NOTICE
Decision filed 04/02/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 170360-U

NO. 5-17-0360

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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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| THE COUNTY OF SHELBY, STATE OF ILLINOIS, and SHELBYVILLE TOWNSHIP ROAD DISTRICT, | ) | Appeal from the Circuit Court of Shelby County. |
| Plaintiffs-Appellees, | ) | |
| v. | ) | No. 05-CH-43 |
| DAVID GALVIN and BARBARA GALVIN, | ) | |
| Defendants-Appellants | ) | |
| (Mark Goodwin, Karla Goodwin, and William Curl, Intervening Plaintiffs-Appellees). | ) | Honorable Kimberly G. Koester, Judge, presiding. |

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JUSTICE WELCH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

## ORDER

¶ 1 *Held*: The appeal is dismissed for lack of appellate jurisdiction where the trial court's order was not a preliminary injunction or temporary restraining order appealable pursuant to Illinois Supreme Court Rule 307(a) (eff. Jan. 1, 2016), was not a final and appealable order under Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015), and was not appealable under Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016).

¶ 2 The defendants-appellants, David Galvin and Barbara Galvin (Galvins), owners of Lithia Estates Subdivision (Lithia Estates), appeal from the order of the Shelby County

circuit court in which the court approved, in part, the plat submitted by the intervening plaintiffs-appellees, William Curl, Mark Goodwin, and Karla Goodwin (Curl and the Goodwins or intervenors) and ordered the Galvins to begin construction of the subdivision. The Galvins seek interlocutory review of this order pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Jan. 1, 2016), or in the alternative, Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). For the reasons that follow, we dismiss the appeal.

¶ 3 Lithia Estates was platted in 1974. Two lots, 24 and 25, were sold and single-family homes were built on each lot. Curl and the Goodwins are the current owners of lots 24 and 25. The Shelbyville Township Road District (Township) accepted and maintained the south 390 feet of the north-south roadway in Lithia Estates, which serviced the two homes. In 1983, the Galvins purchased a campground located north and east of Lithia Estates. In May 2002, the Galvins also purchased Lithia Estates, excluding lots 24 and 25. The other roads dedicated but never accepted by the Township in Lithia Estates were never constructed, although the Shelby County Zoning Ordinance (Zoning Ordinance) required the owners of all subdivisions to construct roads pursuant to the Zoning Ordinance.

¶ 4 The Galvins had a road constructed from their campground to the dedicated and accepted Township road serving the two homes located in Lithia Estates. The road was constructed with personal equipment and without any materials provided by the Township. This road was not built to Township road specifications because it was constructed to be used as a "light traffic driveway" for "personal use." The Galvins used the road as a commercial entrance to their campground. The road commissioner for the

Township was never asked to accept and never accepted the Galvins' new road, he did not consent to the connection of the new road to the Township road, and he did not want the Galvins' new road in the Township road district due to safety and maintenance concerns.

¶ 5 On September 8, 2005, the Township filed a complaint alleging the unauthorized extension of a Township road. On January 20, 2006, Shelby County (County) joined the Township as plaintiffs in the matter, adding allegations regarding violations of the Zoning Ordinance. In a docket entry on June 11, 2008, the trial court entered a final order of partial summary judgment in favor of the Township and the County and ordered the Galvins to construct the subdivision in compliance with the Zoning Ordinance. The court gave the Galvins until December 1, 2009, to construct Lithia Estates as platted. This meant that the Galvins had to construct streets, sewers, a water main supply system, a storm water system, curbs and gutters, sidewalks, and street signs in order to comply with the Zoning Ordinance. The court imposed a $12,000 fine but suspended it subject to the Galvins properly completing the subdivision. The court further ordered that if the Galvins could not comply, the County would develop the subdivision by taking a lien on the Galvins' real estate. On appeal, this court affirmed the trial court's decision. *County of Shelby v. Galvin*, No. 5-09-0565 (2010) (unpublished order under Illinois Supreme Court Rule 23).

