2016 IL App (1st) 16-0356-U

THIRD DIVISION
September 7, 2016

No. 1-16-0356

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

749 WEST CORNELIA CONDOMINIUM ASSOCIATION, Plaintiff-Appellant, v. ERIC HURLBURT and UNKNOWN OCCUPANTS, Defendants-Appellees.	) Appeal from the Circuit Court of) Cook County, Illinois,) Municipal Department,) First District Division.)) No. 05 CH 123333)) The Honorable) Martin P. Moltz,) Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed for lack of jurisdiction where order appealed from was not a final judgment, and the trial court denied the plaintiff's motion to certify questions for interlocutory appeal pursuant to Illinois Supreme Court Rule 308 (Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2015)).

¶ 2 In this case we are asked to determine whether the trial court erred in applying our decision in *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL (1st) 111290 (2014) retroactively to hold that a condominium unit owner dispossessed of his unit by way of a forcible entry and detainer order of possession, may proceed with a motion to vacate that order

on the basis of improper conduct by the condominium association, more than 30 days after that order was entered, without first filing a petition pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). For the reasons that follow, we dismiss the appeal for want of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 The record below reveals the following facts and rather convoluted procedural history. The plaintiff, 749 West Cornelia Condominium Association (hereinafter the condominium association), is a not-for-profit corporation organized under the Illinois General Not for Profit Corporation Act of 1986 (the Not for Profit Act) (805 ILCS 105/101.01 *et seq*. (West 2012)). The condominium association governs the three-unit condominium property located at 749 West Cornelia Avenue in Chicago, Illinois. The defendant, Eric Hurlburt, is the owner of one of the three units, and also one of the three members of the condominium association.

¶ 5 On February 28, 2013, the condominium association filed a forcible entry and detainer action against the defendant, alleging that he had failed to pay his share of the monthly condominium assessments for his unit. According to the condominium association, the defendant failed to pay all of his assessment between October 2011 to the date of the filing of the complaint, and therefore owed the condominium association $2,700 plus additional assessments, interest and late charges.

¶ 6 After numerous attempts to serve the defendant, the defendant appeared in court on April 26, 2013, and requested a trial. The case proceeded to trial and on May 10, 2013, after which the court entered judgment in favor of the condominium association against the defendant, to be stayed until November 19, 2013 (hereinafter the November 19, 2013 order). By that stayed order

the condominium association was granted: (1) possession of the defendant's unit; (2) $250 in assessments; (3) $1,000 in attorney fees; and (4) $407.50 in costs.

¶ 7 During the period of stay between May 10, 2013, and November 20, 2013, the defendant did not pay any portion of the judgment. On November 19, 2013, the order of possession was placed with the Sherriff of Cook County for eviction. Ten days following the eviction placement, the defendant paid the sum of $1,670, which was posted to the defendant's account with the condominium association. By way of email, dated December 12, 2013, the condominium association informed the defendant that his account was still delinquent and that the eviction would continue until all delinquencies had been satisfied in accordance with the law. On February 24, 2014, the defendant was evicted by the sheriff.

¶ 8 On February 28, 2014, the defendant filed a motion to vacate the order of possession. A month later, on March 28, 2014, the defendant also filed a two paragraph motion "to set payoff" asking the trial court to "set a payoff of the amounts due and owing" under the possession order, and stating that pursuant to section 5/9-111 of the Illinois Code of Civil Procedure (Code of Civil Procedure) (735 ILCS 5/9-111 (West 2012)), the court retains jurisdiction to determine those amounts.

¶ 9 On April 3, 2014, the trial court struck the defendant's February 28, 2014, motion to vacate the order of possession, and set a briefing schedule for the defendant's motion to set a payoff.

¶ 10 On April 17, 2014, the condominium association filed its response to the defendant's motion to set the payoff arguing that section 9-111 of the Code of Civil Procedure (735 ILCS 5/9-111 (West 2012)) does not include any provision for the trial court to "set payoff," but only permits the court to vacate the possession order, upon a showing by the defendant that the judgment amount and any arrears on the defendant's share of the common expenses for the period

subsequent to that covered by the judgment have been paid by the defendant, and only provided that the premises are not presently being rented by the condominium association. The condominium association argued that the defendant had failed to set forth any factual basis for the court to provide relief under section 9-111 of the Code of civil Procedure (735 ILCS 5/9-111 (West 2012)). In fact, according to the association, the defendant was in arrears for $5,956.76 for unpaid assessments after May 10, 2013, which included eviction costs.

