

2017 IL App (2d) 170277WC-U
No. 2-17-0277WC
Order filed June 30, 2017

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
SECOND DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JOSEPHINA VALDEZ,)	Appeal from the Circuit Court
)	of Kane County.
Petitioner-Appellant,)	
)	
v.)	No. 16-MR-923
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION and)	
CREATIVE CONTRACT PACKAGING,)	
LLC,)	Honorable
)	David R. Akemann,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Respondent's motion to dismiss appeal to this court for want of appellate jurisdiction would be denied as circuit court's order dismissing claimant's appeal from the Commission for lack of jurisdiction constituted a final judgment; and (2) the circuit court properly determined that it lacked jurisdiction to review Commission's ruling on claimant's motion to release escrow funds.

¶ 2 On September 3, 2010, claimant, Josephina Valdez, retained attorney Kevin Botha (Botha) of the law firm of Hannigan & Botha, Ltd., to represent her in a lawsuit against respondent, Creative Contract Packaging, LLC. On September 10, 2010, Botha filed three separate applications for adjustment of claim on claimant's behalf seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) for injuries claimant allegedly sustained while in respondent's employ. Early in 2011, claimant discharged Botha and hired in his stead attorney Michael Lulay (Lulay) of Lulay Law Offices. On March 12, 2011, Botha prepared a petition for attorney fees seeking \$4,150 for the time he spent working on claimant's case. On December 6, 2011, an arbitrator entered an order continuing Botha's fee petition until the resolution of claimant's case.

¶ 3 Early in 2015, claimant, Lulay, and respondent's attorney, Paul Coghlan (Coghlan), executed a contract settling claimant's case for \$50,000. Based on a contingency fee agreement, claimant's attorney fees were 20% of the settlement amount, or \$10,000. The Illinois Workers' Compensation Commission (Commission) approved the settlement contract on April 22, 2015. Noting that Lulay and Botha were unable to reach an agreement as to the division of the attorney fees, the Commission ordered the attorney fees to be held in Lulay's client trust account "until final adjudication or other resolution of the fee petition." On or about March 10, 2016, the arbitrator ruled on Botha's fee petition. The arbitrator awarded Botha the \$4,150 he requested, with the remaining \$5,850 in attorney fees allocated to Lulay. The arbitrator ordered that the attorney fees being held in escrow be disbursed "only upon a final decision in the event of a petition for review or further appeal."

¶ 4 On March 30, 2016, Lulay sought review before the Commission of the arbitrator's decision on Botha's fee petition. While Lulay's appeal was pending, he filed with the

Commission a motion to release the attorney fees being held in escrow. On July 22, 2016, following a hearing, the Commission denied Lulay's motion to release the escrow funds. On July 28, 2016, the Commission issued its findings of fact and conclusions of law in support of its denial of Lulay's motion. The July 28, 2016, filing states that the order is "interlocutory and therefore not appealable." Nevertheless, Lulay sought judicial review of the Commission's decision in the circuit court of Kane County. Botha and Coghlan filed a joint motion to dismiss Lulay's request for review pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)). On March 21, 2017, the circuit court granted the joint motion to dismiss, finding that Lulay's request for review in the circuit court was premature and that the court therefore lacked jurisdiction to review the appeal.

¶ 5 Claimant subsequently appealed to this court. In response, respondent has filed a motion to dismiss claimant's appeal for want of appellate jurisdiction. Respondent asserts that the Commission's July 28, 2016, order is not a final decision of the Commission. According to respondent, at the very most, the Commission's July 28, 2016, order constitutes "an interlocutory order as to an ancillary matter and not a decision of the dispute on the merits." As a result, respondent asserts that this appeal is not authorized under section 19(f) of the Act (820 ILCS 305/19(f) (West 2016)) or Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). For the reasons set forth below, we deny respondent's motion to dismiss, but affirm the judgment of the circuit court.