¶ 6 Neither the Galvins nor the County made any efforts to construct Lithia Estates from 2008 through 2014. On October 19, 2012, Curl and the Goodwins filed a new lawsuit in Shelby County (No. 12-CH-61) for a writ of *mandamus*, requesting that the

trial court compel the County to comply with the June 11, 2008, judgment in this case and move forward with Lithia Estates' construction. Around February 28, 2014, the court stayed case No. 12-CH-61 pending action in this case.

¶ 7 On April 3, 3014, the County and the Galvins filed a joint motion to vacate and amend the trial court's order of June 11, 2008. The joint motion noted that the County had amended its Zoning Ordinance and neither the County nor the Galvins could comply with the court's order without violating the Zoning Ordinance. The motion argued that the court's order should be deemed void as "compliance with same would require performance of unlawful acts" and sought to have the original plat vacated with the exception of the two developed lots and the dedicated roadway.

¶ 8 On April 16, 2014, the Township filed a motion to dismiss the joint motion. The motion initially argued that the joint motion was untimely as a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401(c) (West 2014)) as it was not filed within two years following the entry of the final order. Alternatively, the motion argued that the Zoning Ordinance would not be violated if the Galvins and the County complied with the trial court's June 2008 order.

¶ 9 On May 12, 2014, Curl and the Goodwins filed a petition for motion to intervene in the proceedings, which was granted by the trial court. Curl and the Goodwins adopted the Township's motion to dismiss, which stood against the County and the Galvins' later filed amended joint motion to vacate and amend the court's June 2008 order.

¶ 10 On October 31, 2014, the trial court's docket entry order denied the Township, Curl, and the Goodwins' motion to dismiss and granted in part and denied in part the

County and the Galvins' request to vacate and amend the June 2008 order. Specifically, the court ordered the Galvins to prepare and submit a new subdivision plat proposal consistent with the county's Zoning Ordinances within 45 days of the entry of the order. However, if the Galvins failed to submit the proposed plat within the time limitation, the court ordered the County to submit a proposed plan within 30 days after the Galvins' plan was due. The court stated that the matter would be set for further hearing, at which time any objections to the newly proposed plats would be heard and any proposals offered by the intervening plaintiffs and the Township would be considered. The court then stated that it would determine "which plat [would] be implemented and when, in compliance with the spirit of its original order."

¶ 11 The Township, Curl, and the Goodwins appealed, and this court entered an order dismissing that appeal for lack of jurisdiction. *County of Shelby v. Galvin*, No. 5-14-0554 (2015) (unpublished order under Illinois Supreme Court Rule 23).

¶ 12 On January 13, 2016, an agreed judgment resolved issues raised by the Township in their objections to a joint plat proposal submitted to the court by the Galvins and the County. The judgment noted that certain issues and objections to the proposed plat remained outstanding as it related to Curl and the Goodwins. The provisions set forth in the judgment were to be included in the final modified Lithia Estates plat.

¶ 13 On May 3, 2016, an amended joint plat proposal was submitted to the circuit court, and on June 20, 2016, the court heard argument on the proposal and the objections and responses. The court did not rule on the various motions but held a conference on August 15, 2016, noting that the "parties will meet to further discuss [the] matter." On

October 24, 2016, the County filed a motion for voluntary dismissal. That same day, the parties appeared and informed the court that they had not reached an agreement. Based on this information, the court "[took the] matter under advisement."

¶ 14 On December 1, 2016, the court ordered the Galvins, at their cost, to obtain a new plat of the subdivision in compliance with the current Zoning Ordinance within 30 days of the order. The new plat was to be as similar to the original plat as possible. The Galvins were also ordered to pay the $12,000 fine that was originally imposed by the court due to their failure to comply with the court's June 11, 2008, judgment; if the payment was not made within 30 days, a lien was to be issued encumbering their property. The court also prohibited all of the parties from encumbering, destroying, or decreasing the value of the property until further order of the court.

¶ 15 On December 27, 2016, the Galvins tendered a plat to the court. The Galvins also filed a motion for approval of plat and for dismissal of the case.

