2017 IL App (1st) 160808-U

No. 1-16-0808

Order filed July 27, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DOUGLAS SMITH,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	No. 14 L 8280
THE VILLAGE OF ROBBINS and MEL DAVIS,	)	
Individually and as Police Chief of the Village of	)	
Robbins,	)	Honorable
	)	Daniel T. Gillespie,
Defendants-Appellees.	)	Judge presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Because the circuit court only dismissed Counts I and II of plaintiff's three-count third amended complaint and never made a special finding that there was no just reason for delaying appeal, we have no jurisdiction to consider the merits of this appeal and dismiss it.

¶ 2 Plaintiff Douglas Smith filed a three-count third amended complaint against defendants, the Village of Robbins and Mel Davis. Initially, the circuit court denied defendants' joint motion

to dismiss, but upon their motion to reconsider, the court dismissed Counts I and II with prejudice. Although in its ruling, the court stated it had previously dismissed Count III, the record belies this statement. Plaintiff subsequently appealed the court's dismissal, contending that it: (1) erroneously dismissed Counts I and II; and (2) wrongly concluded that it had previously dismissed Count III. Because we agree with plaintiff that the circuit court never actually dismissed Count III and it did not make a special finding that there was no just reason for delaying appeal of the dismissal of Counts I and II as required by Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), we have no jurisdiction to consider the merits of this appeal and accordingly dismiss it.

¶ 3 I. BACKGROUND

¶ 4 On May 28, 2015, plaintiff Douglas Smith filed a three-count third amended complaint against defendants, the Village of Robbins (Robbins) and Mel Davis (Davis), both individually and in his official capacity as former police chief of Robbins. In the complaint, plaintiff alleged that, in May 2013, employees and agents of Robbins contacted and recruited him to lead the Robbins Police Department's Internal Affairs Division. After plaintiff interviewed with Davis, he received and accepted an offer from Robbins, "through its agents," to lead the division. Plaintiff claimed the agreement was oral and provided that he would leave his current full-time job with General Electric in Louisville, Kentucky, where he made $80,000 per year with benefits "in consideration" for the job in Robbins. Plaintiff and Robbins agreed that the position would not have benefits and would be part-time, but he would have full authority to manage the investigations of the division. They also agreed that he would begin on August 13, 2013, and anticipated that he would complete his obligations within one year.

¶ 5 Count I of the complaint alleged that Robbins breached its contract with plaintiff. He claimed that, upon being hired by Robbins, he began conducting investigations, including one of Davis for violating state law, but Robbins hindered them. Eventually, in November 2013, Robbins fired plaintiff. Though he never received an official letter of termination, plaintiff had been instructed to turn over his credentials and "it was understood that Plaintiff was barred from returning to work."

¶ 6 Count II of the complaint alleged that Davis, in his official capacity as then-police chief, tortiously interfered with plaintiff's contractual relations with Robbins. Plaintiff claimed that Davis knew of his contract with Robbins and intentionally and maliciously induced Robbins to breach that contract by falsely accusing him of having "faked his credentials" to the village board, the mayor and the "State Training Board." Plaintiff asserted that Davis' actions were an attempt to prevent him from investigating Davis and other members of the police department.

¶ 7 Count III of the complaint alleged that Davis, in his individual capacity, slandered plaintiff. He claimed that, in August, September and November of 2013, Davis had private conversations "after hours from work, by phone and in person" with the then-Deputy Chief of Police of Robbins Hashi Jaco. In those conversations, Davis falsely informed Jaco that plaintiff "faked his credentials," had "integrity issues" and could not "be trusted." Plaintiff asserted that Davis knew these statements were false and were intended to hurt his reputation. As a result of these statements, plaintiff stated that his relationship with Jaco "deteriorated." Plaintiff further alleged that Davis made similar false statements to an unnamed "mutual friend" of theirs.

¶ 8 Defendants filed a joint motion to dismiss all three counts pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). In the section 2-615 (735 ILCS 5/2-615 (West 2014)) portion of the motion, defendants argued that: (1) Count I should be

dismissed because (i) the oral contract was unenforceable against Robbins because plaintiff failed to allege any facts showing the contract had been approved by the village and (ii) regardless, plaintiff failed to allege that their contract was anything but an at-will agreement; (2) Count II should be dismissed because without an enforceable contract between plaintiff and Robbins or a breach of that contract, Davis could not have tortiously interfered with plaintiff's contractual relations; and (3) Count III should be dismissed because the allegations of slander against Davis were nothing but conclusions and thus insufficiently pled.

¶ 9 In the section 2-619 (735 ILCS 5/2-619 (West 2014)) portion of the motion, defendants argued that: (1) Count II should be dismissed because Davis had absolute immunity from a tortious interference claim under section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201 (West 2014)); and (2) Count III should be dismissed because it was barred by the one-year statute of limitations for defamation claims.

