2016 IL App (1st) 160688-U

SIXTH DIVISION
January 6, 2017

No. 1-16-0688

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SEAN KELSEY; FRANCES KELSEY; MARY KELSEY; MARGARET KELSEY, a Minor, by and through her Father and Next Friend, SEAN KELSEY; THOMAS KELSEY; a Minor, by and through his Father and Next Friend, SEAN KELSEY; BEATRICE KELSEY, a Minor, by and through her Father and Next Friend, SEAN KELSEY, Plaintiffs-Appellants, v. TOP LINE EXPRESS, INC.; and DANA E. LEWIS and ANTHONY P. LEWIS, d/b/a Del Delivery, Defendants-Appellees (Bulls Eye Expedition, Inc., Defendants).	)	Appeal from the Circuit Court of Cook County. No. 15 L 2870 Honorable Janet Brosnahan, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Cunningham concurred in the judgment.
Justice Delort specially concurs.

ORDER

¶ 1 *Held:* We dismiss plaintiffs' appeal from the circuit court's order granting a motion to

dismiss on the grounds of interstate *forum non conveniens*, where this court lacks appellate jurisdiction.

¶ 2 Plaintiffs, Sean Kelsey, and five of his children—Frances Kelsey, Mary Kelsey, Margaret Kelsey, Thomas Kelsey, and Beatrice Kelsey—brought suit against defendants, Top Line Express, Inc. (Top Line); Dana E. Lewis and Robert P. Lewis d/b/a DEL Delivery (DEL); and Bulls Eye Expedition, Inc. (Bulls Eye) for injuries sustained during a traffic collision which occurred in Sandusky County, Ohio. The circuit court granted the motions of Top Line and DEL (collectively, defendants) to dismiss the case from plaintiffs' chosen forum of Cook County, Illinois, on grounds of interstate *forum non conveniens* after finding that Sandusky County, Ohio, was a more convenient forum. The dismissal order was entered pursuant to Illinois Supreme Court Rule 187 (eff. Jan. 4, 2013). Plaintiffs pursued an appeal from that order by filing a notice of appeal in the circuit court. For the following reasons, we dismiss the appeal for lack of appellate jurisdiction.

¶ 3 On March 12, 2014, Sean Kelsey was driving his 2001 Toyota Sequoia (the Toyota) eastbound on Interstate 80 (IR-80). Five of Mr. Kelsey's children, Frances, Mary, Margaret, Thomas, and Beatrice, were passengers in the Toyota.

¶ 4 At approximately 2 p.m., Mr. Kelsey brought the Toyota to a stop in the center lane of IR-80 at milepost 101 in Sandusky County, Ohio. The Toyota was subsequently rear-ended by a tractor-trailer owned by Top Line (the Top Line truck). The Toyota was struck a second time when two tractor-trailers, one owned by DEL (the DEL truck) and the other owned by Bulls Eye (the Bulls Eye truck), rear-ended the Top Line truck, pushing it into the Toyota.

¶ 5 At the time of the incident, plaintiffs were residents of South Bend, located in St. Joseph County, Indiana. The Top Line truck was being driven by Grzegorz Piwowarczyk, a resident of Cook County, Illinois, who died as a result of the collision; the DEL truck was being driven by

Roger Stone, a resident of Pennsylvania; and the Bulls Eye truck was being driven by Grzegorz Budnick, a resident of New York.

¶ 6 On March 20, 2015, plaintiffs filed this action, initially against only Top Line, in the circuit court of Cook County. Top Line has its principal place of business and headquarters in Cook County. On June 12, 2015, pursuant to Supreme Court Rule 187 (eff. Jan. 4, 2013), Top Line filed a motion to dismiss the action from plaintiffs' chosen forum of Cook County, Illinois, on the grounds of interstate *forum non conveniens*. Top Line argued that Sandusky County, Ohio was a more convenient forum.

