

2017 IL App (2d) 160619-U
No. 2-16-0619
Order filed August 16, 2017

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
SECOND DISTRICT

COMMITTEE OF TEN FOR PETITION TO)	Appeal from the Circuit Court
DETACH TERRITORY FROM WOODRIDGE))	of Du Page County.
SCHOOL DISTRICT 68 AND COMMUNITY)	
HIGH SCHOOL DISTRICT 99 AND ANNEX)	
TO NAPERVILLE COMMUNITY UNIT)	
SCHOOL DISTRICT 203, ALL IN DU PAGE)	
COUNTY, ILLINOIS: MARGERY STARK)	
ALTMAN, MARK BOONE, DELALI DOW,)	
JEFFERY HAGEN, BETHANY MAEDER,)	
JOHN MCINTIRE, JAMES MURRAY,)	
DANIEL PARZ, LAUREN ROMERO, and)	
MELISSA STEPHENS,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 16-MR-0435
)	
DU PAGE COUNTY REGIONAL BOARD)	
OF SCHOOL TRUSTEES, an administrative)	
agency in the State of Illinois; DARLENE J.)	
RUSCITTI, Du Page County Regional)	
Superintendent of Schools and <i>ex-officio</i>)	
Member and Secretary of the Du Page County)	
Regional Board of School Trustees; GENE)	
CAMPBELL, President; LAURA)	
POLLASTRINI, Member; MARY ELLEN)	
YOUNG, Member; CATHERINE HANZELIN,)	
Member; WAYNE FLOEGEL, Member;)	
PAULA BOWLING, Member; PAULA)	
MCGOWEN, Member, and the BOARDS OF)	
EDUCATION OF WOODRIDGE SCHOOL)	

DISTRICT 68, COMMUNITY HIGH)
SCHOOL DISTRICT 99, and NAPERVILLE)
COMMUNITY UNIT SCHOOL DISTRICT)
203, ALL IN DU PAGE COUNTY, ILLINOIS,) Honorable
Defendants-Appellants.) Bonnie M. Wheaton,
Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed the appeal for lack of jurisdiction where the circuit court order dismissing plaintiffs’ complaint without prejudice was not final and appealable.

¶ 2 Plaintiffs are residents of Hidden Lake, which is a residential townhome community in Lisle, in Du Page County. On December 15, 2015, plaintiffs filed a petition with the Regional Board of School Trustees of Du Page County (the Board) under section 7-1 of the School Code (105 ILCS 5/7-1 *et seq.* (West 2014)) seeking to detach Hidden Lake from Woodridge School District 68 and Community High School District 99 (collectively, Districts 68 and 99), and annex it into Naperville Community Unit School District 203 (District 203).

¶ 3 The petition was signed by more than 100 Hidden Lake registered voters, and section 7-6(c) of the School Code thus required that the petition designate a committee of ten petitioners to act as attorney in fact for all petitioners. See 105 ILCS 5/7-6(c) (West 2014). The petition that was submitted to the Board failed to include such a designation, but rather, plaintiffs identified a committee of ten in a cover letter that they submitted with the petition.

¶ 4 When the matter first came before the Board on January 4, 2016, Districts 68 and 99 informed the Board that they were preparing a motion to dismiss, and the parties agreed to a briefing schedule. Districts 68 and 99 filed their motion to dismiss on January 25, 2016, wherein they argued that the Board lacked jurisdiction to consider the petition because it failed to

designate a committee of ten, and further sought dismissal because the petition contained unverified and prejudicial information.

¶ 5 Commencing the following day, plaintiffs apparently re-canvassed Hidden Lake with a “petition amendment,” upon which they obtained the signatures of 97 resident registered voters. All signatures were obtained between January 26, 2016, and February 7, 2016. The petition amendment designated the same committee of ten that was identified in the cover letter submitted with the original petition. Other than designating a committee of ten, the petition amendment was substantively identical to the original petition, in that it sought detachment of Hidden Lake from Districts 68 and 99, and annexation into District 203.

¶ 6 Plaintiffs filed the petition amendment and a response to the motion to dismiss on February 11, 2016. On February 23, 2016, counsel for petitioners received an e-mail from the director of administrative services for the Regional Office of Education stating that “the Board [could not] accept [the] amended petition at this time as there is currently a petition pending for the same territory. 105 ILCS 5/7-8 limits the filing of successive petitions.”

¶ 7 On March 14, 2016, all parties appeared before the Board and presented arguments regarding the motion to dismiss. At the conclusion of the hearing, the Board dismissed the petition because it “failed to meet the jurisdictional requirements in regard to the committee of ten” and because it “contained unverified and prejudicial information.” The Board issued its written decision on March 15, 2016.

¶ 8 On April 6, 2016, Plaintiffs filed in the circuit court a two-count complaint for declaratory relief and administrative review. In count 1, among other relief, plaintiffs sought a declaration that Hidden Lake must be detached from Districts 68 and 99, and annexed into District 203 as a matter of law. In count 2, plaintiffs sought administrative review of the Board’s

rejection of the petition amendment, as well as reversal of the Board's March 15, 2016, decision dismissing the original petition.

¶ 9 The Board thereafter filed a motion to dismiss under 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), and Districts 68 and 99 filed a motion to dismiss under section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)). The Board contended that declaratory relief was not available under the School Code, and that administrative review concerning the petition amendment was unavailable because the Board did not act upon it because it "was never permitted to be filed while the original [p]etition and [m]otion to dismiss were pending." Districts 68 and 99 made arguments similar to those advanced by the Board, and also argued that plaintiffs failed to exhaust available administrative remedies. Defendants all argued that only the Board's March 15, 2016, administrative decision concerning the original petition was subject to review by the circuit court.

