2020 IL App (1st) 191181-U

FOURTH DIVISION
March 19, 2020

No. 1-19-1181

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

LM INSURANCE CORPORATION, as subrogee of JOLLY MAIDS CLEANING SERVICE, INC.,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellee,	)	
v.	)	No. 18 CH 13007
KATARZYNA WISNIEWSKI,	)	
Defendant-Appellant.	)	Honorable Eve M. Reilly, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissing appeal for lack of jurisdiction where the challenged circuit court order was not appealable.

¶ 2 Katarzyna Wisniewski (Wisniewski) was injured in an automobile accident during her employment with Jolly Maids Cleaning Service, Inc. (Jolly Maids). She filed a complaint against the other driver – which was subsequently settled for $100,000 – and pursued a workers' compensation claim against Jolly Maids. Although an arbitrator initially found that Wisniewski's cervical spine (neck) and lumbar spine (lower back) issues were both caused by

the accident, the Illinois Workers' Compensation Commission (Commission) subsequently found no causal connection between the accident and her lumbar spine issues and thus vacated the arbitrator's award of past and prospective medical expenses associated with her lumbar condition. The circuit court and the Workers' Compensation Commission Division of the Illinois Appellate Court affirmed the Commission's decision. LM Insurance Corporation (plaintiff) – Jolly Maids' workers' compensation insurer – filed a complaint for declaratory judgment against Wisniewski for recovery of its workers' compensation lien pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2018)), from the $100,000 settlement; plaintiff then filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1005 (West 2018)). Wisniewski responded, in part, that the healthcare professionals and providers who treated her lumbar condition were entitled to recovery from the settlement proceeds in accordance with the Health Care Services Lien Act (770 ILCS 23/1 *et seq.* (West 2018)). The circuit court granted plaintiff's motion for summary judgment, and Wisniewski filed the instant appeal. For the reasons discussed below, we dismiss this appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 Wisniewski, a 23-year-old cleaning woman, was injured when her vehicle was struck by a vehicle driven by Raymond Gurgone (Gurgone) as she drove to a job site on August 22, 2013. She made a workers' compensation benefits claim to Jolly Maids, which submitted the claim to plaintiff; she subsequently filed an application for adjustment of claim before the Commission. While the claim was pending, Wisniewski filed a complaint against Gurgone, which was settled out of court for the $100,000 limit of his insurance policy on January 6, 2015.

¶ 5 A hearing was conducted before a Commission arbitrator on January 13, 2015, wherein

testimony and medical records were presented. The arbitrator found that Wisniewski's cervical and lumbar spine issues were causally related to the work accident. On February 3, 2016, the Commission entered an order modifying the arbitrator's decision and finding that Wisniewski failed to prove that her *lumbar* spine condition was causally related to her August 22, 2013 work-related injury. The Commission noted that Wisniewski admitted that she had no lower back complaints during her emergency room visit on the date of the accident or during her doctor visits on August 24, 2013, August 30, 2013, and September 6, 2013. The decision indicated that the Commission was unable to reconcile Wisniewski's testimony regarding a lower back injury at the time of her vehicle accident with the lack of any lower back symptoms, examination findings, or diagnoses from the accident date until mid-September 2013. The Commission thus reversed the arbitrator's finding of a causal connection between the work injury and her lumbar spine condition and vacated the award of past and prospective medical expenses related thereto.

¶ 6 After the circuit court of Cook County affirmed the Commission's decision, the Workers' Compensation Commission Division of Illinois Appellate Court entered an order on September 29, 2017, holding that the Commission's (a) decision that the condition of ill-being in Wisniewski's lumbar spine was not causally related to her work accident was not against the manifest weight of the evidence and (b) denial of past and prospective medical care relating to her lumbar spine was not against the manifest weight of the evidence. *Wisniewski v. Illinois Workers' Compensation Commission*, 2017 IL App (1st) 163115WC-U, ¶ 35.

