

No. 1-17-1584

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

ALBANY BANK AND TRUST COMPANY, N.A.,	) Appeal from the
	) Circuit Court of
Plaintiff-Appellee,	) Cook County
	)
v.	) No. 11 L 12158
	)
GARY FISHKIN,	) Honorable
	) Alexander White,
Defendant-Appellant.	) Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The defendant's appeal is dismissed for lack of jurisdiction.
- ¶ 2 The defendant, Gary Fishkin, appeals from orders of the circuit court that (1) denied his motion to claim a personal property exemption under section 12-1001(b) of the Code of Civil Procedure (Code) (735 ILCS 5/12-1001(b) (West 2016)) in a supplementary proceeding to enforce judgment and discover assets brought by the plaintiff, Albany Bank and Trust Company, N.A. (Albany Bank), and (2) directed a third party, BMO Harris Bank, N.A. (BMO), to turn over

to Albany Bank \$1759.02 held in Fishkin's bank account at BMO.<sup>1</sup> For the reasons which follow, we dismiss this appeal for lack of jurisdiction.

¶ 3 We set forth only those facts from the pleadings and exhibits of record that are necessary to understand the posture of the present appeal.

¶ 4 On September 29, 2009, the circuit court entered a money judgment in favor of Albany Bank and against Fishkin. Albany Bank then initiated supplementary proceedings against Fishkin to enforce judgment and discover assets under section 2-1402 of the Code (735 ILCS 5/2-1402) (West 2016)). On April 19, 2017, Albany Bank filed a motion asking the circuit court to “[o]rder BMO \*\*\* to turnover” \$1759.02 held in Fishkin's bank account “in partial satisfaction” of the judgment entered against him. In response, Fishkin filed a motion to exempt the funds in his bank account at BMO under the personal property exemption, commonly known as the “wildcard” exemption, provided in section 12-1001(b) of the Code (735 ILCS 5/12-1001(b) (West 2016)).

¶ 5 On June 21, 2017, the circuit entered a written order stating that “Fishkin's Motion to Claim the Wildcard Exemption is DENIED.” In that order, the circuit court did not rule upon Albany Bank's motion for turnover. On that same date, Fishkin filed a notice of appeal seeking to reverse the circuit court's order that “den[ied]” his motion to claim the wildcard exemption and “grant[ed]” Albany Bank's request for turnover. However, it was not until June 29, 2017, that the circuit court entered a written order directing BMO “to turn over to Albany Bank the \$1,759.02 \*\*\*.” No postjudgment motions were filed in the circuit court, and Fishkin neither amended his notice of appeal from June 21, 2017, nor filed a new notice of appeal following the entry of the June 29, 2017, order.

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<sup>1</sup> BMO is not a party to this appeal.

¶ 6 As a threshold matter, Albany Bank asserts that we lack jurisdiction over this appeal because the defendant's notice of appeal was premature. On December 22, 2017, this court denied Albany Bank's motion to dismiss on this basis. However, we may reexamine the issue of our jurisdiction even where a motion to dismiss for lack of jurisdiction has been denied. See *National Life Real Estate Holdings, LLC v. International Bank of Chicago*, 2016 IL App (1st) 151446, ¶¶ 9-10.

¶ 7 Appellate jurisdiction is limited to review of final judgments and orders "except as specifically provided in the supreme court rules[ ] \*\*\*." *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 108 (2005) (citing *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994)). A final judgment is defined as "a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit." *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). In a section 2-1402 proceeding, an order is final and appealable "when the citation petitioner is in a position to collect against the judgment debtor or a third party, or the citation petitioner has been ultimately foreclosed from doing so." (Internal quotation marks omitted.) *Chicago Police Sergeants' Ass'n, Policemen's Benevolent & Protective Ass'n, Unit 156A v. Pallohusky*, 2017 IL App (1st) 162822, ¶ 13. Whether appellate jurisdiction exists is a question of law that we decide *de novo*. *Gardner v. Mullins*, 234 Ill. 2d 503, 508 (2009).

¶ 8 Here, the circuit court's order of June 21, 2017, was not final. In that order, the circuit court denied Fishkin's motion to claim the personal property exemption as to the funds in his bank account at BMO, but did not rule upon Albany Bank's motion for turnover. Thus, the order neither fixed the parties' rights as to the funds in Fishkin's bank account nor positioned Albany Bank to collect thereon. Comparable to the denial of an affirmative defense, the denial of

Fishkin's motion to claim the personal property exemption did not dispose of any part of the litigation on the merits. See, *e.g.*, *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 57 (noting that "the denial of \*\*\* affirmative defenses" was not a final order because it did not resolve "a separate part of the essential controversy between the parties."). In so holding, we reject Fishkin's reliance on Supreme Court Rule 304(b)(4) (eff. Mar. 8, 2016), which permits a party to appeal "[a] final judgment or order entered in a proceeding under section 2-1402 of the Code" without a Rule 304(a) finding. Because the June 21, 2017, order was not final, Rule 304(b)(4) is inapplicable.

¶ 9 For the foregoing reasons, we dismiss the defendant's appeal for lack of jurisdiction.

¶ 10 Dismissed.