

No. 1-15-3512

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

THE FOREST PRESERVE DISTRICT OF	)	Appeal from the
COOK COUNTY, ILLINOIS, a Body Corporate	)	Circuit Court of
and Politic of the State of Illinois,	)	Cook County.
)	
Plaintiff and Counterdefendant-Appellant,)	
)	
v.	)	Nos. 15 L 50227
	)	00 L 050726
CONTINENTAL COMMUNITY BANK AND TRUST	)	(consolidated)
COMPANY, an Illinois Corporation, as Successor to)	
Maywood-Proviso State Bank, as Trustee Under Trust)	
Agreement Dated November 1, 1983, Known as Trust)	
No. 6173; JACK RIVO; and UNKNOWN OTHERS,)	
)	
Defendants	)	Honorable
	)	Kay M. Hanlon and
(Jack Rivo, Defendant and Counterplaintiff-Appellee;	)	Eileen O'Neill Burke,
Gregory A. Bedell, Intervenor).	)	Judges Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

Held: We dismiss plaintiff's appeal in part, where this court lacks appellate jurisdiction over a portion of this appeal.

¶ 1 Plaintiff and counterdefendant-appellant, The Forest Preserve District Of Cook County, Illinois, a body corporate and politic of the State of Illinois (the District), filed this suit seeking to utilize its power of eminent domain to acquire certain property held in trust by defendant,

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Continental Community Bank And Trust Company, an Illinois corporation, as successor to Maywood-Proviso State Bank, as Trustee under Trust Agreement dated November 1, 1983, known as Trust No. 6173 (the Trustee), for the benefit of defendant and counterparty-appellee, Jack Rivo (collectively, defendants). The portion of the current appeal addressed by this order concerns the District's challenge to the circuit court's order granting a petition for attorney fees filed by Mr. Rivo's prior attorney, intervenor, Gregory A. Bedell. For the following reasons, we conclude that this portion of the current appeal must be dismissed for lack of appellate jurisdiction.

¶ 2

I. BACKGROUND

¶ 3 This case has been the subject of three prior appeals to this court, ultimately yielding a decision affirming the circuit court's order granting summary judgment in favor of Mr. Rivo, as the District never passed a valid ordinance authorizing the acquisition of the property in question. See *Forest Preserve District of Cook County v. Continental Community Bank & Trust Co.*, No. 1-12-2211 (Sept. 6, 2012) (appeal dismissed for lack of jurisdiction); *Forest Preserve District of Cook County v. Continental Community Bank & Trust Co.*, 2014 IL App (1st) 131652-U (appeal dismissed for lack of jurisdiction); *Forest Preserve District of Cook County v. Continental Community Bank & Trust Co.*, 2016 IL App (1st) 152145-U (summary judgment in favor of Mr. Rivo affirmed). The orders entered by this court in those prior appeals, including the factual background set out therein, are incorporated herein by reference.

¶ 4 The current appeal concerns the District's attempt to reverse two of the circuit court's orders, entered on November 6, 2015, and December 17, 2015, in which the circuit court: (1) granted petitions for attorney fees filed by three of Mr. Rivo's attorneys, including a petition filed by Mr. Bedell; (2) ordered that those fees must be paid by December 4, 2015; and (3)

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granted a motion for rule to show cause filed by Mr. Rivo's then-current attorneys, and held the District in contempt for its failure to timely pay the attorney fees awarded to Mr. Rivo's then-current attorneys.

¶ 5 Specifically, the record reflects that three petitions for attorney fees were filed in this matter in late 2015, two by plaintiffs' then-current attorneys and one by Mr. Bedell. Mr. Bedell's petition sought to recover for the fees incurred in his representation of defendants in connection with a petition filed pursuant to section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (2004). Mr. Bedell only represented defendants in the course of prosecuting that petition.