¶ 11 In support, the condominium association attached an affidavit of its treasurer, Matt Williams, who itemized the defendant's debt to the association. According to Williams, as of February 29, 2013, the defendant owed the association unpaid assessments in the sum of $2,700 (at the rate of $150, per month for 18 months). Williams averred that after the court entered judgment in favor of the association in the amount of $1657.50 including attorneys' fees and costs, the defendant paid the association the sum of $1670.00 (on November 29, 2013). Williams stated, however, that since that date, the defendant continued to owe the association $5,956.76 for common expenses, itemized as follows: Midway Moving and Storage ($4500); locksmith charge ($293.51); post-possession order judgment attorneys' fees ($733.75); court costs/ sheriff's fees ($79.50); November 2013 assessment balance ($50.00); February 2014 assessment ($150); and March 2014 assessment ($150).

¶ 12 On May 6, 2014, the trial court denied the defendant's motion to set payoff because the motion was filed more than 30 days after the order of possession was entered, and the trial court therefore lacked jurisdiction. The court specifically noted that its ruling was not a ruling on the merits.

¶ 13 On January 16, 2015, the condominium association leased the defendant's unit to a third party, for one year, at a monthly rent of $1500.

¶ 14 Nearly a year later, on July 29, 2015, after having hired new counsel, the defendant filed an "amended alternative motion to vacate" the November 19, 2013, order of possession. Therein, the defendant first contended that pursuant to section 9-111 of the Code of Civil Procedure (735 ILCS 5/9-111 (West 2012)), after an order of possession was entered against a condominium owner for failure to pay assessments, the trial court continued to have jurisdiction while that unit owner was dispossessed until either the board foreclosed its lien or the unit owner successfully moved to vacate the order of possession. As to the merits, the defendant argued that the order of possession should be vacated because: (1) in contravention of section 18(a)(9) of Illinois Condominium Property Act (Condominium Property Act) (765 ILCS 605/18(9) (West 2012)), which requires all association business to be voted upon at an open meeting of the condominium board of managers, including any actions related to litigation, the defendant, who was president of the thee-unit association, was never made aware that the board voted at an open meeting to file the instant litigation against him; and (2) in contravention of section 18(a)(16) of the Condominium Property Act (765 ILCS 605/18(16) (West 2012)), the condominium association hired as its attorney in the instant litigation, Patrick J. Williams, the father of Mathew Williams, one of the condominium association's board members, without giving the requisite notice of this hire to all of the owners within 20 days of that decision. In addition, the defendant asserted that the condominium association never voted to authorize the lease of the defendant's unit to a third party through an open meeting, in contravention of section 18(a)(9) of the Condominium Property Act (765 ILCS 605/18(9) (West 2012)) and this court's decision in *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL (1st) 111290 (2014) (hereinafter *Palm II*). Finally, the defendant argued that contrary to the decision in *Glens of Hanover Condominium Association v. Chiramonte*, 149 Ill. App. 3d 287 (1987), the condominium association was

improperly refusing to return possession of the defendant's condominium unit to him, based on the fact that he has not paid any of the post-possession order attorneys' fees and costs that the condominium association had incurred. Accordingly, the defendant sought that: (1) the order of possession be vacated and possession of the unit be restored to the defendant; (2) the court find that condominium association member, Matthew Williams, breached his fiduciary duty to the association; and (3) the defendant be awarded attorneys' fees pursuant to the Illinois Citizen Participation Act (735 ILCS 110/1 *et seq*. (West 2012)), commonly referred to as the Anti-Strategic Lawsuits Against Public Participation Act (the Anti-SLAPP Act).

¶ 15 In support of his motion, the defendant attached an affidavit attesting to the veracity of all of the allegations therein, and in addition stating that he has paid the full judgment amount ($250 in assessments, $1,000 in legal fees, and $407.50 in costs); as well as all subsequently recurring assessments, including on July 23, 2015 ($2028) representing payment and late charges for the time period between July 2014 up to July 2015.

