

No. 1-19-1634

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

KRISTIN COX,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County
)	
v.)	No. 09 D 80027
)	
ANTONIO BARRERA,)	The Honorable
)	Jeanne Cleveland Bernstein
Respondent-Appellant.)	and Maritza Martinez,
)	Judges Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Griffin and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction. The circuit court’s order denying respondent’s motion to dismiss a petition for rule to show cause was not a final order, and therefore the circuit court’s Rule 304(a) finding was ineffective to permit an immediate appeal. Because we lack jurisdiction to consider the order appealed from, we also lack jurisdiction to consider respondent’s arguments that the circuit court’s previous orders were void for lack of jurisdiction.

¶ 2 Respondent, Antonio Barrera, appeals pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) from the circuit court’s order denying his motion to dismiss a petition for rule to show cause for lack of jurisdiction. We lack jurisdiction to consider Barrera’s appeal because the

circuit court order from which Barrera appeals is not a final order or judgment under Rule 304(a). We therefore dismiss Barrera's appeal.

¶ 3

I. BACKGROUND

¶ 4 These proceedings began in June 2009 when petitioner, Kristin Cox, filed a *pro se* petition for an order of protection against Barrera, along with a complaint to establish that Barrera was the father of Cox's minor child. Over the course of the proceedings, it was established that Barrera was the father of Cox's child. In 2013, after a trial, the circuit court awarded sole custody of the minor child to Barrera, who resided in Michigan. Cox was granted visitation rights.

¶ 5 In 2016, Barrera filed a motion in the circuit court of Cook County seeking to change venue and to move all proceedings to the Seventeenth Circuit Court of Kent County, Michigan (Kent County circuit court). On August 23, 2016, the Cook County circuit court granted Barrera's motion and ordered that all further proceedings would take place in the Kent County circuit court.

¶ 6 In January 2019, Cox filed a *pro se* motion in the circuit court of Cook County seeking to modify her visitation rights, which the circuit court denied, observing that the matter had been transferred to the Kent County circuit court. On February 8, 2019, Cox filed a *pro se* emergency motion in the circuit court of Cook County, asserting that she could not locate Barrera in Michigan and that Barrera had never completed the transfer of the case to the Kent County circuit court. The circuit court held an emergency hearing and heard testimony from Cox and Barrera's former counsel. Following the hearing, on February 8, 2019, the circuit court vacated the portion of its August 23, 2016, order transferring the matter to the Kent County circuit court and appointed a child representative. The Cook County circuit court continued the matter for a conference with the judge presiding over a child support action pending in the Kent County circuit court, and set a court date of March 13, 2019, for the child representative's report.

¶ 7 On March 13, 2019, Judge Maritza Martinez of the domestic relations division of the Cook County circuit court entered an order transferring the matter back to the Kent County circuit court.

¶ 8 On May 1, 2019, Judge Jeanne Cleveland Bernstein, after consultation with Judge Martinez and Presiding Judge Grace Dickler, granted Cox's motion to reconsider and vacated the March 13, 2019, order transferring the matter to the Kent County circuit court, and granted Cox supervised visitation with the minor child.

¶ 9 In June 2019, Cox, now represented by counsel, filed a petition for a rule to show cause asserting that Barrera had failed to comply with the May 1, 2019, order permitting Cox to have supervised visitation with the minor child. The circuit court issued the rule to show cause and allowed the parties to brief the issue. On July 9, 2019, Barrera filed a motion to dismiss "the entire action" and Cox's petition for a rule to show cause, arguing that the Cook County circuit court lacked jurisdiction to take any action after it transferred the matter to the Kent County circuit court on August 23, 2016. Barrera did not file a substantive response to the rule to show cause and Cox did not file a written response to the motion to dismiss.

¶ 10 On July 26, 2019, following a hearing, the circuit court entered a handwritten order denying Barrera's motion to dismiss "as it fails to comply with the requirement to state the statute proceeding [*sic*] under." The circuit court also made a written finding that there was "no just reason to delay enforcement of or appeal from this order." The circuit court's July 26, 2019, order did not reference any of its previous orders or certify those orders for appeal under Rule 304(a).

¶ 11 Barrera filed a notice of appeal on August 9, 2019, identifying the circuit court's (1) February 8, 2019, order vacating the August 23, 2016, order transferring the case to Kent County; (2) May 1, 2019, order vacating the March 13, 2019, order retransferring the case to Kent

County; (3) June 17, 2019, order issuing a rule to show cause; and (4) July 26, 2019, order denying Barrera's motion to dismiss for lack of jurisdiction.

¶ 12

II. ANALYSIS

¶ 13 We have an independent duty to ascertain our jurisdiction—even when the parties do not dispute it—and to dismiss an appeal when we lack jurisdiction. *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 141576, ¶ 12. Generally, our jurisdiction is limited to appeals from final orders or judgments, unless an appeal is authorized under a supreme court rule or statutory provision. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 675 (2007).