¶ 6 On November 6, 2015, the circuit court entered an order granting all three petitions for attorney fees. Of note, that order contained separate numbered paragraphs in which the circuit court specifically granted, respectively, the petitions filed by Mr. Bedell (paragraph 1), and Mr. Rivo's then-current attorneys, Victor Cacciatore II (paragraph 2), and Cathy Pilkington (paragraph 3). Paragraph 4 of the order stated that the District "is ordered to pay the judgment amounts to Gregory A. Bedell, Victor Cacciatore II, and to Cathy Pilkington by December 4, 2015, as set forth in this order." On December 2, 2015, the District filed a motion to reconsider the circuit court's award of attorney fees. That motion was denied on December 4, 2015.

¶ 7 When the District failed to timely comply with the November 6, 2015 order, Mr. Rivo's then-current attorneys filed a motion for rule to show cause on December 8, 2015, and asked that the District be held in contempt for its failure to timely pay the attorney fees awarded to Mr. Cacciatore and Ms. Pilkington. Mr. Bedell did not join in this motion, participate in this motion in any way, or independently seek a finding of contempt for the District's failure to timely pay the judgment entered in his favor, contained in paragraph 1 of the November 6, 2015, order. On

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December 17, 2016, the circuit court entered an order granting the motion for rule to show cause and specifically ruled that the District “is held in indirect civil contempt for failure to pay attorney fees and costs as set forth in Paragraph Nos. 2, 3 and 4 of the November 6, 2015 order.” The circuit court’s order also specified for a daily fine to be imposed upon the District until it complied with paragraphs 2, 3 and 4 of the November 6, 2015 order. The District thereafter appealed.

¶ 8 In an order entered on September 13, 2016, this court granted a motion to intervene in this appeal filed by Mr. Bedell and allowed him to file a brief in response to the District’s appellant’s brief. In that order, we also denied the alternative relief requested by Mr. Bedell that had raised the question of this court’s appellate jurisdiction to review the District’s appeal of the fees awarded to Mr. Bedell and directed that such jurisdictional issues “may be addressed by the parties within the briefs filed in due course.” Thus, the question of this court’s appellate jurisdiction to consider the District’s appeal of the fees awarded to Mr. Bedell has now been addressed by the parties in both the context of ruling on Mr. Bedell’s motion to intervene and in the briefs they have filed with this court.

¶ 9 On December 21, 2016, this court granted a “Motion to Stay a Portion of Appeal Pending Finalization of Settlement,” jointly filed by both the District and Mr. Rivo. According to the motion filed by the District and Mr. Rivo, those two parties entered into a settlement agreement on December 9, 2016, “whereby they agreed to settle and release and fully and finally resolve all matters between them in any and every forum.” However, because the settlement agreement had to be approved by the District’s Board of Commissioners, the District and Mr. Rivo asked that the portion of this appeal concerning the issues between the District and Mr. Rivo be stayed until March 17, 2016, which would allow time for the settlement agreement to be approved and place

the District and Mr. Rivo in a position to move for the final dismissal of that portion of the appeal. In the December 21, 2016 order, this court agreed and granted the request to stay that portion of the appeal until March 17, 2017. The order specifically indicated that “[t]he remaining portion of this appeal, which concerns the issues between the District and Mr. Bedell, [is] not stayed or otherwise affected by this order.”

¶ 10 Finally, and for purposes that will be made clear in our jurisdictional analysis, we note that on May 26, 2015, Mr. Rivo filed an amended counterclaim against the District. That counterclaim remained pending at the time the District initiated this appeal and, according to the parties’ filings with this court, remains pending in the circuit court pending the finalization of the settlement agreement between Mr. Rivo and the District.

¶ 11

II. ANALYSIS

¶ 12 On appeal, the District contends that the circuit court made errors with respect to the petition for attorney fees filed by Mr. Bedell. However, now faced with resolving the remaining, non-stayed issues between the District and Mr. Bedell, and having considered the jurisdictional arguments presented by the parties in full, we conclude that we are without appellate jurisdiction to consider this portion of the current appeal.