¶ 7 Plaintiff, as the subrogee of Jolly Maids, filed a complaint for declaratory judgment against Wisniewski in October 2018, alleging it had paid disability benefits and medical costs in excess of $156,000 in connection with her work-related injury, *i.e.*, the cervical spine injury. Plaintiff asserted that, as a workers' compensation lienholder, it was entitled to a disbursement of

the $100,000 settlement pursuant to section 5(b) of the Workers' Compensation Act (820 ILCS 305/5(b) (West 2018)), less the statutorily-required 25% attorney fee and pro rata costs — $75,000 less pro rata costs. In her answer, Wisniewski admitted plaintiff would be entitled to the recovery of the benefits paid, but disputed the amount claimed by plaintiff.

¶ 8 Plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2018)). Plaintiff noted that Wisniewski had taken the position that she could not distribute the settlement funds because the providers which had treated her lumbar spine injuries had health care services liens on the funds. Plaintiff observed, however, that the "additional injuries were formally resolved as unrelated to the work injury," as decided by the Commission and affirmed by the circuit court and appellate court. According to plaintiff, because Wisniewski had received workers' compensation benefits for the injuries sustained in the accident, plaintiff was entitled to recovery under the Workers' Compensation Act with respect to her third-party settlement on account of the accident.

¶ 9 In her response to plaintiff's motion for summary judgment, Wisniewski asserted that plaintiff had not joined in its action the medical providers which had liens against her third-party recovery. She also argued that plaintiff had not established that its lien was superior to these health care services liens. She posited that the settlement was based on the treatment of her lumbar condition because she had only undergone surgery on her lumbar spine at that time; the recommendation for cervical spine surgery was made after the settlement. According to Wisniewski, plaintiff was "having [its] cake and eating it too" by seeking reimbursement from a settlement that was reached based on her lumbar spine injury which plaintiff claimed was not caused by the accident. She further contended that the Workers' Compensation Act was intended to prevent her double recovery, which would not occur in the instant case.

¶ 10 In its reply, plaintiff asserted that the health care services lienholders were not necessary parties to its action because the treatment they provided was unrelated to the work injury and thus not part of the workers' compensation scheme. Plaintiff nevertheless indicated it would include the lienholders in a separate motion to adjudicate before the circuit court, "so they will have the opportunity to defend their liens if they [choose]." Plaintiff also argued, in part, that: (a) it had paid workers' compensation benefits in the aggregate amount of $243,844.42,[1] commencing with the first medical treatment and report of injury in this matter; (b) Wisniewski provided no support for her argument that the third-party settlement was unrelated to the treatment paid for by plaintiff; (c) the sole reason that the medical providers filed health care services liens was because Wisniewski informed them that her lumbar condition was related to the work accident, which was formally adjudicated to be incorrect; and (d) Wisniewski's personal liability for the outstanding medical bills unrelated to the accident was not relevant to the issues in plaintiff's declaratory judgment action.[2]

¶ 11 Plaintiff subsequently filed a motion to adjudicate all outstanding medical liens on April 12, 2019; the liens of multiple health care providers and professionals were referenced in the motion. Plaintiff contended these liens "should be adjudicated and should not be assertable" because the medical issues underlying those liens were unrelated to the work accident.

¶ 12 After hearing arguments, the circuit court entered an order on May 7, 2019, granting plaintiff's motion for summary judgment. The order allowed Wisniewski to disburse the third-party settlement funds pursuant to section 5(b) of the Workers' Compensation Act "[without] any additional lienholder attachment." The order also entered and continued the motion to adjudicate liens to June 7, 2019 "to allow for lienholder review of today's decision and

[1] This increased amount was due to a $87,000 permanent partial disability settlement apparently paid by plaintiff to Wisniewski after the filing of its declaratory judgment action.

