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2017 IL App (3d) 160251-U

Order filed February 9, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

RALPH DIXON,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	
)	
DAVID WEISS,)	
)	Appeal No. 3-16-0251
Defendant-Appellee,)	Circuit No. 14-MR-979
)	
and)	
)	
Eric Mitchell,)	Honorable
)	Bennett J. Braun,
Defendant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal from the dismissal of claims against one defendant in a civil action stating claims against two defendants was dismissed because the claims against the second defendant were still pending and the order did not contain an express written finding that there is no just reason for delaying the appeal.

¶ 2 The plaintiff, Ralph Dixon, appealed the dismissal of the claims against the defendant, David Weiss, in his civil action against Weiss and another defendant, Eric Mitchell.

¶ 3 FACTS

¶ 4 Dixon brought a civil action against Weiss and Mitchell. The complaint alleged that Mitchell was Dixon's privately-retained attorney in a criminal case and that Weiss was also an attorney who appeared on behalf of Mitchell. Dixon alleged that Weiss knowingly made false statements to the court that resulted in the Dixon being held in "non-punitive segregation" (Count I) and that Weiss committed perjury by effecting improper service on Dixon of Mitchell's motion to dismiss (Count II). The remainder of the complaint contained five counts alleging claims against Mitchell.

¶ 5 Weiss filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)), arguing that both claims failed to state claims upon which relief could be granted. The trial court granted the motion in an order dated April 14, 2016. That order did not contain Rule 304(a) language and set a status date for the claims against Mitchell. Dixon appealed the dismissal of the claims against Weiss.

¶ 6 ANALYSIS

¶ 7 Dixon argues that the trial court erred in dismissing his claims against Weiss. Dixon's jurisdiction statement in his appellant's brief acknowledges that the dismissal was only of the claims against Weiss, but alleges that he filed a timely notice of appeal pursuant to Supreme Court Rule 304(a). Weiss argues on appeal that the trial court's order granting his motion to dismiss should be affirmed.

¶ 8 Neither party raises the issue of our jurisdiction, but we must independently ascertain whether we have jurisdiction before proceeding in a cause of action. *Secura Insurance Co. v.*

Illinois Farmers Insurance Co., 232 Ill. 2d 209, 213 (2009) (citing *People v. Smith*, 228 Ill.2d 95, 106 (2008); *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill.2d 153, 159 (1998)). Dixon filed his notice of appeal pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016), which is the rule that provides for appeals from final judgments that do not dispose of an entire proceeding.

Rule 304(a) provides:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party." Ill. S. Ct. R. 304(a).

¶ 9 Absent a Rule 304(a) finding, a final order disposing of fewer than all of 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, 902 N.E.2d 631, 634 (2008) (citing *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill.2d 458, 464 (1990)). In this case, Dixon's complaint stated claims against two defendants: Mitchell and Weiss. Weiss's motion to dismiss was granted, but the claims against Mitchell were still pending. The order granting Weiss's motion to dismiss does not contain a finding pursuant to Rule 304(a), nor does the record indicate any such finding after the order was entered. Thus, the order granting Weiss's motion to dismiss was not appealable at the time the appeal was filed. Since the order was not appealable, we must dismiss the appeal.

¶ 10

CONCLUSION

¶ 11

The appeal from the judgment of the circuit court of Will County is dismissed.

¶ 12 Appeal dismissed.