¶ 16 On February 14, 2017, a copy of a resolution by the Shelby County Board supporting the County's motion for voluntary dismissal of the lawsuit was filed. At a February 17, 2017, hearing, the court expressed frustration with the defendants' "complete lack of respect" for its 2008 and 2014 orders. The court also noted that the third version of the plat was "not anywhere within the spirit of the 2008 [order] or any subsequent orders." The court denied the County's motion for voluntary dismissal and stated that it would provide the parties with their requirements and responsibilities for the next hearing.

¶ 17 At the April 11, 2017, hearing, the court clarified that the County's motion for voluntary dismissal was denied because "there was nothing to dismiss" as "the issues had been resolved." The court also denied the Galvins' motion for approval of plat and dismissal of case. Specifically, the court found that the submitted plat was "not anywhere near the intended plat" and "not anywhere within the limits or terms of the current Zoning Ordinance." The court also denied the Galvins' motion stating that there were no justiciable facts before the court. Finally, the court granted Curl and the Goodwins the right to present an alternative plat for the court's consideration "in the spirit of this Court's original order and in compliance with the current zoning." The court entered a docket order reflecting these rulings.

¶ 18 On May 8, 2017, the Galvins filed a motion to reconsider the April 11, 2017, docket order. On May 11, 2017, Curl and the Goodwins filed a motion for approval of alternative plat.

¶ 19 A hearing was held on June 11, 2017. The court first denied the Galvins' motion to reconsider the April 11, 2017, docket order, which had argued that the Zoning Ordinance does not allow a landowner to plat for land for another landowner's property. The court responded that the intervenors were involved in this case after the Galvins filed their October 31, 2014, joint motion to amend the court's order, which was granted in part and denied in part; the court specifically stated in that order that if the Galvins failed to submit a plat consistent with the current Zoning Ordinance, then the County was to submit a proposed plan within 30 days after the Galvins' plan was due, and any objections to the newly proposed plats and any proposals offered by the intervening

plaintiffs would be considered at a later date. As to the plat proposal, the court noted that Curl and the Goodwins' plat was "much more in line with what was the original intention of the parties." The court noted that it would be making some adjustments and took the matter under advisement.

¶ 20 In an August 21, 2017, docket entry, the court entered a detailed order in the matter. It noted that both plats were in compliance with the current Zoning Ordinance, but the Galvins' amended plat failed to adopt the spirit of the court's original order while Curl and the Goodwins' proposal "is more closely in compliance with the court's original order." The court approved Curl and the Goodwins' proposed plat in part, subject to the following provisos: (1) that the Galvins begin subdivision construction within 60 days of the order and comply with the easement and road dedication requirements of the proposed plat; (2) the township remove barricades at the end of the Township road and install an "end of road" sign; (3) Curl is granted a sewer easement extending five feet into the proposed newly constructed road; (4) the Galvins remove any dirt pile elevations that affect drainage to existing and future lots and refrain from creating more; (5) construction of lots 6 through 10 begin within six months of the sale of either lot 1, 2, or 3, and lots 4 and 5 construction begin within six months of lots 6 through 10 completion; (6) lots 1, 2, and 3 are listed for sale with a licensed realtor within 60 days of the order, and the Galvins may not interfere with the realtor's property access; (7) all parties share the cost of completing the proposed plat; and (8) all parties pay their own attorney fees. The court reserved ruling on the County's responsibilities for compliance with the order pending the Galvins' compliance. The court stated that the "matter is set for status of

compliance" on October 27, 2017. The Galvins filed a notice of appeal on September 19, 2017, pursuant to Rule 307(a)(1), or, in the alternative, Rule 303.

¶ 21 However, before this court may evaluate the merits of the Galvins' arguments on appeal, we must first determine whether we have subject matter jurisdiction to do so. See *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416 (1991). Illinois courts have an independent duty to consider subject matter jurisdiction, which cannot be waived, stipulated to, or consented to by the parties. *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 13.

