

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
FIRST JUDICIAL DISTRICT

6901 Oglesby Condominium Association,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 18 M1 707213
)	
Myrtle Taylor,)	
)	The Honorable
Defendant Appellant-Appellee.)	Martin Paul Moltz,
)	Judge, Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court's order granting plaintiff's motion to strike defendant's counterclaims was not a final and appealable order, we dismissed the appeal for lack of jurisdiction.

¶ 2 Defendant, Myrtle Taylor, is an 85-year-old woman who has lived in her home for 40 years. She appeals from the trial court's order granting plaintiff's motion to strike her counterclaims. For the reasons explained below, we do not have jurisdiction, because the trial

court's order was not a final and appealable order and this case is still active on the trial court's calendar.

¶ 3 In 2018, plaintiff, 6901 Oglesby Condominium Association, filed a complaint against defendant under the Illinois Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101, *et seq.*), alleging it was entitled to possession of property located at 6901 S. Oglesby Avenue ("Property") and that defendant owed \$18,147.48 in damages for failure to pay monthly assessments.

¶ 4 Defendant filed a counter-complaint alleging she lived in and owned her property for more than 40 years with her husband, who is now deceased, has age-related disabilities, and receives in-home assistance for mobility and areas of daily living. She alleged, *inter alia*, that, in 2010, the 6901 Oglesby Condominium Association converted from a cooperative ownership, in which she was a shareholder, to a condominium. During the conversion process, the residents were assessed a special assessment. To satisfy her portion of the special assessment, in December 2010, she executed a mortgage with plaintiff as the lender and grantee and defendant as the borrower. Defendant alleged that, without her knowledge, plaintiff subsequently filed a quit-claim deed that conveyed her property to plaintiff and, in 2015, it executed a quit-claim deed that conveyed the property back to her. Defendant alleged that, in 2015, plaintiff also filed a trustee's deed conveying her property to it. She alleged she paid assessments "during times she was not a condominium owner" and plaintiff was the actual owner and that she overpaid plaintiff. Defendant alleged counterclaims against plaintiff for quiet title, slander of title, false light, accounting, and "violation of 12 U.S. Code § 2609."

¶ 5 Plaintiff filed a motion to strike defendant's counterclaims. It argued that, under the Act, the court should strike defendant's counter-complaint because her claims were not germane to plaintiff's underlying action for possession.

¶ 6 Relying on this court’s decision in *Milton v. Therra*, 2018 IL App (1st) 171392, the trial court granted plaintiff’s motion to strike defendant’s counterclaims. See *Milton*, 2018 IL App (1st) 171392, ¶¶ 23, 27, 49 (stating that under the Act, “ ‘no matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise’ ” and finding that the defendant’s counterclaim was not proper because it was outside the scope of a forcible entry and detainer action) (quoting 735 ILCS 5/9-106 (West 2016)). The trial court’s order also states “[t]here is no reason to delay enforcement or appeal of this order” and “[t]his order is without prejudice to re-filing in another division.” We note that the record on appeal does not contain a transcript of the hearing on plaintiff’s motion to strike defendant’s counterclaims.

¶ 7 Defendant appeals from the trial court’s order granting plaintiff’s motion to strike her counterclaims. She contends the trial court erred when it granted plaintiff’s motion to strike her counterclaims and argues her claims are germane to plaintiff’s underlying claim for possession.

¶ 8 Even though plaintiff’s underlying complaint for possession is pending with the trial court, defendant argues we have jurisdiction under Illinois Supreme Court Rule 304(a) because the court’s order granting the plaintiff’s motion to strike her counterclaims dismissed all of her counterclaims and stated that “[t]here is no reason to delay enforcement or appeal of this order.” Plaintiff contends that we do not have jurisdiction because the court’s order was not a disposition on the merits or a final judgment, as the order stated that “[t]his order is without prejudice to re-filing in another division.”

¶ 9 Our jurisdiction is generally limited to reviewing appeals from final judgments. *JPMorgan Chase Bank, N.A. v. E.-W. Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 24. An order is considered final “if it terminates the litigation on its merits or disposes of the rights of

the parties' entire controversy or on some definite part of the litigation." *JPMorgan Chase Bank, N.A.*, 2014 IL App (1st) 121111, ¶ 24.

¶ 10 Illinois Supreme Court Rule 304(a) governs situations, as here, when a party seeks to appeal an order that does not resolve all claims in the case. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); see *Id.* Rule 304(a) 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." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Thus, if multiple claims are involved in an action and a party seeks to appeal an order that is final with respect to one or more claims but not all claims in the action, the order must contain a Rule 304(a) finding. *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 23. However, "the mere inclusion of a Rule 304(a) finding in a nonfinal order does not make the order appealable under the supreme court rules." *Inland Commercial Property Management, Inc.*, 2015 IL App (1st) 141051, ¶ 23.

