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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ANDRE STEVENS,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	No. 15-MR-1059
)	
THE BOARD OF TRUSTEES OF THE)	
WAUKEGAN POLICE PENSION FUND)	
and JAMES ST. CLAIR, MICHAEL)	
TAYLOR, ROBERT TAYLOR, MARTIN)	
VAN ANROOY, and DEBRA VAN)	
ARSDALE, as trustees of the Waukegan)	
Police Pension Fund,)	Honorable
)	Margaret J. Mullen,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed defendants' appeal, as the trial court's order on administrative review, remanding the cause for defendants to obtain and consider an additional independent medical examination, was not final or otherwise appealable.

¶ 2 Defendants, the Board of Trustees of the Waukegan Police Pension Fund and its individual trustees (Board), appeal from an order of the circuit court of Lake County entered in an administrative review proceeding stemming from the Board's decision to terminate a

disability pension awarded to plaintiff, Andre Stevens. Because we conclude that the trial court's order was not final, we dismiss the appeal for lack of jurisdiction.

¶ 3 In 2005, Stevens, a Waukegan police officer, suffered a disabling knee injury. In 2007, the Board denied Stevens' application for a line-of-duty disability pension. Instead, the Board awarded Stevens a nonduty pension. However, Stevens filed an action in the circuit court of Lake County for administrative review of the Board's decision. The trial court awarded Stevens a line-of-duty pension. Pursuant to section 3-115 of the Illinois Pension Code (Code) (40 ILCS 5/3-115 (West 2014)), Stevens was required to submit to an annual medical examination, until he reached the age of 50, for "verification of the continuance of disability for service as a police officer." In 2013, Stevens was examined by Dr. Bryan Forsythe at the Board's request. Following the examination, the Board summoned Stevens to appear at a hearing to determine whether he had recovered from his disability. See 40 ILCS 5/3-116 (West 2014). Following the hearing, the Board terminated Stevens' pension. Stevens filed a complaint in the circuit court of Lake County for administrative review of the Board's decision. In his brief in support of the complaint, Stevens contended that the Board's decision was against the manifest weight of the evidence. Stevens also contended that the hearing before the Board had been unfair because Forsythe's findings were tainted by misinformation supplied to him by the Board's attorney. Specifically, the Board's attorney wrote to Forsythe and advised him that the Board believed that Stevens had made a good recovery from knee surgery and had completed a marathon.

¶ 4 On July 7, 2016, the trial court entered an order remanding the matter to the Board for "an additional independent medical examination" of Stevens. The order further provided, "[t]his case is continued to and until July 28, 2016, *** for status of appointment of independent medical examiner." On July 28, 2016, the trial court continued the case to August 8, 2016, "for

status.” The Board moved for entry of a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 10, 2016) that there was no just reason to delay the enforcement or appeal of the July 7, 2016, order. On August 8, 2016, trial court denied the motion, finding that “[t]he Court has made a final ruling on all matters in controversy between the parties on 7/7/16.” The Board filed its notice of appeal the same day.

¶ 5 It is well established that “[w]e have a duty to consider *sua sponte* whether we have jurisdiction and to dismiss the appeal if we lack jurisdiction.” *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 7. Our jurisdiction is limited to appeals from final judgments unless an appeal is within the scope of one of the exceptions established by our supreme court, permitting appeals from interlocutory orders in certain circumstances. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). “A final judgment fixes absolutely and finally the rights of the parties in the lawsuit; it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment.” *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶ 9.

¶ 6 Although the trial court indicated (in a separate order) that its July 7, 2016, order was a “final ruling on all matters in controversy,” that simply is not the case. The trial court remanded the matter for an additional independent medical examination (IME) to be conducted. Although the trial court did not expressly reverse or set aside the Board’s decision, an additional IME would serve no purpose unless its results might affect the Board’s decision to terminate Stevens’ disability pension. In *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245 (1983), the trial court remanded a proceeding to the Illinois Racing Board for a new hearing on whether to impose sanctions for drugging racehorses. (The original hearing had been unfair because a board member who had investigated the alleged misconduct declined to recuse himself from the

hearing.). The *Wilkey* court concluded that the trial court's order was not final. The *Wilkey* court reasoned that "[b]ecause the order remanded the cause for a new hearing and we cannot assume that the result will be identical, it is obvious that the rights of the parties have yet to be fully and finally adjudicated." *Id.* at 250. The same is true here. Moreover, it has been held that, "[w]here the circuit court has the power to remand an agency decision, jurisdiction remains with the circuit court until final disposition of the matter and only then does this court have jurisdiction.'" *Hooker v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 391 Ill. App. 3d 129, 136 (2009) (quoting *Daley v. License Appeal Comm'n*, 311 Ill. App. 3d 194, 200 (1999)). It is not necessary that the order remanding the matter to an administrative agency contain an explicit reservation of jurisdiction. *Id.* at 137.

¶ 7 Applying these principles here, we conclude that the trial court's remand order, which contemplated further proceedings before the Board, inherently retained the trial court's jurisdiction to review the Board's decision upon the completion of those proceedings. We note that the Board argues on appeal that its decision was not against the manifest weight of the evidence. That question cannot be resolved definitively until the Board has considered the additional IME on remand. Notwithstanding the trial court's August 8, 2016, order, the July 7, 2016, order was not final. If an order is not actually final, a finding of finality by the trial court will be ineffective. *W. B. Cohan Corp. v. City Properties Corp.*, 49 Ill. App. 3d 300, 304 (1977). Furthermore, there is no Illinois Supreme Court rule that would permit an interlocutory appeal from the trial court's order in this case. Accordingly, we lack jurisdiction and must dismiss this appeal.

¶ 8 Appeal dismissed.