¶ 16 On August 13, 2015, the condominium association responded to the defendant's motion arguing, *inter alia*, that the trial court does not have jurisdiction under section 9-111 (735 ILCS 5/9-111 (West 2012)) to consider ancillary matters such as whether the open meetings provisions of the Condominium Act were violated; rather under that section, the trial court may only address whether an order can be vacated based on payment of arrears by the disposed owner and on allowing the condominium association to relet a particular unit. The condominium association, therefore, argued that a motion to vacate raising any ancillary grounds was available to the defendant only by way of a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)), which the defendant had failed to file. The condominium association further argued that even though the court did have jurisdiction to consider the defendant's section 9-111 (735 ILCS 5/9-

111 (West 2012)) argument that he had "fully paid" the "judgment plus all subsequently recurring assessments," the defendant had nonetheless failed in his burden to present any evidence, aside from his own word, of such payment.

¶ 17 On August 19, 2015, over the defendant's objection, the trial court granted the condominium association's motion to permit Patrick J. Williams to withdraw as its counsel.

¶ 18 On August 21, 2015, in a separate action, a mortgage foreclosure complaint was filed against the defendant and his unit by the bank holding the mortgage.

¶ 19 On September 9, 2015,[1] the trial court *sua sponte* found that the condominium association's institution of the ligation against the defendant violated this court's decision in *Palm II* and section 18(a)(9) of the Condominium Property Act (765 ILCS 605/18(a)(9) (West 2012)) and was therefore "null and void." The trial court sought additional briefing on the issues of whether the defendant was entitled to immediate possession of his unit, to any of the rent collected by the condominium association from the lease of his unit, and/or to any other restitution. The court set a briefing schedule as well as a hearing date.

¶ 20 After substantial briefing by the parties, on September 30, 2015, the court held a hearing on the issues.[2] In a written order, following that hearing, the trial court "restate[d] its ruling" that the condominium association "having failed to comply with section 18(a)(9) of the Condominium Property Act" and the decision in *Palm II*, the action against the defendant was "improperly filed and the litigation and any judgment ordered in the case are therefore null and void." The court, however, stated that it could not provide the defendant with any relief.

[1] We note that the record below does not contain a transcript of this hearing.

[2] We are, again, without a transcript from that hearing.

Specifically, as to the defendant's "motions for restitution or to be restored to the position [he] was in prior to the litigation," the court stated that it "believed that it was without jurisdiction to rule on these issues," and recommended that the defendant file a separate cause of action in chancery court. With respect to the defendant's section 9-111 (735 ILCS 5/9-111 (West 2016)) motion to vacate the judgment and restore possession, the trial judge again stated that it did not believe it had jurisdiction to rule on that matter.

¶ 21 On October 19, 2015, the defendant filed such an action in chancery court (case No. 15 CH 15315).

¶ 22 On October 30, 2015, the condominium association filed a motion to reconsider, or in the alternative a motion to modify the court's orders of September 9, 2015, and September 30, 2015, to indicate in writing that during those hearings the trial court had stated (albeit without the presence of a court reporter) that those orders had been entered in favor of the defendant but "without prejudice," so as to permit the condominium association to replead the cause of action within 28 days, and presumably after remedying the open meetings errors the court had found had been committed by the condominium association prior to filing its original action.

¶ 23 On November 10, 2015, the trial court denied the condominium association's motion to reconsider, but granted its motion to modify its prior orders (September 9, 2015 and September 30, 2015) to clarify that those orders dismissing the condominium association's original cause of action for forcible entry and detainer, as "null and void" were made "without prejudice." At the hearing on these motions, which is part of the record on appeal, the trial court explicitly stated that both the September 9, and September 30, orders intended to "dismiss" the case filed by the condominium association against the defendant "without prejudice." The court stated, however,

that it would not set a deadline by which the condominium association would be required to refile the case against the defendant.

¶ 24 Within 30 days of the court's order, on December 9, 2015, the condominium association filed a motion to certify the following questions for appeal pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010)):

(1) Whether the trial court erred when it found that it had jurisdiction to make any finding or enter any order that the condominium association had violated *Palm II* and the Condominium Property Act when the defendant did not file a petition pursuant to section 2-1401 and when more than 30 days had passed since the court entered the order the defendant sought to vacate?