¶ 7 On July 23, 2015, plaintiffs filed their first-amended complaint adding two additional defendants: Bulls Eye (also domiciled in Cook County); and DEL (a Pennsylvania corporation). On December 3, 2015, DEL filed a motion to dismiss based on interstate *forum non conveniens* and argued, as Top Line had, that Sandusky County, Ohio was more convenient. Bulls Eye, on October 14, 2015, filed its answer to the first-amended complaint and chose not to file a *forum non conveniens* motion. Bulls Eye has filed an appearance in this court, but has not otherwise participated in this appeal.

¶ 8 On February 29, 2016, the circuit court entered an order granting the motions to dismiss on interstate *forum non conveniens* grounds after finding Sandusky County, Ohio, was a more convenient venue. The order provided that, pursuant to Rule 187, the following conditions applied to the dismissal:

> "[I]f the plaintiff[s] elect[] to file the action in another forum within six months of the dismissal order, the defendant[s] shall accept service of process from that court; and *** if the statute of limitations has run in the other forum, the defendant[s] shall waive that defense.

> If the defendant[s] refuse[] to abide by these conditions, the cause shall be reinstated for further proceedings in the court in which the dismissal was granted. If the court in the other forum refuses to accept jurisdiction, the plaintiff[s] may, within 30 days of the final order refusing jurisdiction, reinstate the action in the court in which the dismissal was granted."

¶ 9 On March 16, 2016, plaintiffs filed in the circuit court a notice of appeal from the order granting defendants' motions to dismiss. Plaintiffs did not file a petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2) (Ill. S. Ct. R. 306(a)(2) (eff. Mar. 8, 2016)), in this court.

¶ 10 This court has an independent duty to determine whether jurisdiction over an appeal exists. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 754 (2006) (citing *Department of Public Aid ex rel. K.W. v. Lekberg*, 295 Ill. App. 3d 1067, 1069 (1998)). If we lack jurisdiction, the appeal must be dismissed. *Id.* The issue of appellate jurisdiction was separately briefed by the parties at our request.

¶ 11 Plaintiffs contend that an order granting a motion to dismiss pursuant to *forum non conveniens* constitutes a final order. Plaintiffs further assert that this court has jurisdiction over their appeal under Illinois Supreme Court Rules 301 (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)), and 303 (Ill. S. Ct. R. 303 (eff. Jan. 1, 2015)), which allow for appeals from final orders by the timely filing of a notice of appeal in the circuit court. We disagree.

¶ 12 "An order is final and appealable when it terminates the litigation between the parties on the merits or disposes of the rights of all the parties in regard to the entire controversy or some definite part thereof." *In re Petition to Incorporate Village of Greenwood*, 275 Ill. App. 3d 465, 470 (1995). In determining whether an order is final, a court must look to the substance and not the form of that order. *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 567

(1999). Furthermore, the order must be interpreted from the context in which it was entered, including the pleadings, motions, and issues before the court. *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1069 (2003)

¶ 13 Defendants moved to dismiss this action from plaintiffs' chosen forum pursuant to Rule 187, which sets forth the procedures for *forum non conveniens* motions. Rule 187(c)(2) (eff. Jan. 4, 2013) states that a dismissal on *forum non conveniens* grounds "shall" be made with two conditions. Specifically, as reflected by the order entered by the circuit court, Rule 187 provides:

> "(2) *Dismissal of action.* Dismissal of an action under the doctrine of *forum non conveniens* shall be upon the following conditions:
>
> (i) if the plaintiff elects to file the action in another forum within six months of the dismissal order, the defendant shall accept service of process from that court; and
>
> (ii) if the statute of limitations has run in the other forum, the defendant shall waive that defense." (Emphasis in original.) *Id.*

¶ 14 An order granting a motion to dismiss on interstate *forum non conveniens* grounds, under Rule 187, is an interlocutory order. Ill. S. Ct. R. 306(a)(2) (eff. Mar. 8, 2016); *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 764 (2009); *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 11 (order entered under Rule 187 granting intrastate *forum non conveniens* motion is interlocutory and appeal must be pursued under Rule 306); *Wakehouse v. Goodyear Tire & Rubber Co.*, 353 Ill. App. 3d 346, 351 (2004) (order dismissing case on interstate *forum non conveniens* grounds is not a final order for *res judicata* purposes). The lack of finality is due to the fact the rule requires that a dismissal on *forum non conveniens* grounds be subject to

certain conditions, including the condition that a plaintiff may elect to file the case in another forum. *Quaid,* 392 Ill. App. 3d at 763-64.

