2017 IL App (2d) 160692-U
No. 2-16-0692
Order filed January 24, 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

PATRICK STEGER,	)	Appeal from the Circuit Court
	)	of DeKalb County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 08-F-151
	)	
DEBRA EINEKE,	)	Honorable
	)	Marcy L. Buick
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The appeal must be dismissed for lack of appellate jurisdiction.

¶ 2 Petitioner, Patrick Steger, appearing *pro se*, appeals from the denial of his motion to re-establish visitation with his son. Petitioner admits that three of his other motions remain pending in trial court. In the absence of a written finding of appealability under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), this court lacks jurisdiction and we dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 On May 14, 2008, Nevyn was born to petitioner and respondent, Debra Eineke. The parties were never married, and respondent was married to someone else at the time of Nevyn's

birth. Over the ensuing four years, the trial court heard and ruled on several motions and petitions filed by the parties regarding child support, visitation, and other matters. Among the orders entered was an agreed judgment of parentage on June 29, 2010, which granted petitioner visitation, including on alternating weekends and holidays.

¶ 5 About 18 months after the judgment, the parties' relationship became increasingly hostile. Petitioner was convicted of criminal conduct involving respondent. Respondent was granted an order of protection, which reserved petitioner's visitation rights.

¶ 6 Each party filed petitions that alleged the other party should be held in contempt of court for violating the terms of the judgment, including the visitation provisions. On September 5, 2012, petitioner filed a petition for a rule to show cause regarding respondent's alleged violations of the agreed judgment of parentage. He also sought a finding that respondent interfered with his telephone visitation that had been authorized by an order entered on July 11, 2012. Petitioner represents in his appellate brief that "[t]his petition is still pending in front of the family court after more than four years."

¶ 7 On February 20, 2013, petitioner filed a motion to modify the agreed judgment of parentage. Petitioner represents that "[t]his petition is still pending in front of the court after three and half years."

¶ 8 On May 13, 2013, petitioner filed a written motion for attorney fees and for respondent to be taken into custody based on her alleged violations of the agreed judgment of parentage. Petitioner also filed a petition for a rule to show cause regarding respondent's alleged violation of the agreed judgment of parentage. Petitioner states that "[t]hese petitions are still pending in front of the court after three and a half years." Petitioner alleges that he has not seen Nevyn since August 5, 2013.

¶ 9 On November 23, 2015, after several intervening pleadings and orders, petitioner filed the motion that is the subject of this appeal. The motion requested temporary visitation while petitioner was appealing an order of protection entered in favor of respondent. Following a hearing on the petition on June 7, 2016, and July 13, 2016, the trial court denied the motion on July 27, 2016. The written order provides, in part, that "[a]ll other pending motions are continued generally and may be brought before the court upon proper notice." Petitioner filed a notice of appeal on August 22, 2016.

¶ 10 II. ANALYSIS

¶ 11 A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, and this duty exists regardless of whether either party has raised the issue. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). We note that respondent has not filed a brief in this case. The failure of an appellee to file a brief does not mandate *pro forma* reversal, as "[a] considered judgment of the trial court should not be set aside without some consideration of the merits of the appeal." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976)). The appellate court should address the appeal so long as the record is simple and the issues can be decided easily without the appellee's brief. *Talandis*, 63 Ill. 2d at 133. This case presents such a scenario, and, therefore, we will consider the appeal, notwithstanding the lack of respondent's brief.

¶ 12 Petitioner asserts that we have jurisdiction under Illinois Supreme Court Rule 307(a) (eff. Feb. 26, 2010). The only potentially relevant subsections of Rule 307(a) confer appellate jurisdiction from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction" (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)) and "terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings"

(Ill. S. Ct. R. 307(a)(6) (eff. Feb. 26, 2010)). The order from which petitioner appeals denied his petition for a change in visitation. The order does not involve an injunction under Rule 307(a)(1). See *In re T.M.*, 302 Ill. App. 3d 33, 38 (1998) (trial court's interim decision to modify supervised visitation from 12 hours per day to include supervised overnight visitation 2 nights a week did not constitute an injunction that is appealable under Rule 307(a)(1)); see also *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, ¶ 23 (visitation order "intended to place restrictions on the parents and, if necessary, inform the children of the conditions of visitation" was not an injunction for purposes of Rule 307(a)(1)). Moreover, the order did not terminate petitioner's parental rights or involve adoption proceedings in any way. See Ill. S. Ct. R. 307(a)(6) (eff. Feb. 26, 2010). This appeal does not fall under Rule 307(a).

¶ 13 An order regarding visitation, such as the one appealed here, may be reviewed as an interlocutory order under Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014). *In re Marriage of Betsy M.*, 2015 IL App (1st) 151358, ¶ 42-44. Rule 306(a)(5) provides that "[a] party may petition for leave to appeal to the Appellate Court from the following orders of the trial court: *** from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules." Under extenuating circumstances and in its discretion, the appellate court may acquire jurisdiction by characterizing a petitioner's brief as a petition for leave to appeal under Rule 306(a)(5). *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 109 (2005) ("Rule 306(a)(5) is the vehicle by which to seek review of interlocutory child custody orders"); see also *In re Curtis B.*, 203 Ill. 2d 53, 63 (2002).

