2019 IL App (1st) 180600-U

THIRD DIVISION
March 27, 2019

Nos. 1-18-0600 & 1-18-0760, cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPHER STOLLER, as Special Administrator of the Estate of Bernice Stoller, Deceased, Plaintiff-Appellant, v. PREMIER CAPITAL, LLC, STEVEN B. ADAMS, RICHARD J. TARULIS, DAVID G. WENTZ, DAVID N. SCHAFFER, Individually and d/b/a BROOKS, ADAMS & TARULIS, and TIMOTHY J. HOPPA, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 L 8969 Honorable Marguerite Quinn, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Appeals dismissed for want of jurisdiction.

¶ 2 After Bernice Stoller committed suicide, her husband, plaintiff-appellant Christopher Stoller (Christopher), filed this wrongful death claim against defendant-appellee Premier Capital, LLC, as well as defendants Steven B. Adams; Richard J. Tarulis; David G. Wentz; David N. Schaffer; their law firm, Brooks, Adams & Tarulis; and Timothy J. Hoppa. The crux of

Christopher's complaint was that the defendants, by attempting to enforce a money judgment against Bernice that had been vacated, caused Bernice to commit suicide.

¶ 3 The circuit court granted summary judgment to Tarulis, Wentz, Hoppa, Schaffer, and the law firm Brooks, Adams & Tarulis. Later, the court granted judgment on the pleadings to Adams. Christopher filed separate appeals of those orders, which were docketed in this court as Appeal Nos. 1-17-0290 and 1-17-0481, respectively. We consolidated those appeals and, on June 28, 2018, issued a Rule 23 Order affirming the circuit court's summary judgment order in No. 1-17-0290 and dismissing Christopher's appeal for want of prosecution in No. 1-17-0481. See *Stoller v. Premier Capital LLC*, 2018 IL App (1st) 170290-U, ¶ 23. That left Premier as the only remaining defendant in the case.

¶ 4 Christopher filed his lawsuit against Premier on June 1, 2009. On March 30, 2010, the circuit court entered an order of default against Premier. Seven years later, in March 2017, a prove-up on damages was tried to a jury. On March 15, 2017, the jury returned a verdict in favor of Christopher for $16 million. The circuit court entered judgment on the verdict on March 16.

¶ 5 On April 3, 2017, Premier filed a motion to vacate the default judgment pursuant to section 2-1301(e) of the Code of Civil Procedure. See 735 ILCS 5/2-1301(e) (West 2016). The basis of the motion was that Christopher failed to serve Premier with a summons or a copy of his complaint when he filed this lawsuit in 2009. On May 15, 2017, the circuit court granted Premier's motion and vacated the judgment. In the same order, the court transferred the case to the Presiding Judge of the Law Division for reassignment. The order further noted that Premier would file a motion to dismiss after the case was reassigned.

¶ 6 On June 2, 2017, Christopher filed what he called a "post-trial 735 ILCS 5/2-1202 motion to cancel or rescind the court's judgment dated May 15, 2017." On March 20, 2018, the court denied Christopher's motion.

¶ 7 On March 26, 2018, Christopher filed a notice of appeal in this court, appealing the circuit court's May 15, 2017 and March 20, 2018 orders. That appeal was docketed as Appeal No. 1-18-0600. On April 16, 2018, Stoller filed a second notice of appeal, again appealing these two orders. That appeal was docketed as Appeal No. 1-18-0760. Upon motion by Christopher, we consolidated the appeals for disposition.

¶ 8 Christopher raises numerous arguments on appeal, but first we must assure ourselves of our jurisdiction. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). Christopher initially claims that we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), which provides that: "Every final judgment of a circuit court in a civil case is appealable as of right." *Id*. Premier argues that neither of the appealed orders were final judgments.

¶ 9 "An order is considered final 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.' " *Williams Montgomery & John Ltd. v. Broaddus*, 2017 IL App (1st) 161063, ¶ 32 (quoting *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989)).

