

Nos. 1-16-2235 & 1-16-2472 (consolidated)

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 JUDICIAL DISTRICT

MARCIA DEMPE, as Guardian of the Person of Christopher Lindroth, Disabled; MARCIA DEMPE and FIRST MIDWEST BANK/WEALTH MANAGEMENT COMPANY, as Co-guardians of the Estate of Christopher Lindroth, Disabled,) Appeal from the
) Circuit Court
) of Cook County.
)
)
) Plaintiffs-Appellees and Cross-Appellants,)
)
)
) v.) No. 08 L 7378
)
) THE METROPOLITAN PIER AND EXPOSITION AUTHORITY,)
) d/b/a McCORMICK PLACE EXPOSITION CENTER,)
)
) Defendant and Third-Party Plaintiff and Cross-Appellee)
)
) (Global Experience Specialists, f/k/a GES Exposition Services,)
) Incorporated, Defendant-Appellant and Third Party Plaintiffs-) Honorable
) Appellees; Coastal International, Incorporated, Third-Party) Thomas V. Lyons, II,
) Defendant-Appellant).) Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** The circuit court’s order determining the employer’s *Kotecki* cap on contribution liability was not a final and appealable order. We dismiss the appeal for lack of jurisdiction.

¶ 2 This case returns to us for a second time. See *Dempe, et al. v. Metropolitan Pier & Exposition Authority, et al.*, 2016 IL App (1st) 142535-U, ¶ 53, *appeal denied*, No. 120754 (July 18, 2016) (*Dempe I*). Because the order in *Dempe I* set out the facts in detail, we briefly summarize only those particular facts necessary to provide context for this appeal.

¶ 3 Christopher Lindroth, an employee of Coastal International, suffered serious injuries while working at a trade show held at McCormick Place. Lindroth's mother and co-guardian, Marcia Dempe, brought this lawsuit alleging negligence and willful and wanton conduct against various entities including GES (the official services contractor for the trade show). GES filed a separate complaint for contribution against Coastal. After trial, the jury returned a verdict of \$34.15 million in favor of plaintiffs and against GES, but found Lindroth 35% at fault for his injuries, reducing the verdict to approximately \$22.2 million. On GES's contribution claim, the jury allocated 75% of GES's responsibility to Coastal.

¶ 4 GES filed a posttrial motion seeking, in part, to set the cap on Coastal's liability pursuant to *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991) (the *Kotecki* cap). Following a hearing on GES's motion, the circuit court rejected Coastal's argument that it lacked jurisdiction to set the *Kotecki* cap, and it then determined that the *Kotecki* cap would be "the amount paid of the workers' comp[ensation] lien as of the time of the judgment *** and the additional payments *** that would be made and will continue to be made by the time this case is resolved and GES pays their judgment against *** plaintiff." The court also entered an order finding "no just reason to delay enforcement or appeal as to plaintiff and GES's posttrial motions" pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)).

¶ 5 GES appealed the trial court's order setting the *Kotecki* cap, and Coastal filed a separate appeal challenging the trial court's denial of Coastal's motion for a good faith finding as to a

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proposed settlement between Coastal and plaintiffs. We consolidated Coastal's and GES's separate appeals. On March 31, 2016, we dismissed Coastal's appeal for want of jurisdiction. We affirmed GES's appeal in part and dismissed it in part. *Dempe I*, 2016 IL App (1st) 142535-U, ¶¶ 88-90. We held that, although the circuit court included Rule 304(a) language in its order setting the *Kotecki* cap, because GES had not yet paid more than its *pro rata* share of the judgment, that particular order was not a final order. *Id.* ¶ 53.

¶ 6 On July 28, 2016, GES filed plaintiffs' "release (satisfaction) of judgment" with the trial court, indicating that the plaintiffs had received "full satisfaction and payment of the [\$22,197,500] judgment" against GES.

¶ 7 On August 12, 2016, within 30 days of the filing of the release and satisfaction of judgment, GES filed a notice of appeal (case no. 1-16-2235). "As a protective measure," GES explains, it filed a second notice of appeal (case no. 1-16-2474) on September 2, 2016, within 30 days of the issuance of this court's mandate in *Dempe I*. We consolidated the two appeals. On April 10, 2017, while this appeal was pending, the circuit court entered an agreed order dismissing all remaining claims by the MPEA against Coastal with prejudice.

¶ 8 Coastal has moved to dismiss these appeals, arguing that this court lacks jurisdiction. It presents the same argument in its brief. We ordered the motion taken with the case. In our earlier opinion, we dismissed GES's prior appeal of the order setting the *Kotecki* cap for want of jurisdiction because at that point in time, there was nothing in the record to indicate that GES had paid more than its *pro rata* share of the judgment. See *Dempe I*, 2016 IL App (1st) 142535-U, ¶¶ 53, 90. Coastal's argument is premised on the fact that after our earlier dismissal, the trial court entered no further orders that could have affected the non-finality of the *Kotecki* cap order. Accordingly, Coastal asserts that this court still lacks appellate jurisdiction because

GES “has not cited to any final order of the trial court that was issued after the mandate [in *Dempe I*] that would confer this court with jurisdiction.” GES does not dispute that the circuit court entered no further orders directly addressing the *Kotecki* cap order. It contends, however, that when it paid the judgment against it in full, as reflected by the July 27, 2016 satisfaction and release, the *Kotecki* cap order was transformed into a final order.

¶ 9 In *Dempe I*, we found the *Kotecki* cap order was not final because at that time, GES had not yet paid “more than its *pro rata* share of the judgment”. *Id.* ¶ 53 (“Although the order from which GES appeals determined the *Kotecki* cap, until GES pays more than its *pro rata* share of the judgment, the trial court cannot enforce its determination as to the *Kotecki* cap.”) (citing 740 ILCS 100/2(b) (West 2014) (“The right of contribution exists only in favor of a tortfeasor who has paid more than his *pro rata* share of the common liability.”)). The release demonstrates that GES has now paid more than its *pro rata* share of the judgment because, although Coastal was responsible for 75% of the judgment, GES paid 100% of it.

¶ 10 However, the release and satisfaction still does not render the *Kotecki* cap order final and appealable. The jury assessed 75% of GES’s responsibility to Coastal. The circuit court has entered no order quantifying Coastal’s liability to GES into a fixed amount of money. When it entered the *Kotecki* cap order, the circuit court stated that the amount “would be extremely [easy] to calculate” when the judgment was paid and the case was resolved. Our supreme court has explained: a judgment is final if it “ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.” *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill.2d 221, 232-33 (2005). Stated another way, “A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment.” *In re Marriage of Verdung*, 126 Ill. 2d 542,

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553 (1989) (citing *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981)). Here, GES's contribution judgment against Coastal cannot be executed upon because it has not been liquidated into a fixed dollar amount. See, e.g., *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 505 (2009) (a finding that a plaintiff was entitled to a not-yet-determined amount of attorney fees and costs was a nonfinal order, "similar to a finding of liability without a determination of damages"). And even though the order included a finding under Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), that finding could not make a nonfinal order final so as to vest this court with jurisdiction. *Kellerman v. Crane*, 119 Ill. 2d 111, 118 (1987).

¶ 11 Accordingly, we dismiss both appeals for lack of jurisdiction.

¶ 12 Dismissed.