(2) Whether the court erred when it vacated an order entered more than 30 days before the defendant filed a motion seeking to vacate it, and did not file a petition pursuant to section 2-1401?

(3) Whether the court erred when it made its finding that the plaintiff had violated *Palm II* and the Condominium Property Act when it did not fix any standard of proof and did not hear any testimony?

(4) Whether the court erred when it applied *Palm II* to dismiss a case which was not being heard on a motion for summary judgment?

(5) Whether the court erred when it found that *Palm II* should be given retroactive effect?

¶ 25 In the alternative, the condominium association requested that the court enter an order making its November 10, 2015, findings (in relation to *Palm II* and the Condominium Property Act) final and appealable so as to confer jurisdiction upon the appellate court and allow the

condominium association an opportunity to appeal the findings that had been entered in favor of the defendant.

¶ 26 On January 5, 2015, the trial court denied the plaintiff's request to certify any questions for appeal, noting that they were not purely legal, or new and unique issues. At this same hearing, however, the trial court announced for the first time that its prior rulings (which it continued to confirm several times were "still a dismissal without prejudice,") had, in fact, been "final and appealable." The trial court indicated that the findings were "final and appealable" because it was "always" his understanding that the condominium association could merely refile a "new" forcible entry and detainer action" against the defendant, and not amend the current action. The trial court then indicated that it would be up to the appellate court to determine whether it would permit the filing of a late notice of appeal. On February 4, 2016, within 30 days of the court's January 5, 2015, order, the condominium association filed its notice of appeal.

¶ 27 II. ANALYSIS

¶ 28 Before addressing the merits of this appeal, we must first determine whether we have jurisdiction. According to the defendant[3] this court lacks jurisdiction because the condominium association filed a late notice of appeal. The defendant asserts that after the trial court entered a final order on September 30, 2015, and denied the condominium association's timely filed motion to reconsider that order on November 10, 2015, the condominium association failed to file a notice of appeal within 30 days of November 10, 2015, as required by Illinois Supreme

[3] We note that the defendant filed a separate motion to dismiss this appeal pursuant to Illinois Supreme Court Rule 361(h) (eff. January 1, 2006), and that we took the motion with the case, to be addressed by the parties in their briefs.

Court Rule 303(a) (eff. May 30, 2008). Instead, according to the defendant, the condominium association waited until February 4, 2016, to do so.

¶ 29 The condominium association, on the other hand, argues that neither the September 30, 2015, nor the November 10, 2015, order were "final and appealable" orders, and that until the court denied its timely filed posttrial motion on January 5, 2016, seeking to certify questions on appeal or in the alternative find that the September 30, 2015, and November 10, 2015, orders were "final and appealable," any notice of appeal to this court would have been denied, on the basis that the orders appealed from were not "final." Accordingly, the condominium association argues that its notice of appeal was timely filed within 30 days of the January 5, 2016, order and that we therefore have jurisdiction to consider this appeal. For the reasons that follow, we disagree with the condominium association.

¶ 30 Ordinarily, jurisdiction is conferred upon this court by the filing of a notice of appeal within 30 days of the entry of the final judgment from which the appeal is taken from. *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 643 (2008). Illinois Supreme Court Rule 303 provides that a "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, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order ***." Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). This requirement is both mandatory and jurisdictional. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill .2d 209, 213 (2009). "If the appellant fails to comply with the deadline ***, this court lacks authority to consider the appeal." *McCorry v. Gooneratne*, 332 Ill. App. 3d 935, 939 (2002).

¶ 31 The deadline for filing an appeal is triggered by "the final decision of the court resolving the

dispute and determining the rights and obligations of the parties." (Internal quotation marks omitted.) *McDonald v. Health Care Service Corp.*, 2012 IL App (2d) 110779, ¶ 21; see also *D'Agostino v. Lynch*, 382 Ill. App. 3d at 641 ("Generally, appellate jurisdiction exists only to review final orders.") An order or judgment is final and appealable "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." *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 23; see also *Richter v. Prairie Farms Dairy, Inc*., 2016 IL 119518, ¶ 24-25 (An order or judgment is final if it "terminate[s] the litigation and fix[es] absolutely the parties' rights, leaving only enforcement of the judgment") (citing *In re Detention of Hardin*, 238 Ill. 2d 33, 42-43 (2010); *Village of Niles v. Szczesny*, 13 Ill. 2d 45, 48 (1958)); see also *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 11576, ¶ 12 ("A judgment or order is 'final' if it disposes of the rights of the parties, either on the entire case or on some definite or separate part of the controversy, [such as a claim in a civil case]."). In determining when a judgment or order is final, a reviewing court looks to its "substance rather than form." *Richter*, 2016 IL 119518, ¶ 24-25.