¶ 10 After a hearing on defendants' motions to dismiss, the circuit court dismissed the petition without prejudice on July 6, 2016. Specifically, the circuit court declined to exercise jurisdiction as to the declaratory judgment count, commenting that it would be better "to have the matter initially decided by the Regional Board." With respect to the administrative review count, the circuit court commented that "the Board was correct in not hearing the amended petition until either leave had been sought and granted to file an amended petition or the original petition had been withdrawn. At any rate, that order of the board or decision of the board was not a final order which would be subject to administrative review."

¶ 11 On appeal, plaintiffs contend that the circuit court erred in dismissing their complaint. Specifically, with respect to their declaratory judgment count, plaintiffs argue that circuit courts have the authority to make findings as to whether school districts are compact and contiguous,

and that the circuit court's refusal to exercise said authority was in error. Asserting that the matter could be resolved as a matter of law and that "there is no need for additional hearings and legal battles," plaintiffs ask that this court compel the Board to issue an order detaching Hidden Lake from Districts 68 and 99, and annexing it into District 203. In their administrative review count, plaintiffs contend that the Board erred in rejecting the petition amendment, and in dismissing their original petition. We do not reach the merits of these arguments, however, as we are without jurisdiction for lack of a final and appealable order from the circuit court.

¶ 12 Except as provided by supreme court rule, this court lacks jurisdiction to review judgments, orders, or decrees that are not final. *Department of Transportation ex rel. People v. 151 Interstate Road Corp.*, 209 Ill. 2d 471, 478 (2004). It is well established that a final order is a determination by the trial court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties concerning the litigation. *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982); *Phoenix Capital, LLC v. Tabiti*, 2016 IL App (1st) 162686, ¶ 6. A judgment is final for purposes of appeal if it terminates the litigation on the merits such that, if affirmed, all that is left is to proceed with the judgment's execution. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 34. The inclusion of the phrase "without prejudice" in an order "clearly manifests the intent of the trial court that its order not be considered final and appealable." *Pfaff v. Chrysler Corp.*, 155 Ill. 2d 35, 63 (1992), *overruled on other grounds by ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 534 (2010).

¶ 13 In their appellate brief, plaintiffs' statement of jurisdiction states that the appeal was brought pursuant to Supreme Court Rule 301, which provides that "[e]very final judgment of a circuit court in a civil case is appealable as of right." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Plaintiffs acknowledge that their complaint was dismissed without prejudice, but contend that the

inclusion of this phrase in the order is not dispositive on the issue of appealability. Citing *Austin's Rack, Inc., v. Gordon & Glickson, P.C.*, 145 Ill. App. 3d 500, 502 (1986), they urge us to look to the substance and effect of the order, and assert that the dismissal of their complaint left them without the right to proceed on the merits such that the order is final and appealable, notwithstanding the dismissal of their complaint “without prejudice.”

¶ 14 As we outlined in *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, our supreme court has stated that this type of form-over-substance analysis applies to *general* orders of dismissal—“where certain ‘magic words’ indicative of a final decision on the merits were not included in a dismissal order such that it becomes necessary to look to the substance of that order.” (Emphasis in original.) *Id.* ¶ 24 (quoting *Pfaff*, 155 Ill. 2d at 62-63 (1992)). Conversely, courts of review should “decline to engage in any interpretation of an order which affirmatively states on its face it is not a final order.” *Pfaff*, 155 Ill. 2d at 62-63. The dismissal of a complaint “without prejudice” is on its face a non-appealable order. *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982).

¶ 15 Here, the circuit court unambiguously dismissed the plaintiffs’ complaint without prejudice, both orally and in its written order. The circuit court even commented that its order was “not *** final and appealable.” Thus, in light of our decision in *D'Attomo*, and consistent with our supreme court’s command in *Pfaff*, the circuit court’s July 6, 2016, order is not final, and we therefore lack jurisdiction over this appeal.

¶ 16 Indeed, even if the circuit court had entered a *general* order of dismissal, without indicating whether it was with or without prejudice, we would still find that we lack jurisdiction. Looking to the substance and effect of the order, it is clear that it did not terminate the litigation between the parties. In announcing its ruling, the circuit court commented that the dismissal was “without prejudice to the plaintiffs bringing another petition before the Board and, in the event of

an unfavorable ruling, from seeking administrative review from that ruling.” The circuit court’s written order stated that “a new petition should be filed for hearing before the Board.”

¶ 17 Here, it cannot reasonably be said that the July 6, 2016, order fixed absolutely and finally the rights of the parties concerning the litigation. The circuit court plainly contemplated the filing of a new petition and that the litigation between the parties was not terminated. Importantly, there is nothing to prevent plaintiffs from filing with the Board a petition for detachment and annexation that complies with the School Code, proceeding to a hearing, obtaining a final determination on the merits and, in the event of an unfavorable ruling, seeking review of that decision in the circuit court. Put simply, plaintiffs remain free to file such petition anew, as if the dismissed action had never been filed. Likewise, the circuit court’s order does not preclude the filing of an amended complaint.

¶ 18 For these reasons, we find that the circuit court’s July 6, 2016, order was not final, and we therefore lack jurisdiction over this appeal.

¶ 19 Appeal dismissed.