¶ 13 Except as specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994), *et seq.*; *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 14 However, even a final judgment or order is not necessarily immediately appealable.

Illinois Supreme Court Rule 304(a) provides:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." Ill. S. Ct. Rule 304(a) (eff. Feb. 26, 2010).

Rule 304(b) provides that some final judgments and orders are appealable without the finding required for appeals under paragraph (a) of that rule, even if they adjudicate fewer than all the claims or the rights and liabilities of fewer than all the parties. Ill. S. Ct. Rule 304(b) (eff. Feb. 26, 2010).

¶ 15 Additionally, while the Illinois Supreme Court Rules confer jurisdiction upon this court to consider some interlocutory appeals not involving final orders, that authority only arises in certain, specific circumstances. See Ill. S. Ct. R. 306 (eff. July 1, 2014) (interlocutory appeals of certain orders by permission); Ill. S. Ct. R. 307 (eff. Nov. 1, 2016) (interlocutory appeals of certain orders as of right); and Ill. S. Ct. R. 308 (eff. Jan. 1, 2015) (permissive interlocutory appeals involving certified questions).

¶ 16 On appeal, the District does not contend its challenge to the fees awarded to Mr. Bedell constitutes an appeal from a final order, pursuant to Rule 301 or 304(a). Indeed, the record reflects that other issues were pending in the circuit court at the time the circuit court entered its

orders regarding the attorney fee petitions, including Mr. Rivo's still-pending counterclaim, and that none of the circuit court's relevant orders were accompanied by Rule 304(a) language. What the District does assert are a number of other purported sources of appellate jurisdiction.

¶ 17 First, we consider the District's assertion that we have appellate jurisdiction to review the award of attorney fees to Mr. Bedell pursuant to Rule 304(b)(3) (Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010)), which provides for appeals from a "judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." In making this assertion, the District contends that "[s]ince all of Bedell's work was performed in the Section 2-1401 case, the order awarding his fees is an award made under section 2-1401, and the basis for the appeal is Rule 304(b)(3)." We disagree.

¶ 18 As our supreme court has recognized, "[s]ection 2-1401 of the Code of Civil Procedure [citation] authorizes a party to seek relief from a final judgment, such as a default judgment, when brought more than 30 days after judgment has been entered. [Citation.] The filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one. [Citations.] Thus, a circuit court's ruling on such a petition is deemed a final order and provision has been made for immediate review of these orders in Supreme Court Rule 304(b)(3)." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 101-02 (2002).

¶ 19 The record clearly reflects that the section 2-1401 petition was granted on February 15, 2012. No attorney fees were awarded at that time, and the District never successfully appealed from that decision under Rule 304(b)(3). Thereafter, it was not until late 2015 that Mr. Bedell filed the attorney fee petition that ultimately resulted in the circuit court's November 6, 2015 order which we now consider here. While it is certainly true that Mr. Bedell's work in this matter consisted solely of his efforts in prosecuting the section 2-1401 petition, it is equally clear that

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Mr. Bedell's petition for attorney fees, and the order granting that petition, were both filed well after the section 2-1401 petition was granted and the section 2-1401 proceeding reached its conclusion. Thus, it is simply not the case that the attorney fees awarded to Mr. Bedell in this matter constituted a "judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure," so as to be appealable pursuant to Rule 304(b)(3).

¶ 20 Next, we consider the District's contention that it was held in contempt for its failure to timely pay the attorney fees awarded to Mr. Bedell, and it therefore has properly appealed pursuant to Rule 304(b)(5) (Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010)), which provides for appeals from an order "finding a person or entity in contempt of court which imposes a monetary or other penalty."