¶ 32 Generally, a dismissal of a case with prejudice is considered a final judgment. *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). Conversely, it is well-accepted that "[a]n order dismissing an action 'without prejudice' is not deemed final for purposes of appeal." *Paul H. Schwendener, Inc., v. Jupiter Elec. Co., Inc.*, 358 Ill. App. 3d 65, 73 (2005); see also *Richter*, 2016 IL 119518, ¶¶ 24-25 ("[D]ismissal 'without prejudice' signals that there was no final decision on the merits and that the plaintiff is not barred from refiling the action.") (quoting *DeLuna v. Treister*, 185 Ill. 2d 565, 576 (1999)). The rationale for this rule stems from the Code of Civil Procedure which permits the trial court to allow amendments to pleadings "[a]t any time before final judgment." See *Richter*, 2016 IL 119518, ¶ 25 (quoting 735 ILCS 5/2-

616(a) (West 2012)). This is true even if the party dismissed without prejudice is not explicitly granted a time period in which to file an amended complaint. *Richter*, 2016 IL 119518, ¶ 28. As our supreme court explained, the trial court retains jurisdiction to allow the amendment of such a complaint even after any time period for such leave is granted, as well as to consider the cause of action, without any amendment, if the party dismissed without prejudice, chooses to stand on its original complaint. *Richter*, 2016 IL 119518, ¶ 28.

¶ 33 As such, the appellate court lacks jurisdiction to entertain an appeal from any portion of an order which is not final unless it falls within one of the exceptions contained in Illinois Supreme Court Rules 306 through 308. Ill. S Ct. Rs. 306-308 (eff. Feb. 26, 2010) (referencing interlocutory appeals and certified questions). Even though a special finding by the trial court under Illinois Supreme Court Rule 304(a) will permit an interlocutory appeal where the trial court makes an "express written finding that there is no just reason for delaying either enforcement or appeal or both" (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) in cases where, *inter alia*, more than one issues has not been finally decided, it will not confer appellate jurisdiction to an order that is not final. *Jaffke v. Anderson*, 162 Ill. App. 3d 290, 293 (1987).

¶ 34 In the present case, we are without a final judgment which would vest us with jurisdiction to consider this appeal. The trial court's September 9 order was not final and appealable, as it explicitly requested further briefing from the parties on several undecided issues, including, *inter alia*, the defendant's right to immediate possession of his unit, and restitution from the condominium board. See *Fabian*, 2014 IL App (1st) 11576, ¶ 12 (A judgment or order is not final if it fails to "dispose of the rights of the parties, either on the entire case or on some definite or separate part of the controversy.") Similarly, the September 30, order was not final and appealable as was made clear both by the "half-sheet" for that day, and by the trial court's

subsequent, November 10, order, explicitly stating that that order was "dismissed without prejudice." See *Paul H. Schwendener,* 358 Ill. App. 3d at 73 ("An order dismissing an action 'without prejudice' is not deemed final for purposes of appeal."); see also *Richter,* 2016 IL 119518, ¶¶ 24-25 ("[D]ismissal 'without prejudice' signals that there was no final decision on the merits and that the plaintiff is not barred from refiling the action.") (quoting *DeLuna v. Treister*, 185 Ill. 2d 565, 576 (1999)).

