

No. 1-16-1912

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 DISTRICT

DUANE MCCARVILLE,)	Appeal from the
)	Circuit Court of
Plaintiff- Appellant,)	Cook County
)	
v.)	No. 14 L 8086
)	
JOON LEE'S TAE KWON DO, JOON LEE'S TAE)	
KWON DO SCHOOL, Inc., JOON LEE, HEE SOOK)	
LEE, MASTER JOON LEE'S, Inc., and MASTER)	
MARTIAL ARTS ACADEMY OF OAK LOAW, Inc.,)	Honorable
)	Daniel T. Gillespie,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for want of jurisdiction.

¶ 2 The plaintiff, Duane Mccarville, appeals from an order of the circuit court granting a motion for summary judgment filed in this negligence action by the defendants, Joon Lee, Hee Sook Lee, Master Joon Lee's, Inc. and Master Martial Arts Academy of Oak Lawn, Inc. For the reasons which follow, we dismiss this appeal for want of jurisdiction.

¶ 3 On August 1, 2014, the plaintiff filed the instant action seeking recovery for injuries he is alleged to have received while on the premises of Joon Lee's Tae Kwon Do located in Oak Lawn, Illinois. In his second amended complaint filed on February 3, 2016, the plaintiff pled twelve negligence counts of which two counts were pled against each of the defendants, Joon Lee's Tae Kwon Do, Joon Lee's Tae Kwon Do School, Inc., Joon Lee, Hee Sook Lee, Master Joon Lee's, Inc., and Master Martial Arts Academy of Oak Lawn, Inc. On February 23, 2016, Joon Lee, Hee Sook Lee, Master Joon Lee's, Inc., and Master Martial Arts Academy of Oak Lawn, Inc. filed their answer to the second amended complaint, and on March 15, 2016, these defendants filed a joint motion for summary judgment. It does not appear from the record that the defendants Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc. were ever served with process or filed an appearance, and we find no order ever dismissing the counts of the second amended complaint pled against them.

¶ 4 On May 20, 2016, this case came before the trial court, following which an order was entered which states that the matter was "heard on the Motion for Summary Judgment of defendants Joon Lee, Hee Sook Lee, Master Joon Lee's Inc., and Master Martial Arts Academy of Oak Lawn, Inc." That order also provided that the matter was "set for ruling on June 16, 2016." On June 16, 2016, the trial court entered a memorandum order which, without delineation, states that the "Defendants have moved for Summary Judgment." The last three sentences of the order state: "the Defendants' motions for summary judgment should be granted. Accordingly, judgment is entered for the Defendants. This is a final, appealable order." The plaintiff filed a notice of appeal on July 8, 2016. According to his brief, the plaintiff invoked our jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 5 Prior to addressing the substantive issues raised by the plaintiff in this appeal, we are obligated to examine our jurisdiction and dismiss this appeal if that jurisdiction is lacking, even when, as in this case, none of the parties have questioned our jurisdiction. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985); *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984).

¶ 6 As noted earlier, the summary judgment from which the plaintiff appeals, was entered pursuant to a motion filed by the defendants Joon Lee, Hee Sook Lee, Master Joon Lee's, Inc., and Master Martial Arts Academy of Oak Lawn, Inc. The defendants Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc. did not join in that motion, nor was the motion brought on their behalf. Counts I and II of the plaintiff's second amended complaint sought recovery against Joon Lee's Tae Kwon Do and counts III and IV sought recovery against Joon Lee's Kwon Do School, Inc.

¶ 7 This court acquires jurisdiction over an appeal from a judgment which does not dispose of the claims against all of the defendants only if the judgment order complies with the mandates of Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). In relevant part, Rule 304(a) provides that, when a judgment is entered in favor of fewer than all of the parties to an action, an appeal may be taken "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." Ill. S. Ct. R. 304(a) (eff. March 8, 2016). In this case, the summary judgment entered on June 16, 2016, provides only that: "This is a final, appealable order." No reference is made in the order to Rule 304(a), and the language in the order does not track the language of the rule, namely: that there is no just reason for delaying its appeal. In a number of cases, this court has held that merely stating that an order is final and appealable is insufficient to satisfy the requirements of Rule 304(a). See *Palmolive*

Tower Condominiums, LLC v. Simon, 409 Ill. App. 3d 539, 542-44 (2011); *Matson v. Department of Human Rights*, 322 Ill. App. 3d 932, 939 (2001); *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 4-5 (1993).

¶ 8 Despite the fact that Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc. were never served and did not file appearances in this matter, they are still parties to this suit for purposes of Rule 304(a). *Kral v. Fredhill Press Company, Inc.*, 304 Ill. App. 3d 988, 993 (1999); *Zak v. Allson*, 252 Ill. App. 3d 963, 965 (1993). However, the rule expressed in *Kral* and *Zak* is subject to an exception:

"When an action is brought against a master based on the alleged negligent acts of his servant, and no independent wrong is charged on behalf of the master, his liability is entirely derivative, being founded upon the doctrine of *respondet superior*. In this regard, it has been said that the liability of the master and servant for the acts of the servant is deemed that of one tortfeasor and is a consolidated or unified one." *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 123-24 (1978).

In such a case, a judgment in favor of either the master or servant is deemed a judgment in favor of both. *Id.* at 124; *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 454-55 (2006); *Merritt v. Randall Painting Co.*, 314 Ill. App. 3d 556, 559 (2000). Under such a circumstance this court may acquire jurisdiction pursuant to Rule 301 over an appeal from an order dismissing either the master or the servant but not both. *Merritt*, 314 Ill. App. 3d at 559. In this case, however, the liability of the unserved defendants, Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc., is not founded upon the actions of any of the defendants who moved for summary judgment. The second amended complaint alleges that the liability of Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc. is predicated, in part, upon the

negligent acts or omissions of Jane Lee and Michael Pendleton who were never joined as defendants. Consequently, the exception to the rule expressed in *Kral* and *Zak* recognized in *Cangemi* and *Merritt* is inapplicable in this case.

¶ 9 We also note that the memorandum order entered by the trial court states that "the Defendants' motion for summary judgment should be granted. Accordingly, judgment is entered for the Defendants." The order does not specify which defendants brought the motion for summary judgment or in whose favor the judgment was entered. However, as section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2014)) does not authorize a trial court to enter summary judgment *sua sponte* or in favor of a party who has not moved for summary judgment (*Peterson v. Randhava*, 313 Ill. App. 3d 1, 9-10 (2000)), we will not interpret the summary judgment entered by the trial court on June 16, 2016, to include judgment in favor of the unserved defendants, Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc.

¶ 10 The foregoing analysis leads us to conclude that the judgment from which the plaintiff has appealed did not dispose of the claims pled against Joon Lee's Tae Kwon Do and Joon Lee's Tae Kwon Do School, Inc. in the plaintiff's second amended complaint, and the sentence in the judgment order stating that it is a "final, appealable order" does not satisfy the requirements of Rule 304(a). We conclude that we lack jurisdiction to review the summary judgment entered on June 16, 2016, and, therefore, dismiss this appeal.

¶ 11 Appeal dismissed.