¶ 15 As we have set forth above, the dismissal order which plaintiffs seek to appeal includes the conditions outlined in Rule 187 and allows plaintiffs to file their action in another forum. The February 29, 2016, dismissal order did not dispose of the litigation on the merits or dispose of the rights of the parties. Therefore, the dismissal order is not a final order and may not be appealed under Rules 301 and 303.

¶ 16 "An appellate court's jurisdiction is limited to review of appeals from final orders [citation], unless the order appealed from comes within one of the exceptions for interlocutory orders set forth in the supreme court rules [citations]." *Village of Sugar Grove v. Rich,* 347 Ill. App. 3d 689, 693 (2004). Supreme Court Rule 306(a)(2), pertains to permissive appeals from interlocutory orders and provides in relevant part:

> "A party may petition for leave to appeal to the [a]ppellate [c]ourt from the following orders of the trial court *** from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds." Ill. S. Ct. R. 306(a)(2) (eff. Mar. 8, 2016).

Thus, Rule 306(a)(2) recognizes that orders granting motions to dismiss on *forum non conveniens* grounds are interlocutory and allows for permissive appeals from such orders.

¶ 17 Additionally, Rule 306 "is specific in its requirement that, in order to vest the appellate court with jurisdiction, the petition for leave to appeal must be filed within 30 days after entry of the trial court's order or within such extension of time as may be granted by the reviewing court." *In re Leonard R.,* 351 Ill. App. 3d 172, 174 (2004) (citing *Kemner v. Monsanto Co.*, 112 Ill. 2d

223, 236 (1986)); see also, *Law Offices of Jeffery M. Leving, Ltd. v. Cotting*, 345 Ill. App. 3d 495, 499 (2003) (quoting *National Seal Co. v. Greenblatt*, 321 Ill. App. 3d 306, 308, (2001)) ("The rule requires, as a prerequisite to invoking appellate jurisdiction, the filing of a petition " 'in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order." ' "). "The thirty-day time limit under Rule 306 is jurisdictional." *In re Leonard R.*, 351 Ill. App. 3d at 174.

¶ 18 Our supreme court has given warning that the " 'appellate and circuit courts of this state must enforce and abide by the rules of this court. The appellate court's power "attaches only upon compliance with the rules governing appeals." ' " (Emphasis and citations omitted.) *People v. Salem*, 2016 IL 118693, ¶ 19. Thus, the appellate court " 'does not have the authority to excuse the [failure of a party to comply with the] filing requirements of the supreme court rules governing appeals.' [Citation.]" *Id.*

¶ 19 Here, the order in this case granting a motion to dismiss on *forum non conveniens* grounds is an interlocutory order and subject to Rule 306(a)(2). Therefore, the timely filing of a petition for leave to appeal under Rule 306 in this court was required to vest this court with appellate jurisdiction. See *Miller v. Consolidated Rail Corp.*, 173 Ill. 2d 252, 258 (1996). Because plaintiffs failed to file a timely petition under Rule 306, we lack appellate jurisdiction.

¶ 20 Plaintiffs cite *Kerry No. 5, LLC v. Barbella Group, LLC*, 2012 IL App (1st) 102641; *In re Marriage of Ricard and Sahut*, 2012 IL App 1st 111757; *Nemanich v. Dollar Rent-A-Car Services, Inc.*, 90 Ill. App. 3d 484 (1980); *Stone Container Corp. v. Industrial Risk Insurers*, 91 Ill. App. 3d 807 (1980); *Certain Underwriters at Lloyd's, London v. Bertrand Goldberg Associates, Inc.*, 238 Ill. App. 3d 692 (1992); *Pre Fab Transit Co. v. Fontaine Trailer Co., Inc.*, 299 Ill. App. 3d 293 (1998); *Professional Group Travel, Ltd. v. Professional Seminar*

Consultants, Inc. 136 Ill. App. 3d 1084 (1985); and *In re Marriage of Clark* 232 Ill. App. 3d 342 (1992), in support of their position that the February 29, 2016, dismissal order was a final and appealable order under Rules 301 and 303.

