the County Department and each District of the Municipal Department of the Circuit Court of Cook County is authorized to transfer to any judge previously assigned to said Division or District any matter previously assigned to that judge for the purpose of *** terminating such matter." Cook Co. Cir. Ct. G.O. 13 (Oct. 20, 1964). Accordingly, Judge Flanagan's order transferring the 2010 case to Judge Maddux, the presiding judge of the law division, and Judge Maddux's order reassigning the 2010 case to Judge Egan, who was previously assigned to the 2006 case, were purely administrative acts (*Gray*, 363 Ill. App. 3d at 901) in exercise of the court's inherent authority to control its docket and the course of the litigation. *J.S.A.*, 224 Ill. 2d at 195-96.

¶ 28 Therefore, we find the May 20, 2010, order denying the motion to stay was ministerial and

administrative in nature, falling within the inherent power of the court to control its docket and regulate the procedural details of the litigation, and the order did not affect the relationship of the parties in their everyday activity outside of the litigation. *In re A Minor*, 127 Ill. 2d at 262. Accordingly, the May 20, 2010, order was not an injunctive order appealable under Supreme Court Rule 307(a)(1). *In re A Minor*, 127 Ill. 2d at 262.

¶ 29 We note that defendants also argued in the section 2-1401 appeal that the law-of-the-case doctrine barred the circuit court from finding in the section 2-1401 proceedings that Hicks' notice of appeal divested the circuit court of jurisdiction because that finding was contrary to the appellate court's finding that it lacked jurisdiction over Hicks' May 2010 appeal. The law of the case doctrine bars litigation of an issue previously decided in the same case. *In re Christopher K.*, 217 Ill. 2d 348, 365 (2005) (citing *People v. Tenner*, 206 Ill. 2d 381, 395 (2002)). We find that the doctrine does not apply in this case because a section 2-1401 petition is a new proceeding and is not a continuation of the former proceeding. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95,102 (2002); 735 ILCS 5/2-1401(b) (West 2010).

¶ 30 Finally, we turn to the question of whether the circuit court erred when it found that it was divested of jurisdiction when Hicks filed her notice of appeal from the May 20, 2010, interlocutory order denying her motion to stay a hearing on the motion for summary judgment. A notice of appeal is a procedural device filed with the circuit court that, when timely filed, vests jurisdiction in the appellate court in order to permit review of the judgment such that it may be affirmed, reversed or modified. *General Motors Corp. v. Pappas*, 242

Ill. 2d 163, 173 (2011). Generally, once the notice of appeal is filed, the appellate court's jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the circuit court. *Pappas*, 242 Ill. 2d at 173. However, if the order appealed from is not final and appealable, the notice of appeal neither deprives the circuit court of jurisdiction to proceed with the case nor vests the appellate court with jurisdiction to review. *The State ex rel. Beeler v. Target Corporation*, 367 Ill. App. 3d 860, 863-64 (2006) (citing *Welch v. City of Evanston*, 181 Ill. App. 3d 49, 55 (1989)).

¶ 31 In this case, because we found that the May 20, 2010, order was not a final order or an appealable interlocutory order, the May 20, 2010, notice of appeal, which referenced the May 20, 2010, order, did not divest the circuit court of jurisdiction, and the circuit court retained jurisdiction to enter the May 21, 2010, order granting defendants' motion for summary judgment. Accordingly, we find that the circuit court erred in the section 2-1401 proceeding when it found that the May 20, 2010, notice of appeal divested the circuit court of jurisdiction and prevented the court from entering the May 21, 2010, order granting defendants' motion for summary judgment.

¶ 32 Conclusion

¶ 33 We find the circuit court's May 20, 2010, order denying Hicks' motion to stay the proceedings was not a final order or an appealable interlocutory order, and the notice of appeal referencing the May 20, 2010, order did not divest the circuit court of jurisdiction to rule on the defendants' motion for summary judgment. Therefore, we find that the circuit court erred when it vacated the May 21, 2010, order in the section 2-1401 proceeding, and

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hold that the circuit court had jurisdiction to grant defendants' motion for summary judgment.

Accordingly, we reverse the decision of the circuit court that granted Hicks' section 2-1401 petition.

¶ 34 Reversed.