

No. 1-15-0018

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

<i>In re</i> MARRIAGE OF STELLA LOGAN,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee-Cross-Appellant,)	Cook County.
)	
and)	No. 09 D 8675
)	
CHRIS LOGAN,)	The Honorable
)	Jeanne Cleveland Bernstein,
Respondent-Appellant-Cross-Appellee.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 **Held:** We dismiss this appeal from a post-dissolution of marriage order for lack of appellate jurisdiction, because the order being appealed was not a final or appealable order under the Illinois Supreme Court rules.

¶ 2 This appeal arises from the 2009 dissolution of the marriage of petitioner Stella Logan and respondent Chris Logan. After their marriage was dissolved, Chris and Stella returned to court frequently on disputes over child custody, property, and child support. Chris appeals a December 9, 2014 order which, he claims, denied his motion to vacate an earlier order that had granted sole custody to Stella and which disposed of certain real property. Chris contends that

the trial court's refusal to vacate that order was contrary to the policy of liberally vacating default orders and allowing them to be heard on the merits. We dismiss the appeal for lack of jurisdiction.

¶ 3 In December 2009, the circuit court entered a judgment of dissolution of marriage incorporating a marital settlement agreement and a joint parenting agreement regarding C.L., the parties' only child. The judgment granted the parties joint legal and physical custody of C.L., did not order either party to pay child support, and reserved the issue of future child support. In relevant part, the settlement agreement awarded a jointly-owned residence to Stella alone and a condominium owned by Stella to Chris alone. Each party was to be solely responsible for the mortgage or other debts on the respective property each obtained.

¶ 4 The parties filed various motions in the following years. The court ordered Chris to pay child support from November 2010 onwards, and to contribute to child care expenses. In April 2012, the court entered orders finding that Stella paid property taxes for the condominium in February 2011 and that she gave Chris a quitclaim deed for the condominium. Orders entered in October 2012 reflect that the parties undertook "a good faith effort to have their individual names removed from the properties so that they may refinance the homes" and directed Chris to "make a good faith effort to refinance the" condominium.

¶ 5 In April 2013, Stella filed a motion to terminate joint custody and award sole custody to her, alleging that Chris had "consistently refused and failed to abide by" the parenting agreement and thus endangered C.L.'s "physical, mental, moral, and emotional health." Chris responded to Stella's motion, denying that he failed to abide by the parenting agreement, responding *seriatim* to the various allegations in Stella's supporting affidavit, and alleging that Stella had interfered with his relationship with C.L.

¶ 6 In May 2014, the court directed that all property tax and mortgage bills for the condominium should be addressed to Chris, that Stella not take mortgage interest or property tax deductions for the condominium on her income tax return, and that she execute whatever documents were needed to remove herself from the condominium mortgage.

¶ 7 In July 2014, Stella filed a motion alleging that Chris owed her over \$40,000 for the down payment on the condominium which had originally been drawn from Stella's personal bank account, and that the condominium mortgage was in default causing the bank to seek payment from her. Stella sought leave to sell the condominium or an order requiring Chris to refinance the condominium and pay her back from the proceeds.

¶ 8 In August 2014, Stella filed two motions captioned as motions for "default judgment", both seeking a ruling on pending motions which she filed earlier. One of the new motions was based on the court's earlier orders requiring Chris to refinance the condominium so that Stella would no longer be liable for that debt. The motion also alleged that Stella's credit was in risk of ruin because the bank was now moving to foreclose on the condominium mortgage. The other new motion sought a ruling on Stella's pending motion for sole custody and sought to remove Chris as a trustee of C.L.'s special needs trust. In a September 2014 motion for a rule to show cause, Stella alleged that Chris was financially unable to pay the condominium mortgage or purchase the condominium from Stella, and that he was refusing to pay the mortgage merely to harass her. She sought an order awarding her the condominium "or at the very least" a judgment against Chris for her \$40,000 down payment.

¶ 9 On September 30, 2014, the court continued Stella's pending motions to October 14 and ordered Stella to send a copy of the order to Chris by regular and certified mail.

¶ 10 On October 14, 2014, the court heard Stella's motions. In its order, the court recited that Stella was present but Chris was not, found that Chris was served with notice of the motions on August 1 and 19, September 12, and October 2, and found Chris "in default for failure to appear." The court awarded Stella sole custody of C.L. and possession of the condominium, and took the case off call.¹

¶ 11 Chris then filed various motions. One was a motion to vacate a "default order," claiming that he had jury duty and had to meet with C.L.'s physician regarding an upcoming surgery, and contending that the settlement agreement addressed the disposition of property. Chris also filed a motion to hold Stella in contempt for failing to add Chris to the condominium mortgage, failing to provide him the mortgage statements, and taking a property tax refund for the condominium. In the contempt motion, Chris also sought to have the income tax exemption for C.L. awarded to himself, alleging that Stella was no longer employed and had not contributed to the C.L.'s child care expenses.