¶ 10 Christopher is appealing two orders: (1) the May 15, 2017 order that vacated the default judgment against Premier; and (2) the March 20, 2018 order that denied Christopher's "post-trial motion" challenging that vacatur. But neither order was a final order, because neither order terminated the litigation or otherwise resolved any of Christopher's claims, such that "the only thing remaining" to be done in the case was "to proceed with execution of the judgment." *Id.*

¶ 11 The May 15, 2017 order vacated the only judgment that Christopher could have even sought to execute, namely the order entering judgment on the jury's verdict. And that order transferred the matter for reassignment and, based on Premier's assertions in open court, contemplated that Premier would file a motion to dismiss. In other words, after the May 15 order, Christopher's claim against Premier was still alive, and was (and is) still pending. That's the antithesis of a final order. See *AAA Disposal Systems, Inc. v. Aetna Casualty & Surety Co.*, 355 Ill. App. 3d 275, 281, (2005) ("An order vacating a judgment is not final and consequently not appealable because the merits of the case are still pending."); *In re Marriage of Agustsson,* 223 Ill.App.3d 510, 514 (1992) (same).

¶ 12 The March 20, 2018 order stands on an equally tenuous jurisdictional footing. Most critically, the March 20 order did not finally resolve any of Christopher's claims. All the circuit court did by entering that order was refuse to disturb its May 15, 2017 order. And as we've explained, the May 15, 2017 order, by its own terms, didn't resolve Christopher's claim against Premier. Obviously, an order refusing to "cancel or rescind" a non-final order cannot, itself, be a final order.

¶ 13 In a last attempt to secure appellate jurisdiction, in his reply brief, Christopher insists that Premier's 2-1301 motion was really a section 2-1401 petition. A section 2-1401 petition is a postjudgment motion (such as a motion to vacate the judgment) that is filed more than 30 days after the judgment under attack. See 735 ILCS 5/2-1401(a) (West 2016).

¶ 14 We have jurisdiction to review the grant or denial of relief on a section 2-1401 petition under Illinois Supreme Court Rule 304(b)(3) (eff. March 8, 2016). See *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 496–97 (1998). So if Christopher were correct that Premier's section 2-1301 motion was, in substance, a section 2-*1401* petition, we would

have jurisdiction to review the order that granted Premier's motion and vacated the underlying final judgment.

¶ 15 But Christopher is not correct. His argument is that Premier was first defaulted in the underlying action in March 2010, so Premier's section 2-1301 motion came over seven years after the "judgment," not within 30 days of it. Christopher is confusing an interlocutory finding of default with a final default *judgment*.

¶ 16 "A default judgment is comprised of two factors: '(1) a finding of the issues for the plaintiff; and (2) an assessment of damages.' " *Jackson v. Hooker*, 397 Ill. App. 3d 614, 620-21 (2010) (quoting *Wilson v. TelOptic Cable Construction Co., Inc.*, 314 Ill. App. 3d 107, 112 (2000)); see *Stotlar Drug Co., Inc. v. Marlow*, 239 Ill. App. 3d 726, 728 (1993) ("A default judgment is final if it grants the plaintiff relief and either resolves the case entirely or is final as to one party or cause of action and is certified in accord with the requirements of Supreme Court Rule 304(a).").

¶ 17 Thus, contrary to the stance Christopher has repeatedly taken in this case, when Premier was defaulted on March 30, 2010, the order finding Premier in default was not a "default judgment." Christopher did not obtain a default *judgment* against Premier until March 16, 2017, when the circuit court entered judgment on the jury's verdict following the prove-up trial. See *Jackson*, 397 Ill. App. 3d at 621 ("[I]t is clear the October 5, 2007, order granting plaintiff's motion for default constituted only an interlocutory order of default, not a final default judgment for the purposes of section 2–1301(e) of the Code. The final and appealable default judgment in this case was entered following the prove-up hearing on June 9, 2008, when the trial court found in plaintiff's favor and awarded $700,000 in damages.").

¶ 18 And within thirty days of that final default judgment in March 2017, Premier moved, pursuant to section 2-1301(e) of the Code, to vacate that judgment for lack of personal jurisdiction. Premier followed section 2-1301(e) to the letter:

> "(e) The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2016).

¶ 19 By its plain terms, "[s]ection 2–1301(e) is available to seek relief *** from a *final default judgment* within 30 days of its entry." (Emphasis added.) *Stotlar Drug Co.*, 239 Ill. App. 3d at 728. That is precisely what Premier did here.

¶ 20 So Christopher's attempt to characterize Premier's post-trial motion as a section 2-1401 petition fails, and thus he can find no refuge under Rule 304(b)(3), governing appeals from section 2-1401 orders. (Nor, for that matter, did Christopher's notice of appeal or docketing statement identify Rule 304(b)(3) as a basis for appellate jurisdiction, an oversight we might excuse if his substantive argument were correct.)

¶ 21 As we can find no basis for appellate jurisdiction over either order that Christopher has appealed, we have no choice but to dismiss these appeals.

¶ 22 Appeals dismissed.