¶ 21 In *Kerry No. 5, LLC*, the defendants moved to dismiss the action for improper venue under section 2-201 of the Code of Civil Procedure (Code) (735 ILCS 5/2-101 West 2008)), and, in the alternative, on *forum non conveniens* grounds. *Kerry No. 5, LLC*, 2012 IL App (1st) 102641, ¶ 1. The circuit court granted the motion to dismiss on both grounds. *Id.* ¶ 3. The appellate court, without discussion, stated that it had jurisdiction under Rules 301 and 303 "governing appeals from final judgments entered below." *Id*. However, the *Kerry No. 5, LLC* court did not discuss the finding in *Quaid*, that a dismissal under Rule 187 is not a final and appealable order. Further, the appellate court considered neither Rule 306(a)(2), which provides that orders granting or denying *forum non conveniens* motions to dismiss are interlocutory orders subject to permissive appeal, nor our supreme court's finding in *Miller*, that the timely filing of a petition under Rule 306(a)(2) is jurisdictional.

¶ 22 The circuit court in *Marriage of Ricard and Sahut*, granted the wife's motion to dismiss a divorce action on *forum non conveniens* grounds under Rule 187, finding that France was a more convenient forum. *Marriage of Ricard and Sahut*, 2012 IL App 1st 111757, ¶ 31. The husband appealed and the dismissal was affirmed. *Id.* ¶ 66. Plaintiffs contend that the appeal in that case was perfected by a notice of appeal under Rules 301 and 303. However, the opinion does not reflect how the appeal proceeded procedurally, and does not discuss, in any way, appellate jurisdiction over orders relating to motions to dismiss on *forum non conveniens* grounds.

¶ 23 The defendants in *Pre Fab Transit Co.*, filed motions to dismiss pursuant to section 2-615 of the Code. *Pre Fab Transit Co.*, 299 Ill. App. 3d at 294. Before the motions were decided, a

pretrial conference was held. *Id*. The docket entry for that date indicated that the parties were to brief the issue of *forum non conveniens*. *Id*. at 296. Thereafter, one of the defendants filed a motion to dismiss on *forum non conveniens* grounds. However, the plaintiff "filed a memorandum regarding proper jurisdiction and venue," which did not discuss *forum non conveniens*. *Id*. at 295. The circuit court entered an order of dismissal, purportedly, on *forum non conveniens* grounds. At a hearing on a bystander's report, counsel for the plaintiff testified that, he believed, the issues to be decided by the circuit court were venue and jurisdiction and not *forum non conveniens*. The appellate court reversed the dismissal order and remanded the case to allow all parties to brief the *forum non conveniens* issue. *Id*. at 297. *Pre Fab Transit Co.* is not helpful to plaintiffs, as the basis for the circuit court's dismissal order was disputed and appellate jurisdiction was not discussed by the court.

¶ 24 In *Nemanich*, the appellate court construed the circuit court's order, which transferred the action to California on *forum non conveniens* grounds as a dismissal order and found the order was final and appealable. *Nemanich*, 90 Ill. App. 3d at 489. However, *Nemanich* was decided before a 1994 amendment to Rule 306 expanded its applicability "from [orders] 'denying a motion to dismiss on the grounds of *forum non conveniens*' (134 Ill. 2d R. 306) to [orders] '*allowing or denying* a motion to dismiss on the grounds of *forum non conveniens*' *** (210 Ill. 2d R. 306)." (Emphasis added.) *Quaid*, 392 Ill. App. 3d at 764. Therefore, *Nemanich* is not controlling. Similarly, *Stone Container Corp.*, *Certain Underwriters at Lloyd's, London*, *Marriage of Clark*, and *Professional Group Travel, Ltd.*, which were decided before the 1994 amendment to Rule 306(a)(2), do not support a finding that the dismissal order at issue here, which contained the conditions of Rule 187, was final and appealable under Rules 301 and 303.

