

2014 IL App (2d) 140688-U  
No. 2-14-0688  
Order filed September 24, 2014

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF MIHEE E. WEBB,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-D-0113
	)	
BRIAN D. WEBB,	)	Honorable
	)	Steven L. Nordquist,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Burke and Justice Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Respondent's petition for leave to appeal pursuant to Rule 306(a)(2) was, based on the petition's substance, a petition for interlocutory review of the trial court's order denying his motion to dismiss pursuant to the doctrine of *res judicata*. Therefore, we are without authority to grant the petition.
- ¶ 2 In February 2014, petitioner, Mihee E. Webb, filed a petition for dissolution of marriage seeking to dissolve her marriage with respondent, Brian D. Webb, alleging irreconcilable differences and mental cruelty. Respondent moved to dismiss the petition pursuant to the doctrine of *res judicata*, arguing that petitioner had previously filed a petition to dissolve their marriage in Stephenson County due to irreconcilable differences and mental cruelty, which the

trial court in that matter dismissed after finding that petitioner failed to produce sufficient evidence of mental cruelty. The trial court here denied respondent's motion to dismiss. Thereafter, respondent filed a motion to dismiss under the doctrine of *forum non conveniens*, which the trial court also dismissed. Respondent now brings a petition for an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. July 1, 2014), purporting to seek review of the trial court's order denying his motion to dismiss under the doctrine of *forum non conveniens*. However, because the substance of his petition addresses the trial court's ruling on his motion to dismiss under the doctrine of *res judicata*, we deny the petition for lack of jurisdiction.

¶ 3

#### I. BACKGROUND

¶ 4 The record reflects that petitioner and respondent were married in 1985, and eight children were born during the marriage. On August 29, 2013, petitioner filed a petition for dissolution of marriage in Stephenson County, alleging irreconcilable differences and grounds of mental cruelty. On January 22, 2014, the trial court in that case conducted a hearing on the mental cruelty portion of petitioner's petition. On February 3, 2014, the trial court entered an order finding that petitioner had not established grounds of mental cruelty. The trial court dismissed the case and provided that the order was "final and appealable."

¶ 5 On February 11, 2014, petitioner filed the petition to dissolve the parties' marriage in the current matter. The petition again alleged irreconcilable differences and grounds of mental cruelty. The petition alleged that petitioner resided in Winnebago County.

¶ 6 On March 7, 2014, respondent filed a motion to dismiss the petition pursuant to the doctrine of *res judicata* and citing section 2-619(a)(4) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(4) (West 2014)). Respondent argued that the parties were involved in a

dissolution proceeding in Stephenson County. Respondent argued that the trial court should grant his petition to protect him “from the unjust burden of [relitigating] the same case \*\*\* .”

On March 11, 2014, the trial court entered an order denying respondent’s motion.

¶ 7 On March 25, 2014, respondent filed an “application” for leave to appeal pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010). On April 8, 2014, respondent filed a motion to reconsider, requesting that the trial court reconsider its March 11, 2014, order denying his motion to dismiss. On April 8, 2014, respondent filed a “Motion for a Prescribed Statement - As Required for Application for Leave to Appeal, Pursuant to Supreme Court Rule 308.”

¶ 8 On April 15, 2014, the trial court entered an order denying respondent’s motion to reconsider and “application” for leave to appeal pursuant to Rule 308.

¶ 9 On May 8, 2014, respondent filed a motion to vacate orders pursuant to section 2-1203(a) of the Code (735 ILCS 5/2-1203(a) (West 2014)). On May 15, 2014, respondent filed a motion to dismiss pursuant to the doctrine of *forum non conveniens*, citing section 2-619(a)(3) of the Code (735 ILCS 5/2-619(a)(3) (West 2014)). Respondent raised four arguments in his motion: (1) the trial court had “apparently” determined that the Stephenson County case was still pending; (2) petitioner brought the current petition in bad faith; (3) the “proceedings in Stephenson County \*\*\* would be more convenient for both parties and the public because the process in Stephenson County \*\*\* would be much closer to completion \*\*\*”; and (4) respondent “cannot obtain a fair trial in this [c]ourt.” On June 12, 2014, the trial court denied respondent’s motion to dismiss pursuant to the doctrine of *forum non conveniens*. Respondent timely filed his petition to bring an interlocutory appeal pursuant to Rule 306(a)(2).

¶ 10

## II. ANALYSIS

¶ 11 In his petition for leave to bring an interlocutory appeal, respondent requests that we review the trial court's June 12, 2014, order denying his motion to dismiss the petition to dissolve the parties' marriage pursuant to the doctrine of *forum non conveniens*.

¶ 12 Rule 306 (eff. Feb. 26, 2010) permits a party to seek discretionary review of certain and specified interlocutory orders. *Healy v. Vaupel*, 133 Ill. 2d 295, 306 (1990). Subsection (a)(2) expressly provides that a party may seek discretionary review "from an order \*\*\* allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order \*\*\* allowing or denying a motion to transfer a case to another county within this State \*\*\*." Supreme court rules are to be construed in the same manner as statutes; that is, when the language is plain and unambiguous, courts cannot add exceptions, limitations, or otherwise amend or alter the statute. *Ferguson v. Bill Berger Associates, Inc.*, 302 Ill. App. 3d 61, 68-69 (1999). Thus, when a contention is beyond the plain language of Rule 306, a reviewing court is "without authority to grant leave to appeal from the nonfinal order disposing of that issue." *Id.* at 69-70 (holding that a trial court's denial of a motion to dismiss based on a contractual forum-selection clause was not within the plain language of Rule 306(a)(2) or (a)(4), and therefore, the appellate court was without authority to address that issue).

¶ 13 In this case, while respondent purports to appeal the trial court's denial of his motion to dismiss pursuant to the doctrine of *forum non conveniens*, the substance of his petition addresses the trial court's determination to deny his motion to dismiss pursuant to the doctrine of *res judicata*. Illinois law is well settled that a pleading's substance, not caption, determines its character. *Vanderplow v. Krych*, 332 Ill. App. 3d 51, 54 (2002). Therefore, because Rule 306(a) does not provide that a party may seek discretionary review of an order denying a motion to

dismiss pursuant to the doctrine of *res judicata*, we are without authority to grant leave to appeal from the trial court's nonfinal March 11, 2014, order. See *Ferguson*, 302 Ill. App. 3d at 70.

¶ 14 Further, to the extent that respondent seeks review of the trial court's June 12, 2014, order, we deem his petition waived pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). The content of respondent's petition focused almost exclusively on why the trial court supposedly erred in denying his motion to dismiss pursuant to the doctrine of *res judicata*. Respondent's petition mentions *forum non conveniens* only in passing and he failed to put forth any developed argument as to why the petition should be granted. Arguments that are not supported by citation to authority are procedurally defaulted, and "*pro se* litigants are not excused from following rules that dictate the form and content of appellate briefs." *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. Respondent's petition, therefore, amounts to nothing more than a transparent attempt to bootstrap discretionary review of the trial court's March 11, 2014, order, by way of the trial court's June 12, 2014, order.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons stated, we deny respondent's petition for leave to appeal pursuant to Rule 306(a)(2).

¶ 17 Petition denied.