

2020 IL App (1st) 191019-U

No. 1-19-1019

Order filed May 8, 2020

Sixth Division

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 DISTRICT

DENISE WESTON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	Nos. 18 OP 78406,
)	10 D 80991
CHRISTOPHER B. WEATHERLY SR.,)	
)	Honorable
Defendant-Appellee.)	Mark Joseph Lopez,
)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where the record does not show that the order appealed from was a final, appealable order.
- ¶ 2 Plaintiff Denise Weston appeals *pro se* from a May 14, 2019 trial court order instructing her to not “interfere with Christopher Weatherly’s Sr. parenting time” and continuing this custody matter to July 16, 2019. For the following reasons, we dismiss the appeal.

¶ 3 We initially note that the record on appeal consists of only a common law record. No report of proceedings has been filed, nor does the record include a bystander's report or an agreed statement of facts. See Ill. S. Ct. R. 323 (eff. July 1, 2017). Our supreme court "has long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)).

¶ 4 To the extent that we can glean, the common law record shows that on December 3, 2010, Weatherly filed a complaint seeking to establish custody and visitation of the parties' minor child (case number 10 D 80991). On January 28, 2011, the parties agreed to a parenting plan and, on March 2, 2011, the matter was off call.

¶ 5 On August 24, 2011, Weatherly, through counsel, filed a petition for temporary and permanent custody. On September 1, 2011, Weston filed for an emergency order of protection. On September 6 and 15, 2011, she filed, respectively, a motion in response to the petition for custody and a motion alleging a violation of the order of protection. The filings were held for a consolidated hearing on September 19, 2011. On that date, the trial court issued multiple orders, including a denial of Weston's emergency motion for an order of protection. The court also appointed a public guardian, and continued the case. On May 22, 2013, Weatherly withdrew his petition for custody *instanter*, his counsel was granted leave to withdraw, the public guardian was discharged, and the matter was off call.

¶ 6 On November 5, 2018, Weston filed a motion for an order of protection (case number 18 OP 78406) against Weatherly, and the matter was consolidated with the previous custody case. On January 11, 2019, the court vacated the order of protection and granted Weatherly parenting time, to be decided and scheduled by him and the minor child, who was 16 years old at the time. On

January 15, 2019, Weston filed another motion for an order of protection. The order was vacated on February 5, 2019 and the court entered an order again granting Weatherly parenting time. On February 11, 2019, Weston filed an additional motion for an order of protection. On February 20, 2019, Weatherly filed an emergency motion, stating that Weston violated the court's order for visitation.

¶ 7 The court issued several orders of continuance. On May 14, 2019, the court entered an order of continuance, in which it instructed that Weston shall not “interfere with Christopher Weatherly’s Sr. parenting time,” and continued the case to July 16, 2019. Also, on May 14, 2019, the court entered a “Return of Body Attachment Order,” which vacated a previously entered attachment order. Both parties were ordered to appear in court on July 16, 2019.

¶ 8 On May 16, 2019, Weston filed a notice of appeal which stated the appeal was from the judgment of May 14, 2019.

¶ 9 On July 16, 2019, the court entered an order that stated Weston had “a history of failing to appear and failing to turn the minor child for [Weatherly’s] parenting time.” Weston “once again” failed to appear. The court granted Weatherly sole custody and made him sole decision maker for the minor’s best interests “until further notice of the court.” The court terminated Weatherly’s child support obligations and ceased Weston’s parenting time “until she actively participates in this court[’s] proceedings and files a proper motion seeking parenting time.”

¶ 10 On July 22, 2019, Weston filed an amended notice of appeal, which this court allowed. The amended notice of appeal corrected the trial court case number. It contains the same judgment date of May 14, 2019 as the judgment being appealed. The record contains additional filings made in the trial court by both parties in August 2019.

¶ 11 As an initial matter, we note that Weatherly has not filed a brief before this court, and we have taken this appeal on Weston's brief alone. See *First Capitol Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976); *Direct Auto Insurance Co. v. Koziol*, 2018 IL App (1st) 171931, ¶ 1. Having reviewed Weston's brief, we briefly point out that it fails to comply with the requirements of Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. May 25, 2018)). Although plaintiff is proceeding *pro se*, she is nonetheless required to comply with our supreme court rules. See *Ammar v. Schiller, DuCanto and Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 16. Among other deficiencies, Weston's brief fails to include a statement of jurisdiction or a cogent issue presented for this court to review. See Ill. Sup. Ct. R. 341 (h)(3), (4). Her brief further fails set forth the facts as contained in the record, or to set forth any legal argument or citation to any legal authority. See Ill. S. Ct. R. 341 (h)(6), (7).

¶ 12 Setting aside the deficiencies of Weston's brief, we note that, before this court can address the merits of the appeal, we have an independent duty to assess our own jurisdiction, regardless of whether that issue has been raised by any party. *A.M. Realty Western LLC v. MSMC Realty, LLC*, 2016 IL App (1st) 151087, ¶ 67; see also *Secura Ins. Co. v. Illinois Farmers Ins. Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.") (citations omitted). As explained below, we lack jurisdiction to review the May 14, 2019 order. It is well-established that jurisdiction in the appellate court only arises when a party files a timely notice of appeal from a final judgment. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 541, 521 (2001). Pursuant to Supreme Court Rule 303(a)(1), "a notice of appeal must be filed within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against judgment is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that

judgment or order.” *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 20; Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017).

¶ 13 “An order or judgment is final for purposes of Rule 303(a) if it ‘terminates the litigation between the parties on the merits of the cause or disposes of the rights of the parties either upon the entire controversy or upon some definite part thereof.’ ” *Kroot v. Chan*, 2017 IL App (1st) 162315, ¶ 12 (quoting *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 982 (1st Dist. 1994)). A final judgment requires a determination by the trial court “which ascertains and fixes absolutely and finally the rights of the parties to the litigation.” *Phoenix Capital, LLC v. Tabiti*, 2016 IL App (1st) 162686, ¶ 6 (citation omitted); see *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). In other words, “[a] final order is one that ‘resolve[s] every right, liability or matter raised.’ ” *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 22 (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)). An appellate court lacks jurisdiction to review nonfinal judgments. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9.

¶ 14 Here, both the original and amended notice of appeal designate the date of the judgment being appealed as May 14, 2019. From the record provided, we cannot find that any final, appealable order was entered on this date. As noted, the record does not include any transcript from that, or any other, date. The record includes two orders from that date. One was entitled, “Orders of Continuance,” which set the case for a status date on July 16, 2019, ordered the parties to appear in court on that date, and ordered that Weston not interfere with Weatherly’s parenting time. The other was entitled, “Return of Body Attachment Order,” which vacated a previous attachment order, continued the case until July 16, 2019, and ordered appearance on that court date, “or a Body Attachment Order shall issue.” These orders did not fix the rights of the parties, and did not constitute a final, appealable judgment. Rather, the orders instructed the parties to

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appear in court on July 16 and instructed Weston not to interfere with Weatherly's parenting time. Because the record in this case does not show that the order appealed from was a final, appealable order, we must dismiss the appeal

¶ 15 For the forgoing reasons, the appeal is dismissed.

¶ 16 Dismissed.