[2] Wisniewski has represented that she did not have health insurance.

adjudication."[3] On June 3, 2019, Wisniewski filed a motion to amend the May 7 order, wherein she noted that the order did not include language indicating that the summary judgment ruling was "final and appealable under Illinois Supreme Court Rule 305." She sought the issuance of an amended order (a) granting the motion for summary judgment, (b) indicating that the ruling is "final and appealable under Rule 305" and (3) continuing the motion to adjudicate liens to June 7, 2019. On June 6, 2019, Wisniewski filed a notice of appeal from the May 7 order. In a written order entered on June 7, 2019, the circuit court stated in part: "The 5/7/19 order granting summary judgment for the Plaintiff disposed of all issues in the complaint and was immediately appealable. Defendant Wisniewski has appealed that order therefore the judgment of 5/7/19 and Plaintiff's motion to adjudicate liens are stayed pending outcome of the appeal." The order continued the case for status to September 5, 2019; the electronic docket reflects that the case was "set on status call" on that date.

¶ 13 ANALYSIS

¶ 14 Wisniewski advances two main arguments on appeal. First, she contends the circuit court erred in granting summary judgment in favor of plaintiff as to the reimbursement of its workers' compensation lien. Second, she contends that the circuit court should have ruled that the Health Care Services Lien Act supersedes the Workers' Compensation Act in the instant case.

¶ 15 Prior to addressing her arguments, we must consider our jurisdiction. " 'A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, and this duty exists regardless of whether either party has raised the issue.' " *In re Marriage of Morgan*, 2019 IL App (3d) 180560, ¶ 9, citing *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 17. Our jurisdiction is limited to review of appeals from

[3] Although the motion to adjudicate liens appears to have been filed in April 2019, plaintiff's counsel stated during the May 7, 2019 hearing: "So, today, I filed a motion to adjudicate the liens."

final judgments unless otherwise permitted by statute or under the Illinois Supreme Court rules. *Morgan*, 2019 IL App (3d) 180560, ¶ 9. An order is final if it "terminates the litigation between the parties on the merits or disposes of the rights of the parties either on the entire controversy or a definite and separate part thereof." *Lozman v. Putnam*, 328 Ill. App. 3d 761, 768 (2002).

¶ 16 A final order, however, is not necessarily immediately appealable. *In re Marriage of Sanchez and Sanchez-Ortega*, 2018 IL App (1st) 171075, ¶ 22. Rule 304(a) provides, in part, that if multiple parties or multiple claims for relief are involved in an action, 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). "Without the Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved." *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 464 (1990). The policy considerations underlying the rule include discouraging piecemeal appeals in the absence of a compelling reason and removing the uncertainty as to the appealability of a judgment which was entered on less than all the matters in controversy. *Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 15.

¶ 17 Despite the seeming finality of the summary judgment ruling vis-à-vis plaintiff herein, we find that the record is unclear as to whether plaintiff's claim was fully resolved. The record indicates that plaintiff filed and served the motion to adjudicate liens on April 12, 2019. After the circuit court ruled in favor of plaintiff during the May 7, 2019 hearing, plaintiff's counsel briefly described his communications with a "couple" of the health care services lienholders which had communicated with him but apparently indicated they would not be pursuing their

liens. Plaintiff's counsel continued: "I have a motion to adjudicate. We would like to go through and just adjudicate all the liens that would attach to the third party settlement." The circuit court stated: "I think what should be done is that the lienholders should be notified of this Court's ruling with regard to *** the summary judgment motion and to where the money is actually going. I think that's what should be done before we come back on the motion to adjudicate." The foregoing suggests the health care services lienholders would potentially retain the ability to challenge the circuit court's ruling as part of the adjudication of their liens in a future hearing. To the extent that the plaintiff's lien and the health care services liens were directed toward the same third-party settlement proceeds, the continuation of the proceedings as to the health care services liens calls into question the ostensible finality of the determination as to plaintiff.