¶ 14 The only supreme court rule that Barrera invokes in his statement of jurisdiction is Rule 304(a), which provides, in relevant part,

“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.”
(Emphasis added.) Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

By its own terms, Rule 304(a) contemplates the existence of a final judgment. A “final judgment” for the purposes of appeal is one that fixes absolutely and finally the rights of the parties in a lawsuit, and determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). In the context of Rule 304(a), “[i]t is well settled that ‘the inclusion of the special finding [under Rule 304(a)] in the trial court’s order cannot confer appellate jurisdiction if the order is in fact not final.’ ” *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 14 (quoting *Crane Paper Stock Co. v. Chicago & Northwestern Ry. Co.*, 63 Ill. 2d 61, 66 (1976)). In other words, a Rule 304(a)

finding does not convert a nonfinal order into a final order; a Rule 304(a) finding converts a nonappealable final order into an appealable final order.

¶ 15 Here, neither Barrera’s statement of jurisdiction nor the substance of his appellate brief nor the substance of the circuit court July 26, 2019, order denying Barrera’s motion to dismiss Cox’s petition for a rule to show cause sheds any light on whether this was a final order or judgment. It is clear that the denial of Barrera’s motion to dismiss was not a final order because it did not terminate any aspect of the litigation on the merits; instead the order permitted Cox’s petition to go forward. The circuit court’s finding pursuant to Rule 304(a) did not convert its interlocutory, nonfinal order denying Barrera’s motion to dismiss into a final and appealable order, and the use of Rule 304(a) language was ineffective to allow an immediate appeal from the July 26, 2019, order. Nor are we aware of any supreme court rule or statutory provision that allows a party to appeal, as a matter of right, the denial of a motion to dismiss for lack of jurisdiction. We find that we have no jurisdiction under Rule 304(a) to consider the merits of the circuit court’s July 26, 2019, order.

¶ 16 Furthermore, we lack jurisdiction to address any of Barrera’s arguments challenging the circuit court’s orders entered after August 23, 2016, as void on the theory that the circuit court of Cook County lacked jurisdiction after transferring the case to the Kent County circuit court. While it is generally true that a void order may be directly or collaterally attacked at any time in any court, that is only true where the party attacks an allegedly void order in a court that itself has jurisdiction. As our supreme court has explained, the proposition that a void order may be attacked at any time in any court

“does not act to confer appellate jurisdiction on a reviewing court if such jurisdiction is otherwise absent. [Citation.] Rather, the rule allows a party the ability

to always raise the issue of whether an order is void in an appeal where appellate jurisdiction exists and the case is properly before the court of review.” *EMC Mortgage Co. v. Kemp*, 2012 IL 113419, ¶ 15.

¶ 17 Here, the circuit court made a Rule 304(a) finding in an order that was neither final nor appealable, and this court has no jurisdiction to consider the merits of that nonfinal order. Because we have no jurisdiction to review the order from which Barrera appeals, we have no jurisdiction to consider his arguments that any of the circuit court’s subsequent orders are void. We are not aware of any supreme court rule or statutory provision that allows a party, as a matter of right, to seek appellate review of an allegedly void order where the circuit court has not entered a final judgment or order.

¶ 18 Finally, we cannot determine any independent basis for our jurisdiction over the circuit court’s (1) February 8, 2019, order vacating the August 23, 2016, order transferring the case to Kent County; (2) May 1, 2019, order vacating the March 13, 2019, order retransferring the case to Kent County; or (3) June 17, 2019, order issuing a rule to show cause against Barrera. These orders appear to address issues related to the child custody proceedings between Cox and Barrera and whether the underlying proceedings should take place in Cook County or Kent County. We are not aware of, and Barrera has not directed our attention to, any statutory provision or supreme court rule that vests this court with jurisdiction to review those orders. The issue of whether the Cook County circuit court has jurisdiction over the custody proceedings must first be litigated, presumably in this lawsuit, to a final judgment, and the jurisdictional issues must be preserved for appellate review before this court can arguably consider the questions raised in Barrera’s unsuccessful motion to dismiss, which apparently addressed whether Cook County or Kent County is the appropriate forum. Additionally, an appeal of a final appealable order or judgment must

usually be filed within 30 days of its entry. Here, Barrera has not provided this court with any authority suggesting that the February 8, 2019, May 1, 2019, and June 17, 2019, orders were independent, final and appealable orders or—even if those orders were appealable—that his August 9, 2019, notice of appeal of those orders was timely so as to vest this court with appellate jurisdiction at this time. We find that we lack jurisdiction to address any of the orders identified in Barrera’s notice of appeal.

¶ 19

III. CONCLUSION

¶ 20 For the foregoing reasons, we dismiss Barrera’s appeal.

¶ 21 Appeal dismissed.