

No. 1-13-1652

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(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FOREST PRESERVE DISTRICT OF COOK COUNTY,)	
ILLINOIS, a body corporate and politic of the State of Illinois,)	
)	Appeal from
Plaintiff-Appellant,)	the Circuit Court
)	of Cook County
v.)	
)	00 L 050726
CONTINENTAL COMMUNITY BANK AND TRUST)	
COMPANY, an Illinois Corporation, as successor to)	Honorable
MAYWOOD-PROVISO STATE BANK, as Trustee under Trust)	Eileen O'Neill Burke,
Agreement dated November 2, 1983, known as Trust No. 6173,)	Judge Presiding
)	
Defendants-Appellees.)	

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 This is an eminent domain case. It concluded in 2003 with a \$1.4 million agreed settlement, but was reinstated when the defendant property owner, Jack Rivo, petitioned for relief from judgment under section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (2010). Once the case was reopened, Rivo filed compensation claims totaling an additional \$7 million and to regain title to the property. The plaintiff, Forest Preserve District of Cook County, Illinois, which

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we will subsequently refer to as the District, filed a motion to dismiss Rivo's claims, on grounds that reinstatement of the case had been an error. The trial court denied the District's motion. The District now seeks review and cites Supreme Court Rule 304(b)(3) as the basis for its interlocutory appeal. This rule authorizes an interlocutory appeal from "[a] judgment or order granting or denying any of the relief prayed in a petition [for relief from judgment] under section 2-1401 of the Code of Civil Procedure." Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010); 735 ILCS 5/2-1401 (2010). The District contends that although the motion it appeals from was titled as a motion to dismiss, it comes within the scope of the rule because the District was essentially asking the trial court to revisit its granting of Rivo's petition for relief from judgment, to vacate or at least modify the flawed ruling, and to dismiss Rivo's compensation claims. We will analyze this issue before considering the appellate arguments.

¶ 3 The disagreement between the parties dates to the 1990's, when the District's board of directors began talking about connecting two of the District's large recreational properties, Tampier Lake Preserve and McGinnis Slough, by purchasing 285 acres of mostly undeveloped property that separated those areas. The preserve, the slough, and the proposed green belt between them were in southwest Cook County, near Orland Park, Illinois, in the vicinity of Wolf Road and 135th Street. In 1991, by a 17 to 0 vote, the board purportedly approved a resolution and ordinance that enabled the board to create the green belt. The District then notified the affected property owners, applied for grant money from the State of Illinois Department of Conservation, and borrowed money to finance the property acquisitions. In 2000, the District began filing eminent domain actions, including the current suit concerning 12.5 acres that were held in beneficial

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ownership by Rivo. In 2003, Rivo agreed to give the District his fee simple title in exchange for \$1.4 million, the circuit court entered an agreed judgment order, and Rivo received the funds.

Property owners who had not entered into settlement agreements opposed the condemnation of their holdings and they argued successfully that the District never had legal authority to create the green belt because the board had not properly adopted the necessary ordinance. Thereafter, Rivo petitioned for relief from judgment, and the case was reinstated in 2012. See 735 ILCS 5/2-1401 (2010). Circuit Court Judge Margaret Ann Brennan ordered the reinstatement after reasoning that if the necessary ordinance was not properly adopted, then the circuit court could not "grant the relief of condemnation and therefore the Court lacked subject matter jurisdiction." Judge Brennan also reasoned that the court's lack of subject matter jurisdiction meant that Rivo's unconditional release of claims against the District was "invalid." Judge Brennan further found that the lack of subject matter jurisdiction was a "meritorious defense" to the condemnation settlement, which was the first of the three prongs of a successful section 2-1401 petition. See *Smith v. Airoom*, 114 Ill. 2d 209, 220-21, 499 N.E.2d 138, 1386 (1986) (indicating a section 2-1401 petitioner must show a meritorious defense, due diligence in presenting the defense, and due diligence in filing the petition). Judge Brennan resolved the due diligence prongs of the section 2-1401 petition by concluding that "any delay by [Rivo] can be excused based upon [his] reliance on the District's misrepresentations [that it did have authority to proceed with condemnation]."

¶ 4 The District sought reconsideration of the reinstatement ruling, and when that failed, the District tried to appeal.

¶ 5 In its 2012 appeal, the District cited Supreme Court Rules 301¹ and 303(a)(1)² as the basis for appellate jurisdiction over the trial court order that granted summary judgment to Rivo on his petition for relief from the agreed judgment. Ill. S. Ct. Rs. 301 (eff. Feb 1, 1994), 303(a)(1) (eff. June 4, 2008). However, in the trial court, Rivo filed a petition for attorney fees and in the appellate court he argued that the District's appeal was premature until his fee petition was resolved. More specifically, Rivo argued:

"9. Absent a final order, and with limited exceptions not relevant here, an appellate court cannot acquire subject matter jurisdiction over the matter unless the trial court has made a special finding ***.

