

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).

FILED

June 22, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160503-U

NO. 4-16-0503

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

CHERI MABUS-FRIZZO,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
GERALD P. LIPPOLD,)	No. 2014L1
Defendant-Appellant.)	
)	Honorable
)	Kenneth R. Deihl,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* This court lacks jurisdiction to review defendant’s claim of juror misconduct because the order defendant challenges was not made final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 2 In January 2014, plaintiff, Cheri Mabus-Frizzo, filed a five-count complaint against defendant, Gerald P. Lippold, alleging, *inter alia*, defendant was liable for trespass and maintenance of a nuisance on plaintiff’s property. Following a trial in October 2015, a jury awarded plaintiff damages. Defendant appeals, arguing juror misconduct occurred that violated his right to a fair trial. We conclude this court lacks jurisdiction and dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In January 2014, plaintiff filed a five-count complaint alleging, *inter alia*, that defendant was liable for trespass and maintenance of a nuisance on her property. In October

2015, following a trial on counts I to III, a jury awarded plaintiff \$28,000 in compensatory damages and \$133,500 in punitive damages, and the trial court entered a written judgment on October 28, 2015, confirming the jury verdict. Counts IV and V set forth claims for declaratory relief and a prescriptive easement, respectively. We note counts IV and V remained pending and set for a bench trial at the time defendant filed this appeal.

¶ 5 In December 2015, defendant filed a posttrial motion “for new trial, or, in the alternative, motion to vacate punitive damage award or remittitur or motion for evidentiary hearing regarding juror misconduct and bias.” Defendant attached to his posttrial motion an affidavit by Steven Thursby, the jury foreman, in which Thursby identified statements allegedly made during the trial by another juror, Victoria Bruhn, from which Thursby concluded, “Ms. Bruhn had made up her mind about the case *** before all of the evidence and arguments were done.” Defendant argued, in part, that the foreman’s affidavit revealed juror Bruhn was biased against him, which deprived him of his right to a fair trial.

¶ 6 In January 2016, plaintiff filed a “Rule 304(a) motion” in which she requested the trial court to “issue an order finding there is no just reason for delaying an appeal of the [c]ourt’s October 28, 2015[,] order.”

¶ 7 On March 1, 2016, the trial court denied defendant’s posttrial motion. In its order, the court stated, in pertinent part: “The lone conjectural affidavit of the jury foreman, who failed to raise any improprieties during the trial, does not support a reversal of the jury’s verdict.” In a separate order entered on the same date, the trial court granted a motion filed by plaintiff for sanctions brought pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), finding defendant’s counterclaim lacked any factual basis.

¶ 8 On July 12, 2016, the trial court granted plaintiff’s “Rule 304(a) motion.” The order stated, in part, that the court “finds and orders that there is no just reason for delaying either enforcement or an appeal of its final judgment of October 28, 2015, resolving Counts I through III of the [c]omplaint and its March 1, 2016 Rule 137 [o]rder.” Neither plaintiff’s Rule 304(a) motion nor the court’s order granting the motion mentioned defendant’s posttrial motion or the claim of juror misconduct.

¶ 9 Defendant now appeals, seeking review of the denial of his posttrial motion pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues Steven Thursby’s affidavit demonstrates juror Bruhn was biased against him, which deprived him of a fair trial, and that the trial court erred by failing to hold an evidentiary hearing or grant a new trial as defendant requested in his posttrial motion.

¶ 12 Before considering the merits of this appeal, we must first address this court’s jurisdiction to hear it. See *Secura Insurance Co. v. Illinois Farmers Ins. Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009) (“A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.”).

¶ 13 Generally, “no appeal is permissible, and the circuit court retains jurisdiction over the entire cause, including the power to revise any or all judgments at any time prior to the entry of a judgment adjudicating all claims.” *Elg v. Whittington*, 149 Ill. App. 3d 307, 312, 500 N.E.2d 568, 571 (1986) (quoting *Petersen Brothers Plastics, Inc. v. Ullo*, 57 Ill. App. 3d 625, 630, 373 N.E. 2d 416, 420). Rule 304(a) provides, in pertinent part:

“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. *** The time for filing a notice of appeal shall be as provided in Rule 303. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.” Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 14 At the time defendant filed this appeal, counts IV and V of his complaint remained pending. Consequently, it was incumbent on defendant to first obtain a Rule 304(a) finding as to any order he sought review of on appeal.

¶ 15 In his notice of appeal filed on July 6, 2016, defendant identified only the following order:

“The Order of March 1, 2016, denying Defendant-Appellant Gerald P. Lippold’s Post Trial Motion for New Trial, or, in the Alternative, Motion to Vacate Punitive Damage Award or Remittitur or Motion for Evidentiary Hearing Regarding Juror Misconduct and Bias.”

As explained above, because other claims remained pending in this case, in order to be appealable, the order dated March 1, 2016, denying defendant’s posttrial motion first had to be found final and appealable by the trial court pursuant to Rule 304(a). In our review of the record, we find it was not.

¶ 16 Here, the trial court’s “Rule 304(a) Finding and Order” dated July 12, 2016, failed to identify the March 1, 2016, order denying defendant’s posttrial motion. Instead, the two orders it made final and appealable were (1) the October 28, 2015, judgment confirming the jury’s verdict; and (2) the order granting Rule 137 sanctions against defendant. Neither of the orders identified in the court’s Rule 304(a) finding addressed the issue of juror misconduct or the posttrial motion that defendant seeks to address on appeal.

¶ 17 Because the March 1, 2016, order denying defendant’s posttrial motion was not made final and appealable by the trial court, we are without jurisdiction to consider it and, thus, we must dismiss the appeal.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we dismiss the appeal.

¶ 20 Appeal dismissed.