¶ 18 Even assuming the circuit court entered an order which was "final" as to plaintiff, it would not be appealable prior to the resolution of all claims with respect to all parties unless the order contained a finding that there was no just reason to delay enforcement or appeal. *Sanchez*, 2018 IL App (1st) 171075, ¶ 23. We observe that Wisniewski filed a motion to amend the May 7 order to include language indicating that the ruling on the summary judgment motion was "final and appealable under Rule 305." Rule 305 addresses the stay of judgments pending appeal. See Ill. S. Ct. R. 305 (July 1, 2017). We suspect – although we cannot definitively determine – that the reference to Rule 305 was erroneous. Given the language regarding the continued hearing date on the motion to adjudicate liens in the May 7 order, we presume Wisniewski sought the addition of Rule 304(a) language to address any concern regarding the appealability of the summary judgment ruling.

¶ 19 Assuming Wisniewski intended to secure a Rule 304(a) finding, the language in the

June 7 order – providing that the May 7 order granting summary judgment "disposed of all issues in the complaint" and was "immediately appealable" – appears inadequate. *E.g., Sanchez,* 2018 IL App (1st) 171075, ¶ 27 (finding that language in an order that " '[t]his is a final and appealable order' " was not sufficient to support appellate jurisdiction). "Case law concerned with requisite Rule 304(a) findings allow for the invocation of the rule if it is clear from the record it was the trial court's intent." *Morgan*, 2019 IL App (3d) 180560, ¶ 12. See also *In re Hawthorn-Mellody Farms Dairy, Inc.*, 18 Ill. App. 2d 154, 157 (1958) (discussing the predecessor statute to Rule 304(a); opining that our supreme court "expects a liberal construction of the section in order to avoid the evils of piecemeal appeals it was directed against"). Neither Wisniewski's motion nor the order apparently entered thereon on June 7, 2019 references Rule 304(a) or includes 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). We also do not have the aid of a report of proceedings as to the June 7, 2019 hearing during which the motion to amend was presented. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (discussing the appellant's burden to present a sufficiently complete record).

¶ 20 Wisniewski's statement of jurisdiction in her appellant's brief does not elucidate this matter. Her brief solely refers to the order entered on May 7, 2019; she fails to address (a) her motion to amend the May 7 order or (b) the order entered on June 7, 2019, wherein the circuit court apparently ruled on the motion to amend. Illinois Supreme Court Rule 341(h)(4) requires an appellant's brief to include a statement or explanation of the supreme court rule or other law which confers jurisdiction on this court, as well as "the facts of the case which bring it within this rule or other law" and "the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely." Ill. S. Ct. R. 341(h)(4) (eff. May

25, 2018). Wisniewski's statement of jurisdiction indicates that the appeal was brought pursuant to Rule 303 (Ill. S. Ct. R. 303 (eff. July 1, 2017)), and that she "timely filed" a notice of appeal from the May 7 order on June 6, 2019. Her failure to explain (or mention) the court's subsequent order entered on June 7, 2019, is indicative of the inadequacy of her jurisdictional statement. *E.g.*, *Shared Imaging, LLC v. Hamer*, 2017 IL App (1st) 152817, ¶¶ 20-21 (criticizing the appellant's failure to reference or include a key circuit court order in its jurisdictional statement, statement of facts, appendix, or notice of appeal; noting that "[a]nyone reading [the appellant's] brief would never even know such an order existed").

¶ 21 An appellant has the burden of establishing appellate jurisdiction. *Id.* ¶ 19. For the reasons stated above, Wisniewski has not met her burden in the instant case. As an appeal must be dismissed where our jurisdiction is lacking (*Sanchez*, 2018 IL App (1st) 171075, ¶ 20), we hereby dismiss this appeal.

¶ 22 CONCLUSION

¶ 23 For the reasons discussed herein, this appeal is dismissed for lack of appellate jurisdiction.

¶ 24 Appeal dismissed.