¶ 35 The fact that on January 5, 2016, during the hearing on the condominium unit's motion to certify questions for appeal, the trial court inexplicably stated, for the first time, that it was always its intention that the September 9, September 30, and November 10, orders be "final," does not change our analysis. Once the court found that the dismissal of the cause was without prejudice, there was nothing to prevent the condominium association from amending its original complaint, or refilling a new cause of action after having called an open meeting of the board so as to rectify what the trial court believed were procedural prerequisites under *Palm II*. See *Richter*, 2016 IL 119518, ¶ 28. This is particularly true, where the trial court itself, indicated at the November 10 hearing that it would not set a time limit on when the condominium association could refile its claim. In that respect, the condominium association is correct in pointing out that after the trial court's November 10, ruling, it was without any appellate recourse, since the trial court retained jurisdiction in the matter. *Richter*, 2016 IL 119518, ¶ 28.

¶ 36 Nonetheless, even though the condominium association filed its motion to certify questions for appeal within 30 days of the trial court's November 10, order, we are still without jurisdiction to consider this appeal, since the trial court denied the motion to certify. Pursuant to Illinois Supreme Court Rule 308:

> "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. *** The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2015).

¶ 37 As the plain language of Rule 308 reveals, the trial court is the gatekeeper of permissive interlocutory appeals. Only if the trial court determines that certification is appropriate, does the appellate court have discretion to permit the appeal from going forward. See *Doe v. Sanchez*, 2016 IL App (2d) 150554, ¶ 19 ("Rule 308 permits an appeal of an interlocutory order where the trial court finds that the order involved a question of law on which there are substantial grounds for difference of opinion and that an immediate appeal form the order could materially advance the ultimate termination of the litigation. [Citation.] *If the trial court makes these two necessary findings, we may* hear an interlocutory appeal at our discretion." (Emphasis added)); see also *Rommel v. Illinois State Toll Highway Authority*, 405 Ill. App. 3d 1124, 1125 (2010). Once the trial court certifies the question, the parties must file an application for leave to appeal with this court pursuant to Rule 308, containing a statement of facts, and the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. Ill. S. Ct. R. 308(b) (eff. Jan. 1, 2015).

¶ 38 In the present case, on January 5, 2016, the trial court did not certify any questions for appeal pursuant to Supreme Court Rule 308 (Ill. S. Ct. R. 308(b) (eff. Jan. 1, 2015)). Instead, the trial court denied the condominium association's motion to certify such questions. What is more, during that same hearing, the trial court explicitly refused to make any express written finding

pursuant to Supreme Court Rule 304(a), indicating that the order was "final and appealable" or "immediately enforceable or appealable," so as to permit the condominium association to proceed with its appeal in this court. Nor could it. Despite the trial court's baffling commentary on its prior rulings (on September 9, September 30, and November 10), those rulings were dismissals without prejudice and therefore not final and appealable orders. See *EMC Morg. Corp v. Kemp*, 2012 IL 113419, ¶ 15 ("It is well settled that 'the inclusion of the special [Rule 304(a)] finding in the trial court's order cannot confer appellate jurisdiction if the order is in fact not final.' [Citation.]"). As such, the condominium association proceeded to file its leave to appeal pursuant to Rule 303, even though it was appealing from a non-final order. Accordingly, we are obligated to conclude that we are without jurisdiction to address the appeal.

¶ 39 The condominium association nevertheless argues that it is attempting to attack a void order, and a void order may be attacked at any time, in any court, regardless of its finality. Unfortunately, we disagree. Although a void order generally may be attacked at any time, "[t]his legal proposition *** by itself, does not act to confer appellate jurisdiction on a reviewing court if such jurisdiction is otherwise absent." *EMC Morg. Corp v. Kemp*, 2012 IL 113419, ¶ 15. Instead, as our supreme court has made clear, this "rule allows a party the ability to always raise the issue of whether an order is void in an appeal where appellate jurisdiction exists and the case is properly before the court of review." *EMC Morg. Corp v. Kemp*, 2012 IL 113419, ¶ 15.

¶ 40 Accordingly, while we are gravely troubled both by the trial court's decision to consider ancillary matters in context of a section 9-111 motion to vacate a possession judgment order (735 ILCS 5/9-111 (West 2012)), as well as its decision to apply *Palm II* retroactively and in this framework, without first requiring the defendant to file a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)), and without articulating any standard of proof, we are nonetheless without a

final order and therefore without jurisdiction to address the merits of this case. While we sympathize with the condominium association's arguments, we cannot right one wrong by committing another one. Accordingly, we must dismiss the appeal for want of jurisdiction.

¶ 41 Appeal dismissed with directions.