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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ALEXANDER CALLAHAN,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellee,)	
)	
v.)	No. 18-F-487
)	
NATALIE TRACEY,)	Honorable
)	Neal W. Cerne,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* Order denying respondent’s request for DNA testing was akin to a discovery order, which was not appealable; therefore, reviewing court lacked jurisdiction.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Natalie Tracey, appeals an order of the circuit court of Du Page County denying her motion to have petitioner, Alexander Callahan, submit to DNA testing. Petitioner has not filed a brief. As we lack appellate jurisdiction here, the only action we are permitted to take is to dismiss this appeal. *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 16.

¶ 4 A court has an independent duty to consider its own jurisdiction. In *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994), our supreme court explained: “In reversing the circuit court’s order, the appellate court *sua sponte* raised the issue of whether it had jurisdiction to consider the appeal. There is no dispute that this was proper, for the appellate court has an independent duty to consider its jurisdiction before proceeding to the merits of the case.” Furthermore, if “jurisdiction is lacking, the court *must* dismiss the appeal on its own motion.” (Emphasis added.) *Id.*

¶ 5 Here, respondent cites Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) as the basis for jurisdiction. Indeed, the trial court made the appropriate findings pursuant to this rule. However, Rule 304(a) grants this court jurisdiction only over “a final judgment as to one or more but fewer than all of the parties or claims.” *Id.* As multiple parties are not involved, for us to have jurisdiction, the order sought to be appealed would have to resolve one of the claims between the parties. It has been stated, “Generally, the controlling factor in determining whether an order appealed from under rule 304(a) is final is whether the bases for recovery under the counts that were dismissed are different from those under the counts left standing.” *Coryell v. Village of La Grange*, 245 Ill. App. 3d 1, 5-6 (1993). The order at issue here simply denied respondent’s request for DNA testing.

¶ 6 The proceeding below commenced when petitioner filed a complaint seeking to establish parenting time. Respondent’s motion to compel petitioner to submit to DNA testing states, *inter alia*, “Prior to the determination of Alexander as [the minor’s] natural father and the establishment of parenting time, the parties should submit to deoxyribonucleic acid (DNA) tests to determine inherited characteristics.” Thus, respondent is seeking information to use in the proceedings below. In essence, this is a discovery request.

¶ 7 In *Kaull v. Kaull*, 2014 IL App (2d) 130175, ¶ 22, this court was called upon to review an order compelling a party to provide a DNA sample. We initially noted, “Discovery orders are not final orders and are not ordinarily appealable.” *Id.* In *Kaull*, the court reviewed the order only because an associated contempt finding established appellate jurisdiction in accordance with Illinois Supreme Court Rule 304(b)(5) (eff. March 8, 2016). *Kaull*, 2014 IL App (2d) 130175, ¶ 22. No similar contempt order exists in this case.

¶ 8 Finally, we note that the trial court made the findings required by Rule 304(a). However, “the mere presence of Rule 304(a) language cannot make a nonfinal order final and appealable.” *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 23 (“[T]he mere inclusion of a Rule 304(a) finding in a nonfinal order does not make the order appealable under the supreme court rules.”); *People ex rel. Block v. Darm*, 267 Ill. App. 3d 354, 356 (1994). Hence, these findings do not confer jurisdiction upon this court.

¶ 9 Accordingly, we lack jurisdiction over this appeal. We are left with no choice but to dismiss it.

¶ 10 Appeal dismissed.