10. When issues, such as the award of attorney's fees, [have] yet to be determined, a trial court's order is not a final order for the purposes of appeal.

Lamar Whiteco Outdoor Corp. v. City of West Chicago, 395 Ill. App. 3d 501, 916 N.E.2d 886 (2009). The *Lamar* court stated:

*** the finding that plaintiff is entitled to a not-yet-determined amount of attorney fees and costs is a nonfinal order similar to a finding of liability without a determination of damages. See *Szabo* [*v. U.S. Marine Corp.*, 819 F.2d 714, 717 (7th Cir. 1987)]; see also

1 Rule 301 states, "Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994).

2 Rule 303 states in relevant part, "The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from[.] Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

Rothert v. Rothert, 109 Ill. App. 3d 911, 919, 411 N.E.2d 179[, 184] (1982) (when a trial court has not entered a final order determining the amount of attorney fees and costs, issues relating to such an award are not ripe for review).' [*Lamar*, 395 Ill. App. 3d at 504,] 916 N.E.2d at 889-90.

The District did not respond to Rivo's motion. Another panel of this appellate court granted Rivo's motion to dismiss the appeal. Forest Preserve District of Cook County, Illinois v. Continental Community Bank & Trust Co., No. 1-12-2211 (Sept. 6, 2012).

¶ 6 When they returned to the trial court, Rivo supplemented his attorney fee request with a detailed accounting totaling \$93,000 owed to attorney Gregory A. Bedell, who had assisted Rivo between 2003 and 2012 in the section 2-1401 proceedings. Rivo also filed claims stemming from the condemnation proceedings, including allegations that he is entitled to millions of dollars in damages and to reacquire title from the District.³

¶ 7 It was at this point that the District filed the motion at issue and Rivo countered with a motion for summary judgment on the District's condemnation complaint. These motions were heard in mid 2013 by Circuit Court Judge Eileen O'Neill Burke, who essentially refused to delve

³ With new counsel, Cathy A. Pilkington, Rivo filed 1) a petition for restitution, damages, and other relief including \$759,000 to restore the property to its 2003 condition, the return of \$4,800 Rivo paid to rent the condemned property from the District, \$9,000 Rivo paid to move out of the condemned property, and \$3,750,000 as the amount Rivo would have received in 2007 if he had still held title and been able to sell the property to a different buyer; and 2) a counterclaim seeking an additional \$200,000 as the fair market value of the title in 2003, \$759,000 to restore the property to its 2003 condition, \$285,000 in lost rent while the District held title; a constructive trust over the property; and Section 1983 damages for the wrongful taking of the property.

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into Judge Brennan's 2012 ruling and stated that if the District "was so assured of the incorrectness of the previous ruling, the plaintiff should have raised those arguments through an appeal," however, "Plaintiff's first appeal was dismissed and Plaintiff never filed another appeal." Judge Burke deemed any objection to Judge Brennan's ruling to have been waived and she refused to "re-litigate issues which have already been properly decided in previous proceedings." Judge Burke then granted Rivo's motion for summary judgment on the condemnation complaint. This is the order from which the District now appeals.

¶ 8 Although Rivo argued that the 2012 appeal based on Supreme Court Rules 301 and 303 was premature because his fee petition was pending in the circuit court, he now argues that the 2012 appeal was actually timely under Supreme Court Rule 304(b)(3) as an interlocutory appeal from "[a] judgment or order granting or denying any of the relief prayed in a petition [for relief from judgment] under section 2-1401 of the Code of Civil Procedure." Ill. S. Ct. Rs. 301 (eff. Feb 1, 1994), 303(a)(1) (eff. June 4, 2008); 304(b)(3) (eff. Feb. 26, 2010); 735 ILCS 5/2-1401 (2010). Rivo contends that the District's recent motion to vacate was essentially an improper motion to *reconsider* the granting of Rivo's 2-1401 petition in 2012 and that there is no rule that authorizes interlocutory appeal from that order. Rivo urges us to dismiss the District's appeal for lack of jurisdiction.

¶ 9 The District responds that its appeal comes within the scope of Rule 303(b)(3), because that is a broadly-worded rule that allows interlocutory appeal from a "judgment or order" granting or denying "any" of the relief sought in a section 2-1401 petition, and the District's motion asked the trial court to modify its granting of section 2-1401 relief to Rivo. Ill. S. Ct. R. 304(b)(3) (eff.

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Feb. 26, 2010); 735 ILCS 5/2-1401 (2010). The District fails to cite any authority that supports its expansive reading of the rule.

¶ 10 We are not persuaded by the District's argument. Instead, we are persuaded by Rivo's contention that a "motion to dismiss" a prior ruling does not come within the terms of cited rule. It is apparent that Judge Burke's refusal to dismiss Rivo's new compensation claims was not the "granting or denying *** of a section 2-1401 [petition]." Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). Consistent with that conclusion, we dismiss the District's appeal for lack of jurisdiction.

¶ 11 Appeal dismissed.