

2018 IL App (2d) 170118-U
Nos. 2-17-0118 & 2-17-0217 cons.
Order filed March 15, 2018

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

| | | |
|--------------------------|---|-------------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the Circuit Court |
| LINDA L. BESCI, |) | of Lake County. |
| |) | |
| Petitioner-Appellant, |) | |
| |) | |
| and |) | No. 13-D-971 |
| |) | |
| FRANK J. BESCI, |) | Honorable |
| |) | Charles W. Smith, |
| Respondent-Appellee. |) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed petitioner’s appeals as untimely: in one appeal, the judgment did not include a Rule 304(a) finding and other claims were pending; in the other appeal, petitioner appealed more than 30 days after the judgment and her motion to quash citations related to its enforcement was not directed against the judgment and thus did not extend the time to appeal.

¶ 2 In case No. 2-17-0118, petitioner, Linda L. Besci (Linda), appeals the denial of her petition to vacate a judgment for dissolution of marriage under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), contending that her settlement agreement with respondent, Frank J. Besci (Frank), was unconscionable. In case No. 2-17-0217, she

appeals from an order requiring her to pay her attorney \$30,962.50 in fees related to the underlying case. We dismiss both appeals for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 In May 2013, Linda filed a petition for dissolution of marriage. After extensive litigation of the matter, trial was set for October 5, 2015.

¶ 5 On October 5 and 6, 2015, the parties and their attorneys engaged in settlement negotiations, and two different judges made settlement recommendations. On October 6, 2015, the parties signed a marital settlement agreement. That same day, a hearing was held, and the court approved the settlement, but the matter was continued to allow Linda to be added to Frank's insurance. The final judgment was entered on January 14, 2016.

¶ 6 On February 16, 2016, Linda's trial attorney, Thomas Sbertoli, withdrew his appearance and timely filed a petition for setting final attorney fees and costs. That same day, Linda appeared with new counsel and filed a motion to vacate the judgment, alleging that she signed the settlement agreement under duress and that it was unconscionable. Frank questioned the timeliness of the motion. After a number of delays, on July 28, 2016, Linda sought leave to file an amended motion within 14 days. The court granted the motion. Linda did not file an amended motion. Instead, on September 21, 2016, she filed her section 2-1401 petition to vacate the judgment, again alleging that the settlement agreement was entered under duress and that it was unconscionable.

¶ 7 In October 2016, a six-day hearing was held on the section 2-1401 petition, which was consolidated with the hearing on the fee petition. In a written order dated January 12, 2017, the court denied the section 2-1401 petition. In a separate written order dated January 20, 2017, the court awarded Sbertoli's law firm \$30,962.50 in fees. Neither order contained a finding under

Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason for delaying enforcement or appeal.

¶ 8 On January 23, 2017, Frank filed a petition for contribution to fees and costs, seeking attorney fees related to his litigation of the section 2-1401 petition. Linda responded on February 3, 2017, with an emergency motion to quash citations, arguing that the pendency of Frank's petition made Sbertoli's fee award unenforceable without a Rule 304(a) finding. On February 7, 2017, the court denied the motion in a handwritten order, stating that it would issue a written decision within 14 days. On February 16, 2017, the court issued a written order stating that Sbertoli's fee award was in a distinct cause of action and could be enforced and appealed.

¶ 9 On February 9, 2017, Linda filed a notice of appeal of the January 12, 2017, order in the section 2-1401 case. The notice made no mention of the January 20, 2017, order awarding fees related to the underlying case. Meanwhile, Frank's petition for contribution to fees was continued to February 22, 2017. On that day, Frank filed a petition for prospective fees and costs to cover the costs of appeal. The trial court continued both matters until April 24, 2017.

¶ 10 On March 9, 2017, in the underlying case, Frank filed a petition for a rule to show cause, alleging that Linda failed to transfer titles to vehicles, pay money, and perform other actions required under the agreement. He also filed an amended petition for prospective fees and costs. The petitions were set for hearing on April 24, 2017. The outcome of the April 24, 2017, hearing is not in the record. On March 20, 2017, Linda filed her notice of appeal of the January 20, 2017, fee award. The cases were consolidated for appeal.

¶ 11

II. ANALYSIS

¶ 12 Neither party addresses whether these appeals were timely. However, we have an independent obligation to do so. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232

Ill. 2d 209, 213 (2009). We first determine that the appeal in the section 2-1401 action was premature.

¶ 13 Generally, our jurisdiction is limited to reviewing appeals from final judgments. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Id.* Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) provides that, if multiple claims are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all claims only if the trial court makes an express written finding that there is no just reason to delay enforcement or appeal, or both. A claim is any right, liability, or matter raised in an action. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990). Without a Rule 304(a) finding, a final order disposing of fewer than all claims is not appealable and does not become appealable until all of the claims are resolved. *Id.*

¶ 14 Although a section 2-1401 petition is nominally filed in the same action as the judgment it challenges, it is actually a new and separate action. *In re Marriage of Buck*, 318 Ill. App. 3d 489, 493 (2000). Here, although the January 12, 2017, order finally resolved Linda's section 2-1401 petition, Frank filed a timely petition for contribution in that action. Thus, because the trial court did not attach a Rule 304(a) finding to that order, Frank's petition rendered that order unappealable until the resolution of the remaining claims in the action. See *In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 22. Accordingly, we dismiss the appeal in case No. 2-17-0118 for lack of jurisdiction.

¶ 15 We presume that Linda can timely file a notice of appeal upon the resolution of the pending claims in this matter or upon the entry of a Rule 304(a) finding. However, if the

pending claims have been resolved and the time to file a new notice of appeal has expired, Illinois Supreme Court Rule 303(a)(2) (eff. July 1, 2017) allows Linda to establish the effectiveness of the present notice of appeal. She may do so by filing a motion to establish jurisdiction and to supplement the record in order to show our jurisdiction. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007).

¶ 16 We next determine that the appeal of the fee award was late. As the trial court noted, under the Illinois Marriage and Dissolution of Marriage Act, “[i]rrespective of a Petition for Setting Final Fees and Costs being heard in conjunction with an original proceeding under this Act, the relief requested under a Petition for Setting Final Fees and Costs constitutes a distinct cause of action.” 750 ILCS 5/508(c)(2) (West 2016). “To vest the appellate court with jurisdiction a party must file a notice of appeal within 30 days after entry of the judgment appealed from, or within 30 days after entry of an order disposing of a timely post-[judgment] motion.” *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984); see also Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). However, the motion must be “directed against the judgment.” Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017).

¶ 17 Here, the court entered the fee award on January 20, 2017. Although Linda moved to quash citations related to the enforcement of that judgment, that motion was not “directed against the judgment.” See *Westcon/Dillingham Microtunneling v. Walsh Construction Co. of Illinois*, 319 Ill. App. 3d 870, 875 (2001). Thus, the motion did not extend Linda’s time to appeal, and her notice of appeal, filed on March 20, 2017, was late. Accordingly, we dismiss the appeal in case No. 2-17-0217 for lack of jurisdiction.

¶ 18 III. CONCLUSION

¶ 19 Having determined that we lack jurisdiction, we dismiss both appeals.

¶ 20 Appeals dismissed.