¶ 10 The circuit court held a hearing on the motion. Concerning Count III, in responding to defendants' statute-of-limitations defense, plaintiff argued that the claim should survive the motion to dismiss because the slander allegations related back to his original complaint. The court responded, "[a]ll right. So arguably it did." It further summarized the three counts in plaintiff's complaint and stated with regard to Count III: "Normally, a spoken statement should be given verbatim but that can be addressed better in discovery." The court subsequently denied defendants' motion to dismiss, finding that, although it "could for the reasons set by defendant[s] strike all of the counts," plaintiff could "re-plead it" and "years can go by before we ever get it correctly." Because plaintiff had a "colorful complaint," the court believed "the better procedure" was to "move forward" and let all three counts of the complaint "stand." The court's

written order stated that "[t]he motion to dismiss is hereby denied without prejudice" and "[t]he third amended complaint hereby stands."

¶ 11 Defendants filed a motion to reconsider, arguing that the circuit court erred in its application of the law by allowing Counts I and II to survive the motion to dismiss.

¶ 12 On February 25, 2016, the circuit court issued a written order, granting the motion to reconsider and dismissing Counts I and II with prejudice. The court found that, because plaintiff's employment with Robbins was at-will, he could be terminated without the village being liable for a breach of contract and subject only to liability for the tort of retaliatory discharge. Consequently, the court concluded that Count I had to be dismissed. Furthermore, it noted that plaintiff could not "convert" his breach of contract claim into one of retaliatory discharge because the statute of limitations had expired for such an action. The court also found that, because plaintiff could not make out a breach of contract claim against Robbins, he could not sufficiently allege that Davis tortiously interfered with his contractual relations. Consequently, it concluded that Count II had to be dismissed. Concerning Count III, the court stated that defendants had brought their motion to reconsider "notwithstanding dismissal with prejudice Count III of the Complaint" and later stated "Count III of the Complaint was dismissed with prejudice because it is time-barred." The court concluded its ruling stating that its order was "final and appealable."

¶ 13 A week later, plaintiff filed a motion for a default judgment against Davis for failing to file an answer to Count III of the complaint. Plaintiff asserted that, while defendants filed a motion to reconsider concerning Counts I and II, they made no such request concerning Count III. Davis responded, acknowledging that his and Robbins motion to reconsider "only specifically address[ed] the claims asserted in Counts I and II," but posited that the court's

"ruling [was] undoubtedly impactful to Count III." He argued that Count III contained only conclusory statements, was "grossly insufficient" to assert a claim against him, and it was "against common sense, judicial economy, and the parties' interests" to require him to answer Count III while the motion to reconsider was pending. Davis therefore requested that the circuit court strike plaintiff's motion and either allow him leave to file a motion to dismiss Count III or, in the alternative, require plaintiff to amend his complaint to allege sufficient facts to sustain a claim for slander.

¶ 14 On March 23, 2016, the circuit court entered a written case management order, striking plaintiff's motion for a default judgment without explanation.[1] The order further stated that Davis' motion to strike was stricken as moot. That same day, plaintiff filed a notice of appeal directed at the circuit court's order granting defendants' motion to reconsider and dismissing Counts I and II of his complaint. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Although neither party has raised our jurisdiction over this appeal as an issue, we must first consider it before entertaining the merits of the appeal. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). "[A]n appellate court has an independent duty to consider whether or not it has jurisdiction to hear an appeal." *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 67. In plaintiff's jurisdictional statement, he states that we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), which provides that "[e]very final judgment of a circuit court in a civil case is appealable as of right." A judgment is considered final where "it disposes of the rights of the parties, either on the

[1] The judge who entered the order was a different judge than the one who had previously presided over the case.

entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). An order dismissing claims with prejudice is usually considered a final judgment, but such an order is not always appealable immediately. *Id.*

¶ 17 Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) provides that "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." Absent such a finding, "a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved." *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). The purpose of Rule 304(a) is " 'to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy.' " *Id.* (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)).

¶ 18 In the present case, we are presented with a situation contemplated by Rule 304(a). Of the three counts in plaintiff's third amended complaint, the circuit court has dismissed only two. The court dismissed Counts I and II with prejudice upon reconsideration of defendants' motion to dismiss, but Count III survived. Although in its written ruling on defendants' motion to reconsider, the court stated that it had dismissed Count III, the record contradicts this belief. Nothing in either the court's written ruling or its oral ruling denying defendants' motion to dismiss indicates that it dismissed Count III. Based on the record before us, the court was mistaken that it had previously dismissed Count III, and this count therefore still remains pending. Thus, a final judgment was entered on fewer than all of the matters in controversy, and

we only have jurisdiction to consider this appeal if the circuit court made an express written finding that there was no just reason for delaying appeal. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *In re Marriage of Gutman*, 232 Ill. 2d at 151.

¶ 19 The circuit court never made the express written finding required by Rule 304(a). Although the court concluded its written ruling dismissing Counts I and II by stating that its order was "final and appealable," this language alone is insufficient to trigger an appeal under Rule 304(a). See *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011) (finding that "a circuit court order accompanied by language indicating that it is 'final and appealable,' but not referencing immediate appeal, the justness of delay, or Rule 304(a), does not trigger the rule"). Consequently, this court does not have jurisdiction to hear this appeal under Rule 304(a), and therefore, we must dismiss it for a lack of jurisdiction. See *id.* at 545.

¶ 20 III. CONCLUSION

¶ 21 Based on the foregoing reasons, we dismiss plaintiff's appeal for a lack of jurisdiction.

¶ 22 Appeal dismissed.