

2018 IL App (1st) 180222-U

No. 1-18-0222

Order filed March 1, 2018

Fifth Division

**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

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HAL PATTON,

Petitioner-Appellant,

v.

ILLINOIS STATE BOARD OF ELECTIONS, sitting as  
the duly constituted STATE OFFICERS ELECTORAL  
BOARD, *et al.*,

Respondents-Appellees.

) Appeal from the  
) Circuit Court of  
) Cook County.

) No. 18 COEL 000001

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CHARLES A. YANCEY,

Petitioner-Appellee,

v.

ILLINOIS STATE BOARD OF ELECTIONS, sitting as  
the duly constituted STATE OFFICERS ELECTORAL  
BOARD, *et al.*,

Respondents-Appellees.

) No. 18 COEL 000002  
) (consolidated with  
) 18 COEL 000001)

) Honorable  
) Alfred J. Paul,  
) Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Justices Delort and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 "This appeal concerns the party-switching restrictions on political candidates for the General Assembly under section 8-8 of the Election Code (10 ILCS 5/8-8 (West 2008))." *Hossfeld v. Illinois State Board of Elections*, 238 Il. 2d 418, 420 (2010). At issue is the validity of Hal Patton's statement of candidacy in which he claimed to be a "qualified primary voter of the Republican Party" in the upcoming March 20, 2018, primary election, despite previously signing the nominating petition of Democrat Katie Stuart, a candidate seeking reelection to the General Assembly in the same March 2018 primary election. However, we lack jurisdiction to address this issue and must dismiss the appeal for the reasons to follow.

¶ 3 On December 11, 2017, Charles A. Yancey filed an objector's petition challenging Patton's eligibility to run as a Republican candidate in the primary election. See 10 ILCS 5/10-8 (West 2014). Yancey argued that Patton's statement of candidacy was invalid and he was not a "qualified primary voter" for the party for which he was seeking election (Republican Party), as required by section 8-8 of the Election Code, because prior to signing his statement of candidacy, he signed the Democratic nominating petition of Katie Stuart.

¶ 4 Following a hearing on Yancey's objection before the Illinois State Board of Elections (Board), the hearing officer issued a decision and recommendation to the Board, recommending that the objector's petition be granted and that Patton's name be removed from the Republican ballot for the March 2018 primary election. The Board's general counsel concurred with the recommendation and advised the Board to adopt it.

¶ 5 The Board failed to render a decision by a statutorily required majority vote or render a decision.<sup>1</sup> Patton filed a multi-count complaint in the circuit court of Cook County consisting of a single-count petition for judicial review and three additional counts seeking declaratory relief under various theories alleging unconstitutionality of the underlying statutes (case no. 2018 COEL 000001). Yancey filed his own single-count petition for judicial review (case no. 2018 COEL 000002). The circuit court consolidated the two cases. Patton also filed a three-count counterclaim in Yancey's case.

¶ 6 On January 30, 2018, the circuit court denied Patton's petition, granted Yancey's petition, and ordered that Patton's name be removed from the ballot on the ground that his nomination papers were invalid. The circuit court also denied Patton's request to stay enforcement of its order pending appeal.

¶ 7 On January 31, 2018, Patton filed a notice of appeal along with motions for an expedited appeal and for a stay of the circuit court's order pending appeal. Yancey filed a petition in opposition to Patton's motion for an expedited appeal.

¶ 8 Prior to this court's ruling on his motion, Patton filed a Rule 302(b) motion for direct appeal to the Supreme Court on February 6, 2018. On February 7, 2018, this court declined to consider Patton's motion because of lack of jurisdiction.

¶ 9 The Supreme Court denied Patton's Rule 302(b) request and directed this court to enter an order staying the circuit court's judgment and to expedite consideration of the appeal on February 8, 2018. This court allowed Patton's motions on February 13, 2018.

¶ 10 For the reasons that follow, we dismiss this appeal for lack of jurisdiction.

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<sup>1</sup> One Board member abstained.

¶ 11

ANALYSIS

¶ 12 Although the parties do not dispute jurisdiction, we have an independent duty to consider the issue and to dismiss an appeal where our jurisdiction is lacking. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011). Here, we find that we do not have jurisdiction over this appeal.

¶ 13 Patton's jurisdictional statement asserts that we have jurisdiction over this appeal under Illinois Supreme Court Rule 301 (appeals from final judgments of a circuit court in a civil case as a matter of right) and Illinois Supreme Court Rule 303 (timing of the filing of the notice of appeal).<sup>2</sup>

¶ 14 Only final judgments or orders are appealable as of right unless the particular order falls within one of the specified exceptions enumerated by Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010) governing interlocutory appeals as of right. See *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009). A judgment or order is considered final "if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997). An order dismissing claims with prejudice is usually considered a final judgment, but such an order is not always immediately appealable. *Id.*

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<sup>2</sup> Rule 301 states that "[e]very final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Rule 303 states in relevant part that "[t]he notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from," or "within 30 days after the entry of the order disposing of the last pending postjudgment motion." Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 15 In this regard, Illinois Supreme Court Rule 304(a) provides that "[i]f 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." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). The circuit court's order did not resolve Patton's three declaratory judgment counts or his three-count counterclaim.

¶ 16 In reviewing the circuit court's order of January 30, 2018, denying Patton's petition, granting Yancey's petition, declaring that Patton's nomination papers are invalid, and denying his request to stay enforcement of its order pending appeal, we have found only one statement that arguably comes close to the language found in Rule 304(a). The court's order stated that it was a "final, appealable order." Our court noted in *Palmolive Tower Condominiums, LLC*, that "a circuit court order accompanied by language indicating that it is 'final and appealable,' but not referencing immediate appeal, the justness of delay, or Rule 304(a), does not trigger" appellate jurisdiction under Rule 304(a). *Palmolive Tower Condominiums, LLC*, 409 Ill. App. 3d at 544.

¶ 17 Here, the circuit court's order did not refer to the order's immediate appeal, the justness of delay, or Rule 304(a). Therefore, the language in the order was wholly insufficient to invoke this court's jurisdiction under Rule 304(a). *Palmolive Tower Condominiums, LLC*, 409 Ill. App. 3d at 545.

¶ 18 **CONCLUSION**

¶ 19 Because the circuit court's order of January 30, 2018, does not contain the requisite language required to invoke this court's jurisdiction under Rule 304(a), we must dismiss this appeal.

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¶ 20 Appeal dismissed.