2015 IL App (1st) 143086-U

FIFTH DIVISION
JULY 24, 2015

No. 1-14-3086

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JUNE KENNEDY GOSS,	)	Appeal from the
	)	Circuit Court of
An Alleged Disabled Person	)	Cook County
	)	
(JUNE KENNEDY GOSS, Respondent, and	)	
JENNIFER PADEN, Cross-Petitioner,	)	
	)	No. 08 P 3055
Appellants,	)	
	)	
v.	)	
	)	Honorable
PEGGY L. GOSS, Petitioner,	)	Carolyn Quinn,
	)	Judge Presiding.
Appellee).	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissing interlocutory appeal for lack of jurisdiction; appeal was untimely because motion for reconsideration filed in circuit court did not toll appeal period.

¶ 2 In this interlocutory appeal, appellants June Kennedy Goss (June)[1] and her daughter

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[1] June is referred to as "Marilyn June Kennedy Goss" in certain documents included in the supporting record."

Jennifer Paden (Jennifer) contend that the circuit court of Cook County erred in denying their motion for reconsideration of an order disqualifying their counsel, Strauss & Malk LLP (the SM firm) and appointing new counsel for June (the disqualification order). For the reasons that follow, we hold that their appeal was untimely because the appellants' motion for reconsideration of the disqualification order did not toll the time period for filing a petition for leave to appeal pursuant to Rule 306 of the Illinois Supreme Court Rules. We thus dismiss this appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 June was born on March 9, 1927; she is 88 years old. June has four children: Jennifer, Peggy Goss (Peggy), Frederick Goss (Rick), and Kathy Wilson (Kathy). Since 2006, June has lived in Winnetka, Illinois, in the home of Jennifer and her husband, Richard Paden.

¶ 5 Guardianship Petition Filed by Peggy

¶ 6 On August 28, 2013, Peggy filed a petition for appointment of a guardian for June, alleging that June was a disabled person due to "multiple strokes." Peggy requested that First Midwest Bank be appointed as guardian of June's estate and that Magnolia Care Solutions, LLC as "guardian of the person only." Peggy sought an independent medical evaluation of June to "prove June's level of competency in handling her personal and financial matters."

¶ 7 On November 1, 2013, Brad S. Grayson (Grayson) of the SM firm entered an appearance on behalf of June. The other SM firm attorneys listed on the appearance were Benjamin N. Feder (Feder) and Sean M. Nelson (Nelson).

¶ 8 On January 17, 2014, Mark A. Amdur, M.D. (Amdur) conducted a psychiatric evaluation of June. In his report, Amdur stated, among other things, that June "is disabled by dementia[,]" and although she was "pleasant, alert, and engaged throughout the interview," she "displayed

numerous memory and knowledge deficits." Amdur opined that June "is totally incapable of making personal and financial decisions."

¶ 9 Report of the Guardian *Ad Litem*

¶ 10 On January 30, 2014, Theodore Rodes, Jr., the court-appointed guardian *ad litem* (the GAL) for June, filed a report with the circuit court. The GAL previously had served as June's court-appointed guardian *ad litem* in a guardianship proceeding initiated by June's son Rick.[2] The GAL characterized Peggy's petition as a "Petition to Re-Open Rick's Guardianship Proceeding." In his seven-page report, the GAL stated that he met privately with June at Jennifer's residence on January 28, 2014. June told the GAL "she was not incompetent and did not need a guardian." She stated that "she wanted to keep living with Jennifer at Jennifer's home." The GAL asked June "who she wanted to be her guardian if the Court found that the appointment of a guardian was in her best interests." According to the GAL, "[w]ithout any hesitation at all, [June] told [the GAL] she wanted Jennifer to be her guardian." Among other things, the GAL stated in his report that: June was able to provide correct information regarding various topics, including her children's names and the address of Jennifer's home; June "has great affection" for Jennifer's two children; and June "likes Mr. Grayson," her attorney at the SM firm. The GAL stated:

> "Notwithstanding [June's] position that she does not need a guardian, during my discussion with her, it became apparent to me that [June] was sketchy on too many important facts. As an example, she kept telling me that she sold her real estate interests a 'couple of years ago', regardless of whether it was the Fontana[, Wisconsin] property, the Kenilworth[, Illinois] property or the Florida

[2] Jennifer has represented that both Rick and Kathy filed the earlier guardianship proceeding.

property (although she also stated she sold the Florida property maybe 8 years ago). She could not accurately provide me with the sales prices of those properties. She could not recall whether she ever signed a Power of Attorney. She could only recall the name of one of her doctors, and she could not provide me with the names of any of the medications she takes. As a result, I question whether [June] is capable of giving informed consent to medical decisions and personally managing her estate and financial affairs. She relies on Jennifer to make those decisions for her and seems very comfortable that Jennifer will protect her. Jennifer told me that [June] previously signed Powers of Attorney. If [June] has signed Powers of Attorney, those documents should be produced and presented to the Court to inform the Court of the identity of the agents, the nature and extent of the powers granted to the agents, whether the powers are immediately effective or springing, and whether the agents have accepted office and acted in their appointed fiduciary capacity.