¶ 11 Further, a trial court's order that strikes a complaint or grants a motion to dismiss is generally not considered a final and appealable order unless the language states it is "with prejudice." *O'Hara v. State Farm Mutual Auto Insurance Co.*, 137 Ill. App. 3d 131, 133 (1985). When an order contains language that the order is "without prejudice" it " 'clearly manifests the intent of the court that the order not be considered final and appealable.' " *J. Eck & Son, Inc. v. Reuben H. Donnelley Corp.*, 188 Ill. App. 3d 1090, 1093 (1989) (quoting *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982)). A "dismissal 'without prejudice' signals that there was no final decision on the merits" and the party is not barred from refileing the action. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 24.

¶ 12 Here, the trial court's order granting plaintiff's motion to strike defendant's counterclaims expressly provides that "[t]his order is without prejudice to re-filing in another division." Thus, because the order is entered without prejudice and provided that defendant could re-file her claims in another division, the order was not final and appealable. See *Eck & Son, Inc.*, 188 Ill. App. 3d at 1093. Even though the order states that "[t]here is no reason to delay enforcement or appeal of this order," the inclusion of Rule 304(a) language does not make the order final and appealable. See *Inland Commercial Property Management, Inc.*, 2015 IL App (1st) 141051, ¶ 23. Moreover, our review of the Clerk of the Circuit Court's Electronic Docket of which we may take judicial notice, shows that this case remains on the trial call even though defendant filed a Notice of Appeal. See *TCF National Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 50 (taking judicial notice of the electronic docket of the circuit court of Cook County). Accordingly, based on the foregoing, we must find that we do not have jurisdiction to review the merits of defendant's challenge.

¶ 13 We note that defendant alleged in her counterclaim for accounting that she paid assessments when plaintiff was the actual owner of her unit and when she was not an owner, that she overpaid in excess of \$20,000, and that she has received complex and conflicting statements about her account over the years. In defendant's affirmative defense for "payment," which she filed after the trial court granted plaintiff's motion to strike her counterclaims without prejudice, she also alleged she paid assessments during times when was not an owner subject to assessments, which resulted in her overpaying about \$20,000. The record shows that the trial court granted plaintiff's motion to strike defendant's affirmative defenses and struck them without prejudice. We are curious about why the trial court did not consider ordering an accounting of the time periods during which defendant alleges she paid assessments when

plaintiff was the owner of her unit and she was not on the title to the property. Certainly an accounting to determine how much she paid and actually owes and whether she violated an agreement to pay her assessments is germane to the issue of possession and could possibly lead to a more amicable resolution of this issue. See *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 12 (stating that the only factual questions that need to be answered in a forcible entry and detainer proceeding are “which party is entitled to immediate possession and whether a defense which is germane to the distinctive purpose of the action defeats plaintiff’s asserted right to possession”); *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342, ¶ 18 (noting that whether the defendant unit owner “in fact, owes any assessments is germane to the proceeding”); *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 862 (2004) (stating, “Claims which are germane to the issue of possession generally fall into one of four categories: (1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; and (4) claims questioning the plaintiff’s motivation for bringing the action”) (Internal quotation marks omitted.)).

¶ 14 We are also curious why the court did not order a stay of this matter to give defendant a chance to file her counter-claims in another division, or just transfer the entire case to another division to determine ownership.

¶ 15 In addition, we are very curious about the fact that in spite of defendant’s age and physical condition this matter was not immediately transferred to the Probate Division, Elder Court Section, for consideration of all relevant matters.

¶ 16 Finally, we note that, upon entry of the final judgment on the claim for possession, defendant may appeal “all prior interlocutory orders which constituted a procedural step in the

progression leading to the entry of the final judgment from which an appeal has been taken.” *JPMorgan Chase Bank, N.A.*, 2014 IL App (1st) 121111, ¶ 25 (“An appeal from a final judgment draws into issue all prior interlocutory orders which constituted a procedural step in the progression leading to the entry of the final judgment from which an appeal has been taken.”); see *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342, ¶¶ 3-7 (where, after the trial court granted the plaintiff’s motion to strike the defendant’s affirmative defenses and ordered that her counterclaim be reassigned to the proper division because they were not “germane” to the proceeding, the trial court subsequently entered a final order and the defendant appealed, the reviewing court reviewed the trial court’s order striking the defendant’s affirmative defenses and severing her counterclaim).

¶ 17 In sum, we do not have jurisdiction to reach the merits of defendant’s claims.

¶ 18 Appeal dismissed.