

2017 IL App (1st) 162070-U

No. 1-16-2070

Order filed June 14, 2017

Third Division

**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

---

SAMUEL PINTILIE DBA ALL FLOORINGS 1,	)	Appeal from the
MARCELUS PINTILIE, VALERIU PINTILIE, SERBAN	)	Circuit Court of
FLORIN, COSTACHI PINTILIE,	)	Cook County.
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
HANI TADROS, and BURBANK APARTMENTS LLC,	)	No. 14 M5 582
	)	
Defendants,	)	
	)	
(Samuel Pintilie dba All Floorings 1, Plaintiff-	)	Honorable
Counterdefendant-Appellant; Hani Tadros, Defendant-	)	Russell W. Hartigan,
Counterplaintiff-Appellee).	)	Judge, presiding.

---

JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Lavin and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* Plaintiff's appeal is dismissed for lack of jurisdiction because the trial court's June 1, 2016 judgment order was not a final and appealable order. Even if the June 1, 2016 order was a final and appealable order, plaintiff's appeal would be

dismissed for lack of jurisdiction because he did not timely file his notice of appeal.

¶ 2 Plaintiff-counterdefendant Samuel Pintilie dba All Floorings 1 (Pintilie), *pro se*, appeals the trial court's judgment on an action arising out of a breach of contract involving a construction project.<sup>1</sup> Following a bench trial, the trial court awarded \$13,500 to Pintilie on his complaint and \$6,000 to defendant-counterplaintiff Hani Tadros (Tadros) on his counterclaim.<sup>2</sup> On appeal, Pintilie challenges the judgment amount awarded to Tadros on the counterclaim. Although Tadros has not filed a brief in response, we may proceed on the principles set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We dismiss for lack of jurisdiction.

¶ 3 We have an independent duty to consider whether we have jurisdiction, even if the parties do not raise the issue. *Daewoo International v. Monteiro*, 2014 IL App (1st) 140573, ¶ 72 (“An appellate court has a duty to consider its own jurisdiction, whether or not the parties have raised it as an issue.”). We do not have jurisdiction to review judgments or orders which are not final, except as set forth by the supreme court rules. *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 22. “A judgment or order is final and appealable if it terminates the litigation between the parties on the merits, and sets, fixes, or disposes of the rights of the parties, whether upon the entire controversy or upon some definite and separate part thereof, so that if the judgment or order is affirmed, the trial court need only execute it.” *MidFirst Bank*, 2016 IL App (1st) 150465, ¶ 23.

---

<sup>1</sup> The record reflects Pintilie entered into the subject agreements as “Sam Pintilie dba All Floorings 1” and “Samuel Pintilie.”

<sup>2</sup> Tadros's counterclaim asserted claims against “SAMUEL PINTILE, individually and d/b/a All Floorings 1” for negligence and consumer fraud under the Illinois Consumer Fraud and Deceptive Business Practices Act. The trial court's June 1, 2016 order does not specify whether it entered judgment in favor of Tadros on only one count or on both counts.

¶ 4 Under Illinois Supreme Court Rule 304(a), when a case involves multiple parties or claims, a party may appeal a final judgment that does not “dispose of an entire proceeding, ‘if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.’ ” *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 23 (quoting Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)). A finding under Rule 304(a) does not make a nonfinal order appealable, but “makes a final order appealable where there are multiple parties or claims in the same action.” *Revolution Portfolio, LLC v. Beale*, 332 Ill. App. 3d 595, 598-99 (2002). A notice of appeal from a final appealable order must be filed within 30 days of entry of the order. Ill. S.Ct. R. 303(a)(1) (eff. Jan. 1, 2015). On appeal, as the appellant, it is Pintilie’s burden to establish jurisdiction. *U.S. Bank Nat. Ass’n v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 24.

¶ 5 As an initial matter, Pintilie’s brief does not contain a statement of jurisdiction as required by Illinois Supreme Court Rule 341(h)(4) (eff. Jan. 1, 2016). However, the notice of appeal and arguments in his brief indicate that Pintilie is appealing the trial court’s June 1, 2016, order, which granted judgment in favor of Pintilie on his complaint in the amount of \$13,500 and granted judgment in favor of Tadros on his counterclaim in the amount of \$6,000.

¶ 6 The caption of Pintilie’s complaint lists four additional plaintiffs: Marcelus Pintilie, Valeriu Pintilie, Serban Florin, and Costachi Pintilie. It also lists an additional defendant, Burbank Apartments, LLC. These additional parties are reflected on the trial court’s “Half Sheet” pages. However, the June 1, 2016, order did not expressly dispose of, or reference, any of these parties. Rather, the order only indicates one name – Samuel Pintilie – as plaintiff and one name – Han[i] Tadros – as defendant.

¶ 7 From our review of the entire record on appeal, there is nothing in the record that indicates the status of these additional parties. The four other plaintiffs are not referenced in any subsequent orders or motions. With respect to Burbank Apartments, LLC, the record indicates that it filed a joint answer to the complaint with Tadros, and it appears that it was represented by the same trial counsel as Tadros. But nothing in the record indicates whether Pintilie's action against Burbank Apartments, LLC, was resolved. There is no report of the proceedings in the record from which we can make these determinations.