¶ 22 Our jurisdiction to hear an appeal is confined to reviewing appeals from final judgments unless the appeal comes within one of the exceptions for interlocutory orders specified by the supreme court rules. *Johnson v. Northwestern Memorial Hospital*, 74 Ill. App. 3d 695, 697 (1979). The Galvins assert that the matter is properly appealed to this court pursuant to Rule 307(a)(1), which provides that an appeal may be taken from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Jan. 1, 2016). When determining whether an order constitutes an appealable injunctive order under Rule 307(a)(1), we look to the substance of the action, not its form. *In re A Minor*, 127 Ill. 2d 247, 260 (1989).

¶ 23 An injunction has been defined as a "judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing." (Internal quotation marks omitted.) *Id.* at 261. Among other actions, the trial court's August 21, 2017, order directs the defendants to begin construction of Lithia Estates and to list lots for sale

within 60 days. We believe that this definition applies here and conclude that the order was an injunction.

¶ 24 However, even though the relief ordered was injunctive, it will not be subject to review under Rule 307(a)(1) unless it was interlocutory, not permanent, in nature. *Santella v. Kolton*, 393 Ill. App. 3d 889, 903 (2009). Rule 307(a)(1) applies only to interlocutory injunction orders that merely preserve the status quo pending a decision on the merits, conclude no rights, and are limited in duration, in no case extending beyond the conclusion of the action. *Id.* (citing *Steel City Bank*, 224 Ill. App. 3d at 416). Rule 307(a)(1) does not apply to permanent orders, which are orders that are not limited in duration and alter the status quo. *Id.*

¶ 25 The record indicates that the August 21, 2017, order does not preserve the status quo, nor is it limited in duration. The order requires the Galvins, among other things, to begin building the subdivision and list lots for sale with a licensed realtor within 60 days of the order. The order clearly requires the Galvins to make changes to the existing conditions of their land, and nothing in the order indicates that these measures were intended to be temporary. We conclude that the record indicates that the substance of the order is a permanent mandatory injunction that cannot be appealed under Rule 307(a)(1).

¶ 26 In the alternative, the Galvins assert that the matter is properly appealed to this court pursuant to Rule 303, which provides that an appeal may be taken from a final judgment of the circuit court that has disposed of the entire case. Ill. S. Ct. R. 303 (eff. Jan. 1, 2015).

¶ 27 A final judgment is a judgment that fixes absolutely and finally the rights of the parties in the lawsuit. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 793 (2000). To be a final and appealable order, the order appealed from must determine the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Id.* A final judgment either terminates the litigation between the parties on the merits or disposes of the rights of the parties with regard to the entire controversy or some definite part thereof. *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 18. When an order of the circuit court leaves a cause still pending and undecided, it is not a final order. *Johnson*, 74 Ill. App. 3d at 697.

¶ 28 In the present case, the trial court's August 21, 2017, order reserved ruling on the County's responsibilities for compliance with the order pending the Galvins' compliance, and set the case for further hearing on October 27, 2017, to determine any continuing compliance matters. The court's order talks in terms of certain actions "beginning" and sets up a timeline for construction. As the Galvins themselves note in their brief, it appears that the trial court intends on managing the construction and development of Lithia Estates and that the court anticipates further orders. We must conclude that the court's August 21, 2017, order does not in substance finally dispose of the parties' rights regarding issues in the case, as there are matters left pending and unresolved. Therefore, the order was not a final and appealable order that would confer jurisdiction in this court pursuant to Rule 303.

¶ 29 Likewise, we cannot conclude that we have jurisdiction under Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016). Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) provides that "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." Here, no such language was included in the trial court's order. Therefore, we do not have jurisdiction under Rule 304(a). Further, we do not have jurisdiction under Rule 304(b), which allows for appeals from final judgments that do not dispose of an entire proceeding where the trial court has not made the special written finding required in Rule 304(a). The order at issue here does not fall within the types of orders enumerated in the rule. See Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016).

¶ 30 "Where this court lacks jurisdiction, we must dismiss the appeal; as noted in other contexts, our courts do not sit to render advisory opinions on abstract questions of law to guide potential future litigation." *Steel City Bank*, 224 Ill. App. 3d at 416. For the aforementioned reasons, this appeal is dismissed for want of appellate jurisdiction.

¶ 31 Appeal dismissed.