¶ 25 Plaintiffs suggest that they were not required to appeal the dismissal order under Rule 306(a)(2). Plaintiffs rely on the language in Rule 306 that a party "may" file a petition for leave to appeal from one of the specific interlocutory orders listed in the rule. Plaintiffs contend that, because the language of Rule 306 is permissive, they were not barred from filing a notice of appeal under Rules 301 and 303. However, as we have shown, the dismissal order was interlocutory and therefore appealable only under an exception set forth in Illinois Supreme Court Rules (*e.g.*, Rule 306(a)(2)), and not as a final order under Rules 301 and 303.

¶ 26 Indeed, it is well recognized that " '[w]hen interpreting supreme court rules, our court is guided by the same principles applicable to the construction of statutes,' " and " '[t]his court is obliged "to avoid a construction which renders a part of the statute superfluous or redundant, and instead presume that each part of the statute has meaning." ' " (Citations omitted.) *Salem*, 2016 IL 118693, ¶¶ 11, 16. We would clearly violate these principles if we were to conclude that an order granting a motion to dismiss on the grounds of interstate *forum non conveniens* was in fact a final order appealable as of right under Rules 301 and 303, as it would render the language of Rule 306(a)(2)—which explicitly allows for a permissive interlocutory appeal of such an order—superfluous or redundant.

¶ 27 Attached to plaintiffs' supplemental brief is a proposed petition for leave to appeal under Rule 306(a)(2). Plaintiffs ask that, if we find that their notice of appeal did not perfect their appeal, we allow the filing of the proposed petition and grant it. As discussed above, however, plaintiffs were required to file a petition for leave to appeal within 30 days of the entry of the order dismissing the action from Cook County on *forum non conveniens* grounds. Under Rule 306(c)(4), any motion for extension of time to file a petition must be filed before the 30-day time period for filing the petition had expired. Ill. S. Ct. R. 306(c)(4) (eff. Mar. 8, 2016); *Leonard R.*,

351 Ill. App. 3d at 174. Therefore, we are without jurisdiction to grant plaintiffs leave to file the petition.

¶ 28 We recognize the harshness of this result. Moreover, we are cognizant that plaintiffs' choice to file a notice of appeal in this case was: (1) quite possibly the result of the fact that, prior to the amendment of Rule 306(a)(2), orders dismissing cases on *forum non conveniens* grounds were viewed as final orders appealable under Rule 301 by the simple filing of a notice of appeal (see, *e.g.*, *Nemanich*, 90 Ill. App. 3d at 489); and (2) according to the jurisdictional statement provided on appeal, was a choice made in specific reliance upon the decision in *Kerry No. 5, LLC*, which took this view even after the amendment to Rule 306(a)(2). The *Nemanich*[1] and *Kerry No. 5, LLC* decisions no doubt muddied the waters, but any harm in this case can be addressed only by an exercise of our supreme court's supervisory authority.

¶ 29 However, the fact remains that this court has no power to ignore either Supreme Court Rules 306(a)(2) and 187, or the warnings contained in the *Salem* decision. We are therefore without jurisdiction to consider this appeal at this time, and unless and until plaintiffs secure a supervisory order from our supreme court directing us to accept jurisdiction, this court has no authority to consider either plaintiffs' request to file a petition for leave to appeal or the merits of the appeal.

¶ 30 For the reasons stated, we are obligated to dismiss this appeal for lack of appellate jurisdiction.

¶ 31 Appeal dismissed.

¶ 32 JUSTICE DELORT, specially concurring:

---

[1] See 2 Ill. L. and Prac. Appeal and Error § 107, n. 3 (2016) (citing *Nemanich* for the proposition that an "order granting change of venue to another state's court system on *forum non conveniens* grounds *** was, in effect, dismissal of action and thus final and appealable order").

¶ 33 Article VI, section 6 of the Illinois Constitution provides in part: "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located." Ill. Const. 1970, art. VI, § 6. Essentially, this provision guarantees that a litigant may *eventually* obtain appellate review of any circuit court order, and to have that appeal heard on the merits without receiving specific permission to do so. That right ordinarily vests when the case concludes through the entry of a final order.