¶ 12 In November 2014, Chris filed an additional motion seeking to set aside the property and custody dispositions in the October 14 order. He claimed that Stella assaulted him at the condominium in C.L.'s presence and again in court, also assaulted Chris's relatives, was unemployed with no family in the area and had "a history of medical issues, including seeing a therapist," and had prevented him from participating in raising C.L. "by filing a false order of protection." Chris also alleged that the condominium mortgage was not in default, that he made

¹ The parties and the circuit court characterized Stella's motions as motions for "default judgment" and the court's decision to grant them in Chris's absence as a "default" order. However, we do not believe the "default" characterization is apt in this context. Stella's motions were merely motions seeking a ruling on her substantive motions based solely on the written submissions and without an evidentiary hearing. Notably, Chris filed a written response to Stella's motion to modify child custody, so the court had the benefit of both parties' briefing of that matter when it ruled.

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full payment thereon from 2012 through 2014, and that the settlement agreement awarded the condominium to him alone. Chris also challenged Stella's authority to seek his removal as a trustee of C.L.'s special needs trust because none of the five trustees could be removed without cause, and requested that the court grant his May 2013 motion to modify child support.

¶ 13 Chris's motions were noticed for hearing for November 10, 2014. On that day, the court entered a form order setting the case for a status report for December 9, 2014, and indicated that the order be sent "by regular mail and renote the motion" without specifying who was to do so. On December 9, the court issued an order reading in full:

"This matter before the court on Petitioner [*sic*] motion for Default Judgment/Visitation and sale of property, Respondent appearing, Petitioner appearing.

1. By agreement of the parties, Respondent may visit son in hospital between 8 AM and 11 AM on days when respondent is not working.

2. Parties shall cooperate in the sale of condominium.

3. All other issues are entered and continued until Jan 5, 2015 9:30 am Status."

¶ 14 The record contains no order for January 5, 2015. However, the docket on the clerk of the circuit court's website shows that the court struck this case from its call on January 5 at Stella's behest. See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 39 (court can take judicial notice of online official records). On January 5, 2015, Chris filed a notice of appeal, stating that he was appealing only the order of December 9, 2014.

¶ 15 We must first address our jurisdiction of Chris’s appeal. While Stella has not raised the issue of jurisdiction, we must consider our jurisdiction *sua sponte* and dismiss an appeal if we find that we lack jurisdiction. *People v. Vari*, 2016 IL App (3d) 140278, ¶ 7. Chris claims we have jurisdiction over his appeal under Supreme Court Rule 304. However, as is relevant here, that rule allows for appeals from *final* judgments that do not dispose of an entire proceeding. Rule 304(a) (eff. Mar. 8, 2016) provides that an order that makes a final disposition of some, but not all, claims pending in a case is appealable only if the court makes a written finding that there is no just reason for delaying appeal. No such finding is in the December 9 order.

¶ 16 In his brief, Chris argues that on December 9, the trial court erred by refusing to consider his motion to vacate and that the court “simply, and arbitrarily reaffirmed the Court’s order of October 14, 2014 granting possession of the condominium to the Petitioner, thus holding Respondent in default.” However, the record contains no transcript or bystander’s report of the hearing held on December 9. We are left to rely on the written order of that day, which indicates that pending matters were continued until January 5, demonstrating that the case was still pending. Based on this record, we must conclude that we lack jurisdiction and we accordingly dismiss Chris’s appeal.

¶ 17 In response to Chris’s notice of appeal, Stella filed a *pro se* notice of cross-appeal on February 27, 2015 on a court-supplied fill-in-the-blank form. The notice of cross-appeal stated that she was cross-appealing an October 14, 2014 order, but that order actually *granted* motions filed by her. In a space designated for the “relief sought,” Stella’s notice of cross-appeal indicates her agreement with that order. She later obtained an attorney who has filed a brief on her behalf in this court. Her appellate brief only responds to Chris’s brief and does not seek any affirmative relief in the nature of a cross-appeal. Regardless of Stella’s intent, Illinois Supreme

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Court Rule 303(a)(3) (eff. Jan. 1, 2015) required Stella to file any notice of cross-appeal within 10 days of Chris's service of the notice of appeal to her. Since she did not do so, we must dismiss the cross-appeal for lack of appellate jurisdiction. See *Rodgers-Orduno v. Cecil-Genter*, 312 Ill. App. 3d 1150, 1155 (2000) (dismissing cross-appeal for filing notice of cross-appeal 13 days after service of the notice of appeal).

¶ 18 Appeal dismissed; cross-appeal dismissed.