¶ 14 However, the date of filing of petitioner's brief precludes this court from acquiring jurisdiction under Rule 306. Rule 306(b)(1) requires that "[t]he petition, supporting record and

the petitioner's legal memorandum, if any, shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought, with proof of personal, e-mail or facsimile service as provided in Rule 11." Ill. S. Ct. R. 306(b)(1) (eff. July 1, 2014). Petitioner filed his notice of appeal more than 14 days after his motion was denied, so Rule 306(a)(5) cannot confer jurisdiction in this case.

¶ 15 Moreover, subject to certain exceptions, an appeal may be taken only after the trial court has resolved all claims against all parties. *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 11. A judgment is final if it terminates the litigation between the parties on the merits or disposes of the parties' rights with regard to either the entire controversy or a separate part of it. *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998).

¶ 16 Absent a written finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), a final order disposing of fewer than all the claims is not an appealable order and does not become appealable until all of the claims have been resolved. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). The rule was implemented to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty, which existed when a final judgment was entered on fewer than all of the matters in controversy. *Gutman,* 232 Ill. App. 3d. 2d at 151.

¶ 17 In this case, petitioner filed (1) a petition for rule to show cause on September 5, 2012, (2) a motion to modify the agreed judgment of parentage on February 20, 2013, and (3) a petition for rule to show cause on May 13, 2013. Petitioner admits in his appellate brief that the three pleadings remain pending in the trial court, and we have discovered nothing in the record to refute his assertion.

¶ 18 Our supreme court has held that postdissolution petitions do not initiate separate actions, but instead raise claims in the same, continuing dissolution action. See *In re Marriage of*

Kozloff, 101 Ill. 2d 526, 531 (1984). Nevertheless, there is a disagreement among the districts of the appellate court on " 'whether postdissolution petitions [should be] construed as new actions or as new claims within the original dissolution proceeding.' " *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 26 (quoting *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091, 1095 (2011)). If a post-decree petition under consideration is construed as a separate action from the original dissolution proceeding, appellate court jurisdiction exists upon a final resolution of that petition under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), regardless of the pendency of an unrelated petition. See *In re Marriage of Carr*, 323 Ill. App. 3d 481, 484-85 (2001). However, this court, in agreement with the supreme court, has consistently held that a post-decree petition is simply a new claim within the original proceeding, and therefore, the appellate court does not have jurisdiction to entertain a final decision on that petition while another post-decree petition remains pending, absent a finding by the circuit court under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). See *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 1000-01 (2003). Because there are post-decree petitions pending in the trial court and the order from which petitioner appeals lacks a written finding of appealability under Rule 304(a), we do not have jurisdiction to consider the appeal under that rule.

¶ 19 We note that *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-1050 (2007), provides for the possible reinstatement of an appeal, like this one, that is dismissed as premature. An appellant's options depend on whether the trial court's jurisdiction has lapsed since the court entered the judgment from which he appealed.

¶ 20 If the court has *retained* jurisdiction because fewer than 30 days have passed, a claim remains pending, or both, the appellant must file a notice of appeal within 30 days after (1) a Rule 304(a) finding regarding the judgment appealed or (2) the final judgment on the last

pending claim. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). However, if a timely postjudgment motion is filed, the appellant must wait for the ruling on that motion and file his notice of appeal within 30 days thereafter. *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 341-42 (2001) (for purposes of Rule 304(a), "pending" petitions also include those filed within 30 days *after* the judgment appealed).

¶ 21 If the trial court has *lost* jurisdiction during the pendency of the appeal, such that a subsequent notice of appeal would be late, the appellant may invoke the saving provisions of Illinois Supreme Court Rule 303(a)(2) (eff. June 4, 2008). *Knoerr*, 377 Ill. App. 3d at 1050. This court may give effect to the appellant's premature notice of appeal upon the resolution of the last pending motion. Thus, if necessary, the appellant may move within 21 days to establish our jurisdiction by supplementing the record to show (1) the rulings on the previously pending claims *and* (2) the absence of any other pending claims. If the appellant's motion is well-founded, we will grant it, vacate this disposition, and proceed to the merits. We note that in *Knoerr*, and several subsequent cases, this court has stated that an appellant may seek to supplement the record by means of a petition for rehearing. See, *e.g.*, *Knoerr*, 377 Ill. App. 3d at 1050. However, because pursuing this course does not raise any error in our decision, a petition for rehearing technically is inappropriate. Ill. S. Ct. R. 367 (eff. Dec. 29, 2009). Filing a simple motion to supplement the record is the correct method.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we dismiss the appeal for lack of jurisdiction.

¶ 24 Appeal dismissed.