¶ 21 On appeal, the District acknowledges that Mr. Bedell never sought a contempt finding with respect to the District's failure to timely pay the award entered in his favor. It also acknowledges that the December 7, 2015 order entered by the circuit court did not specifically make any reference to the District's failure to comply with paragraph 1 of the November 6, 2015 order, which was the specific paragraph entering judgment in favor of Mr. Bedell. However, after noting that the District was held in contempt for failing to comply with paragraph 4 of the November 6, 2015 order, and that this paragraph required it to pay all of the attorney fee awards by December 4, 2015, the District contends that "whether Bedell requested it or not, the trial court found the District in contempt for not paying all of the attorneys fees awards." We disagree.

¶ 22 Orders of the circuit court must be interpreted from the entire context in which they were entered, with reference to other parts of the record including the pleadings, motions and issues

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before the court and the arguments of counsel. *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1069 (2003); *P & A Floor Co. v. Burch*, 289 Ill. App. 3d 81, 88 (1997). Orders must be construed in a reasonable manner so as to give effect to the apparent intention of the circuit court. *Id.*; *P & A Floor Co.*, 289 Ill. App. 3d at 88-89. In light of the fact that Mr. Bedell never sought a finding of contempt and the circuit court's contempt order never specifically referenced the award entered in favor of Mr. Bedell, we find that any conclusion that the District was held in contempt for its failure to pay Mr. Bedell would run afoul of these principles. Indeed, while it is true that the circuit court's contempt order did reference paragraph 4 of the November 6, 2015 order, and that this paragraph required the district to pay all of the attorney fee awards by a date certain, after considering the entire context in which this order was entered, it is clear that the circuit court only intended to reference that portion of paragraph 4 requiring the District to pay Mr. Cacciatore and Ms. Pilkington by that date.

¶ 23 Finally, we address the District's argument that it properly appealed from the November 6, 2015 order pursuant to Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2016)). This argument relies upon the District's contention that, to the extent that the November 6, 2015 order required it to pay the judgment amounts awarded pursuant to the attorney fees petitions by December 4, 2015, the order constituted an injunction.

¶ 24 It is certainly true that Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2016)), provides for an appeal as of right from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." It is also true that an injunction is recognized to be "a 'judicial process operating *in personam* and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.'" *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 221 (2000) (quoting *In re A Minor*, 127 Ill. 2d 247, 261 (1989)).

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However, “[w]hile the term ‘injunction’ is to be broadly construed and actions of the circuit court having the force and effect of injunctions are appealable even if called something else, not every nonfinal order of a court is appealable [under Rule 307(a)(1)], even if it compels a party to do or not do a particular thing.” *Short Brothers Construction v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960 (2005). As this court has noted, although an order may be injunctive in nature, “it will not be subject to review under Rule 307(a)(1) unless it was interlocutory, not permanent, in nature. Rule 307(a)(1) applies only to interlocutory injunction orders that merely preserve the status quo pending a decision on the merits, conclude no rights, and are limited in duration, in no case extending beyond the conclusion of the action. [Citation.] Rule 307(a)(1), however, does not apply to permanent orders, which are orders that are not limited in duration and alter the status quo. [Citations.] Such orders constitute final orders and are only appealable under Rule 301 or 304(a), if those rules are otherwise applicable. [Citation.]” *Santella v. Kolton*, 393 Ill. App. 3d 889, 903 (2009).

¶ 25 Here, while the circuit court’s November 6, 2015 order required the District to pay the judgment amounts awarded pursuant to the attorney fee petitions, and to do so by December 4, 2015, that order also clearly altered the status quo and permanently determined the merits of the petitions for attorney fees. As such, this order was not appealable pursuant to Rule 307(a)(1), and we reject the District’s contention to the contrary.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we dismiss the non-stayed portion of this appeal for lack of appellate jurisdiction. That portion of the order we entered on December 21, 2016, staying the remaining portion of this appeal concerning the issues between the District and Mr. Rivo, remains in effect.

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¶ 28 Appeal dismissed in part.