¶ 34 The majority explains that the Kelseys could not appeal the dismissal order as a matter of right because it was not a final order. This begs the question of when the February 29, 2016 order dismissing the Kelseys' case and sending it to Ohio will become "final" so they can appeal without special permission to do so. The *Quaid* court briefly mentioned this issue but did not resolve it. In that case, the defendant relied on the constitutional provision and contended that the supreme court had "no power to adopt rules that would convert a litigant's absolute right to appeal a final judgment into a discretionary appeal." *Quaid*, 392 Ill. App. 3d at 764. The court rejected this contention without any analysis, merely repeating its prior statements that the plain language of Rule 306(a)(2) allowed the plaintiff to petition for leave to appeal the order dismissing the case. *Id.*

¶ 35 In considering when the dismissal order would become final, an analogy can be made to the situation which occurs when a case is dismissed for want of prosecution (DWP) under section 13-217 of the Illinois Code of Civil Procedure (735 ILCS 5/13-217 (West 2014)). That section grants a plaintiff, whose case is dismissed for want of prosecution (DWP), an absolute right to refile the case in Illinois within one year of the dismissal. Because of the specific one-year refiling option, a DWP order does not "absolutely and finally fix the rights of the parties." Therefore, a DWP order cannot be appealed as a final order. *Flores v. Dugan*, 91 Ill. 2d 108,

112 (1982). However, if the plaintiff declines to refile the case, the DWP order becomes final and appealable after the expiration of the one-year period. This is because at that point, "the DWP constitutes a final judgment [and the original DWP order] effectively 'ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.' " *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 502 (1998) (quoting *Flores*, 91 Ill. 2d at 112).

¶ 36 It is difficult to analogize the DWP rule to Rule 187. First, Rule 187 contains no time limit by which the plaintiff is required to refile in the original forum. In fact, it allows the case to be filed in the other forum long after the statute of limitations would have ordinarily expired. Second, unlike the DWP rule, Rule 187 does not grant any absolute right to refile at all after dismissal. Instead, it allows the case to remain forever dismissed from Illinois courts unless someone *other* than the aggrieved plaintiff takes some affirmative step which would allow the case to be reinstated in Illinois. None of these steps are within the control of the plaintiff, and each requires an affirmative act by the opposing party or the court. In fact, these triggers may never occur at all.

¶ 37 While I agree that the majority opinion correctly interprets Rules 187, 301, and 306(a)(2) based on their plain and ordinary meaning, it is entirely unclear when, or ever, the dismissal order would become final. One might suppose that under the supreme court's analysis in *S.C. Vaughan Oil Co.*, the dismissal order might become final in Illinois when all three conditions listed in Rule 187(c)(2)(ii) have been nullified, thereby precluding the plaintiff from reinstating the case in Illinois. Perhaps that occurs when the plaintiff successfully refiles in the other forum, the defendants accept service and answer the complaint there without raising a statute of limitations defense. However, that solution might be unworkable. By filing in the other forum and simultaneously appealing the now-final dismissal order in Illinois, the plaintiff would be

litigating the same case in two separate jurisdictions. That would make the case ripe for dismissal in the other forum and possibly subject the plaintiff to sanctions. The question is made all the more challenging when one considers that the other forum may be a state, or even a foreign nation, with markedly different procedural rules than Illinois which would adversely affect the plaintiff in some way.

¶ 38 Under any analysis, the finality rule clearly forces a plaintiff to litigate in another jurisdiction merely to perfect his Illinois constitutional right to review of the dismissal order. This suggests that the dismissal of this case for lack of jurisdiction cannot be reconciled with Article VI, section 6 of the Illinois Constitution. But the conflict emanates from a rule promulgated by the Illinois Supreme Court itself. As that court recently noted, the appellate court is "free to question" prior supreme court holdings and to recommend that the supreme court revisit them. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 28. However, as an inferior court, we have no authority to declare an Illinois Supreme Court Rule unconstitutional. See *id*. This case raises an issue which, I most respectfully suggest, the supreme court may wish to address. Given the limitations on our authority, I agree that this panel must dismiss the appeal for lack of jurisdiction.