¶ 8 As the appellant, it is Pintilie's burden to "provide a record of the trial court's proceedings sufficient for reviewing the issues raised on appeal." *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). In a direct appeal from the trial court, the record must demonstrate the basis for our appellate jurisdiction. *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25. If any doubts arise from an incomplete record, they will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). The record is insufficient for us to determine the status of plaintiffs Marcelus Pintilie, Valeriu Pintilie, Serban Florin, and Costachi Pintilie and defendant Burbank Apartments, LLC. It is, therefore, insufficient to demonstrate that the trial court's June 1, 2016, order disposed of all parties and claims such that it may be considered a final and appealable order subject to our jurisdiction. *McCorry v. Gooneratne*, 332 Ill. App. 3d 935, 941 (2002) ("We cannot presume that we have authority to decide an appeal on the basis of a record insufficient to show our jurisdiction.").

¶ 9 Because we cannot assume that the June 1, 2016, order disposed of all parties and claims, the order appears interlocutory and cannot be appealed without 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. Mar. 8, 2016); *Fidelity National Title Insurance Co. v. Westhaven Properties Partnership*, 386 Ill. App. 3d 201, 211 (2007). However, the June 1, 2016, order did not include this Rule 304(a) finding and Pintilie does not explain its absence. Accordingly, on this record, we must conclude that the June 1, 2016, judgment order was not a final and appealable order, and therefore, that we lack jurisdiction to consider Pintilie's appeal. *Raglin v. HMO Illinois, Inc.*, 217 Ill. App. 3d 1076, 1078 (1991) (where the order being appealed did not dispose of all the parties in the case and did not contain a Rule 304(a) finding, this court dismissed the plaintiffs' appeal for lack of jurisdiction).

¶ 10 Even assuming that the June 1, 2016, order was a final and appealable order, we would have no jurisdiction to consider Pintilie's appeal as it was untimely filed.

¶ 11 The supreme court rules govern the time in which the parties must file a notice of appeal. *Id.* Illinois Supreme Court Rule 303(a)(1) provides, in relevant part:

“The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order[.]” IL S. Ct. Rule 303(a)(1) (eff. Jan. 1, 2015).

“Strict compliance with the supreme court rules governing the time limits for filing a notice of appeal is required, and neither a trial court nor an appellate court has the authority to excuse compliance with the filing requirements mandated by the supreme court rules.” *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶20. If a notice of appeal is not timely filed, we lack

jurisdiction and must dismiss the appeal. *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8.

¶ 12 Here, the trial court entered its judgment order on June 1, 2016. Pintilie filed his notice of appeal on July 25, 2016, which was more than 30 days after the trial court entered the June 1, 2016 judgment. Because Pintilie did not timely file his notice of appeal pursuant to Rule 303(a)(1), we do not have jurisdiction to consider his appeal. *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 27 (“A notice of appeal filed more than 30 days after a final, appealable order, or order disposing of a posttrial motion, does not invoke this court’s jurisdiction to consider the appeal.”).

¶ 13 Although a timely postjudgment motion tolls the 30-day time period to file a notice of appeal (IL S. Ct. Rule 303(a)(1) (eff. Jan. 1, 2015); *Bank of America, N.A.*, 2012 IL App (1st) 110749, ¶ 20), neither party filed such a motion here. “In order for a postjudgment motion to have the effect of tolling the time in which to appeal the judgment, that motion must be ‘directed against the judgment.’ ” *D’Agostino v. Lynch*, 382 Ill. App. 3d 639, 643 (2008) (quoting Ill. S. Ct. R. 303(a)(1) (eff. Jan 1, 2015)). Therefore, to be considered a postjudgment motion for purposes of the rules governing the time period to file a notice of appeal, “a motion must request at least one of the forms of relief specified in section 2-1203 of the Code (735 ILCS 5/2–1203 (West 2008)), namely, rehearing, retrial, modification, vacation, or other relief directed against the judgment.” *Bank of America, N.A.*, 2012 IL App (1st) 110749, ¶ 20.

¶ 14 The record does not indicate that either party filed a postjudgment motion directed against the judgment. Thus, the time in which Pintilie had to file his notice of appeal was not tolled. On June 29, 2016, Pintilie did file a “citation to discover assets to a third party,” namely

Fifth Third Bank, requesting information regarding any personal property or monies belonging to Tadros. Section 2-1402(a) of the Code of Civil Procedure authorizes the citation action and “provides a mechanism by which a judgment creditor may initiate supplementary proceedings to discover the assets of a judgment debtor or third party, and apply those assets to satisfy the judgment.” *Schak v. Blom*, 334 Ill. App. 3d 129, 132-33 (2002). The citation to discover assets directed to Fifth Third Bank was not a motion “directed against the judgment.” Rather, it was a mechanism to discover judgment debtor Tadros’s assets in order to satisfy Pintilie’s judgment against Tadros. Thus, Pintilie’s filing of the “citation to discover assets to a third party” did not toll the 30-day time period that he had to file his notice of appeal, and his appeal was untimely.

¶ 15 For the reasons explained above, we dismiss plaintiff’s appeal for lack of jurisdiction.

¶ 16 Appeal dismissed for lack of jurisdiction.