¶ 6 Absent an exception created by statute or set forth in the rules of our supreme court, the jurisdiction of a reviewing court is limited to deciding appeals from final judgments. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) ("Every *final* judgment of a circuit court in a civil case is appealable as of right." (Emphasis added.)); Ill. S. Ct. R. 303 (eff. Jan. 1, 2015) (setting forth procedure for

appeals from final judgments of the circuit court in civil cases); *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127 (2003). Jurisdiction to review final decisions of the Commission is vested in the circuit court. 820 ILCS 305/19(f) (West 2016); *American Structures, Inc. v. Industrial Comm'n*, 99 Ill. 2d 40, 43-44 (1983); *Pace Bus Co. v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1069 (2003). This court's jurisdiction in workers' compensation proceedings is limited to appeals from a final judgment of the circuit court. 820 ILCS 305/19(f) (West 2016); *Pace Bus Co.*, 337 Ill. App. 3d at 1069. Thus, contrary to the assertion of respondent in its motion to dismiss, the status of the Commission's July 28, 2016, order has no bearing on whether this court has jurisdiction to review the judgment of the *circuit court*. Rather, our jurisdiction depends on the nature of the circuit court's March 21, 2017, order. In particular, we must examine whether that order constituted a final judgment. "A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof 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).

¶ 7 We conclude that the circuit court's March 21, 2017, order constituted a "final judgment" as that term was defined by the supreme court in *Verdung*. In particular, the merits of this appeal concern whether the circuit court had jurisdiction to review the Commission decision denying Lulay's motion to release the funds being held in escrow. The circuit court granted the joint motion to dismiss of Botha and Coghlan, finding that Lulay's request for review in the circuit court was premature and that the court therefore lacked jurisdiction to consider the appeal. The circuit court did not address the merits of the motion to release the escrow funds. Hence, the only issue before this court is whether the circuit court properly determined that it lacked jurisdiction. See *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 12; *Nestle USA, Inc. v.*

Dunlap, 365 Ill. App. 3d 727, 731 (2006). The circuit court affirmatively and unequivocally decided this issue in its March 21, 2017, order. As such, the circuit court's March 21, 2017, order determined the litigation on the merits so that if affirmed, the only thing remaining would be to proceed with the execution of the judgment. Thus, the circuit court's March 21, 2017, order constituted a final judgment. See *In re Michael D.*, 2015 IL 119178 (addressing appellate court's determination that it lacked jurisdiction and affirming that judgment); *Huber v. American Accounting Ass'n*, 2014 IL 117293 (same).

¶ 8 We now turn to the circuit court's jurisdictional finding. Our review of a decision of the circuit court granting a motion to dismiss is *de novo*. *Nestle USA, Inc.*, 365 Ill. App. 3d at 731. Ultimately, we agree with the circuit court that it lacked jurisdiction to review the merits of Lulay's motion to release the escrow funds. Quite simply, the ruling on Botha's fee petition and the requirement that the attorney fees from the settlement be held in escrow were inextricably entwined. Botha's fee petition was pending when the Commission approved the settlement contract. Noting this, the Commission ordered that the amount set aside from the settlement for attorney fees be held in escrow by Lulay "until final adjudication or other resolution of the fee petition." Neither party sought judicial review of the settlement contract approved by the Commission. Upon ruling on the fee petition, the arbitrator ordered the settlement proceeds being held in escrow to be disbursed "only upon a final decision in the event of a petition for review or further appeal." Lulay appealed that order, and it remains pending before the Commission. Thus, there is no final order on the fee petition or the arbitrator's additional order prohibiting disbursement of the funds being held in escrow. Lulay attempted to circumvent this latter finding by filing with the Commission a separate motion to release escrow funds. As the circuit court found, however, this attempt was futile given the lack of a final order from the

Commission on Botha's fee petition and the relationship between the fee petition and the escrow requirement. If the Commission's decision is not final, it is interlocutory and cannot be appealed until the issuance of a final decision. *Nichols v. Industrial Comm'n*, 49 Ill. 2d 431, 432 (1971); see also *Kendall County Public Defender's Office v. Industrial Comm'n*, 304 Ill. App. 3d 271, 273 (1999) (holding that where a party attempts to appeal an interlocutory or nonfinal order to the reviewing court, it is without jurisdiction to consider the appeal). In this case, Botha's fee petition remains pending in the Commission. That petition is inextricably entwined with the escrow requirement. Since there is no final decision on these matters, the circuit court properly concluded that it lacked jurisdiction to consider the merits of Lulay's motion for release of the escrow funds.

¶ 9 For the reasons set forth above, we deny respondent's motion to dismiss this appeal for want of appellate jurisdiction and we affirm the judgment of the circuit court of Kane County dismissing Lulay's appeal for lack of jurisdiction.

¶ 10 Affirmed.