SECOND DIVISION
January 24, 2017

No. 1-16-0883

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GEORGE CARR,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	15 L 8985
	)	
8200 W. 87th, LLC and KINSELLA	)	Honorable
LANDSCAPE, LLC,	)	William E. Gomolinski,
	)	Judge Presiding.
Defendants	)	
	)	
(Kinsella Landscape, LLC,	)	
	)	
Defendant-Appellant).	)	

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed for lack of jurisdiction where the sole issue on appeal is whether the trial court erred in denying defendant's section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2014)) motion to dismiss.

¶ 2 Defendant Kinsella Landscape, LLC appeals the trial court's ruling denying its section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2014)) motion to dismiss a negligence count brought

by plaintiff George Carr stemming from injuries he sustained after slipping and falling on "black ice" on a paved parking lot adjacent to an apartment complex where Kinsella performed plowing, snow removal and salting-deicing services. Carr filed a complaint raising a count against Kinsella for negligence asserting that Kinsella failed to properly remove ice on the parking lot. Carr also raised a negligence count against 8200 W. 87th, LLC (the apartment complex owner) and Core Equities, LLC d/b/a Core Property Management (Core) (a property management company). Carr later amended the complaint to voluntarily dismiss Core because it had no involvement with the premises on the date of the occurrence. Carr also amended the complaint to add a count against Kinsella for willful and wanton conduct asserting that Kinsella pushed melting snow into an area of the parking lot where it should have known that the melting snow would drain back onto the parking lot and refreeze creating a dangerous condition. Kinsella and 8200 W. 87th separately moved to dismiss the negligence counts claiming that the Snow and Ice Removal Act (Act) (745 ILCS 75/2 (West 2014)) provided immunity from any liability relating to the removal of snow and ice on the parking lot.

¶ 3 Following a hearing on the issue of whether the Act barred Carr's negligence claims, the trial court found that Kinsella and 8200 W. 87th were not immune under the Act from liability for any negligence relating to the removal of ice from the paved parking lot surface. Accordingly, the trial court denied Kinsella's and 8200 W. 87th's motions to dismiss in a combined written order. At the request of Kinsella's co-defendant, the trial court also entered an Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) finding that there was no just reason for delaying either enforcement or appeal of its order. Kinsella timely appealed the trial court's denial of its motion to dismiss. 8200 W. 87th is not a party to this appeal and there is nothing in the record indicating that 8200 W. 87th has appealed the trial court's ruling.

¶ 4 Within two weeks of Kinsella filing a notice of appeal, Carr filed a motion to dismiss the appeal on jurisdictional grounds, asserting that the trial court's order denying Kinsella's motion to dismiss was not a final and appealable order. A different panel of this court entered an order taking Carr's motion to dismiss with the case. Having reviewed the record on appeal and the parties' briefs, we now address the merits of Carr's motion to dismiss the appeal.

¶ 5 Our jurisdiction is limited to reviewing final orders, subject to statutory or supreme court rule exceptions. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994); *Cabinet Service Title, Inc. v. Schroeder*, 255 Ill. App. 3d 865, 868 (1993). Specifically enumerated categories of interlocutory orders are appealable by leave of court under Illinois Supreme Court Rule 306 (eff. Feb. 16, 2011) and as a matter of right under Rule 307 (eff. Feb. 26, 2010). *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 132-33 (2008). Rule 308(a) (eff. Feb. 26, 2010) provides for the permissive appeal of an interlocutory order certified by the trial court as involving a question of law as to which there is substantial ground for difference of opinion and when an immediate appeal from the order may materially advance the ultimate termination of litigation. Consequently, our jurisdiction to consider an appeal from an interlocutory order must emanate from Supreme Court Rules 306, 307 or 308. *Schroeder*, 255 Ill. App. 3d at 869.

¶ 6 Carr correctly points out that the trial court's denial of Kinsella's motion to dismiss was an interlocutory order and not one that was final and appealable. *Desnick v. Department of Professional Regulation*, 171 Ill. 2d 510, 540 (1996). A trial court's judgment or order is "final" "if it disposes of the rights of the parties, either on the 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 leaving the cause still pending and undecided is not a final order. *In re Marriage of Zymali*, 94 Ill. App. 3d 1145, 1148 (1981).

¶ 7 Here, the trial court's order denying Kinsella's motion to dismiss was not a final order because it neither terminated the litigation on its merits nor settled the rights of the parties. Indeed, the sole issue Kinsella raised in its brief on appeal was that the trial court erred in denying its motion to dismiss Carr's amended complaint because the Act provided immunity from any liability relating to the removal of snow and ice. Given that the case remained pending in its entirety following entry of the order, this is clearly an appeal from an interlocutory order. *Schroeder*, 255 Ill. App. 3d at 869. Importantly, the trial court was not asked to certify the question of whether the Act provided immunity to Kinsella under Rule 308 and the parties do not contend that the challenged dismissal order falls within the specified categories afforded review by Rules 306 and 307. Furthermore, the fact that the trial court included a Rule 304(a) finding in its order is not dispositive because the sole claim that Kinsella raised on appeal was the trial court's allegedly erroneous ruling denying its motion to dismiss, and the supreme court has not provided by rule for an appeal of this type of order. *Id*.; see *In re Marriage of Lentz*, 79 Ill. 2d 400, 408 (1980) (appellate jurisdiction is not conferred simply by the trial court's finding that there was no just reason to delay enforcement or appeal). Consequently, Kinsella's appeal is dismissed for lack of jurisdiction.

¶ 8 Appeal dismissed.