It is also important to note that the Trustee's Deed which was signed to convey the Kenilworth property references the Grantor as 'MARILYN JUNE KENNEDY GOSS, not individually, but as Trustee of the MARILYN JUNE KENNEDY GOSS TRUST DATED August 18, 1995,[3] as may be amended.' Absent valid estate planning reasons for transferring the proceeds of sale of the Fontana property, the Kenilworth property, and the Florida property, to Jennifer, as [June] stated to me, if [June] is the sole beneficiary of the Marilyn June Kennedy Goss Trust dated August 18, 1995, during her lifetime, why didn't she

[3] A trustee's deed appended to the GAL's report lists the date of the trust as August 18, 1985.

just transfer the proceeds of sale of the three properties to her Trust to be held for her benefit during her lifetime?"

The GAL concluded his report, "I believe it is in [June's] best interests that she have the on-going assistance of a third-party (be it an agent under a Power of Attorney or a Court-appointed Guardian) to manage her health care needs and manage and protect her estate and financial interests."

¶ 11 Cross-Petition Filed by Jennifer

¶ 12 On February 20, 2014, attorney Nelson of the SM firm entered an appearance on behalf of Jennifer. The other attorneys from the SM firm listed on the appearance were Grayson and Feder.

¶ 13 On February 26, 2014, Jennifer filed a cross-petition for appointment of a guardian for June (the cross-petition). Jennifer stated that June was a disabled person due to "alleged dementia." Jennifer listed the approximate value of June's estate as $50,000 for personal property and $0 for real property; she listed June's anticipated gross annual income and other receipts at $15,600. Jennifer sought appointment of herself as guardian of June's "estate and person." Nelson of the SM firm was listed as counsel for Jennifer.

¶ 14 Motion to Disqualify the SM Firm

¶ 15 Peggy filed a motion seeking, among other things, to disqualify the SM firm from representing Jennifer and June "in these proceedings" (the motion to disqualify).[4] Peggy represented in the motion to disqualify that "[i]n response to concerns by various parties that [Jennifer] may have misappropriated [June's] property or funds, on February 20, 2014, this court ordered [Jennifer] to disclose to the GAL within 14 days information requested by the GAL as to

[4] Peggy also sought to disqualify Jennifer "from acting as Guardian in these proceedings."

the funds, monies, or other transfers of property that [Jennifer] received from [June]." Peggy also noted that the SM firm filed an appearance on behalf of Jennifer and that Jennifer had filed the cross-petition. Peggy contended that under Rule 1.7 of the Illinois Rules of Professional Conduct (the IRPC), the SM firm cannot represent Jennifer "in this matter." According to Peggy, "[g]iven the concerns that [Jennifer] may have misappropriated [June's] assets, her interests are directly adverse to that of [June], and there is a significant risk that [the SM firm's] representation of [June] will be materially limited by its responsibilities to its current client, [Jennifer]."

¶ 16 The SM firm, on behalf of June and Jennifer, filed a response to the motion to disqualify. The response provided, in part, that at "all relevant times, June and Jennifer have been united in their position that Jennifer be appointed June's guardian should this Court find that June requires one." According to the response, Peggy lacked "standing to complain about June's and Jennifer's choice of counsel, as there is no alleged conflict of interest that involves Peggy." The response also argued that Jennifer's and June's interests were aligned and that Peggy's "concerns" about the potential misappropriation of funds by Jennifer were "not enough to warrant disqualification." Contending the motion to disqualify was filed "for improper tactical reasons," the response sought denial of the motion to disqualify.

¶ 17 In an affidavit appended to the response, Jennifer averred, among other things, "I am named co-executor of June's estate by June's most recent will, dated January 30, 2009 and successor trustee of the Marilyn June Kennedy Goss Trust, as amended January 30, 2009." Jennifer also stated, "I recently accepted June's power of attorney for property by joint declaration with Dr. Michael Caughron, June's physician." According to the "Appointment of Jennifer Paden to Act as Attorney-in-Fact for June Kennedy Goss," dated February 28, 2014, and

signed by Jennifer, she and Dr. Michael Caughron (Caughron) each determined that June is "incapable of properly managing her affairs." A letter from Caughron to Jennifer dated February 27, 2014 provided, in pertinent part: "This letter concerns your mother, June Goss, whom I saw for an extended office visit on February 5, 2014. On the basis of that visit, as well as my long history of taking care of her, it is my judgement [*sic*] that June Goss is incapable of properly managing her affairs."

¶ 18 In a reply, Peggy argued that, as an "interested person" and June's daughter, she had standing to file the motion to disqualify. Peggy contended that the conflict of interest was "not potential or speculative" because "[t]he conflict exists now in that neither Jennifer, if appointed as Guardian of the Estate, nor [the SM firm], if it were to represent both June and Jennifer, could, independently and without bias, investigate, review and approve transfers of June's property from Jennifer to herself." (Emphasis in original.) Peggy also asserted that the SM firm's representation of both Jennifer and June is a "non-waivable conflict of interest" in that "June cannot give the required informed consent" under Rule 1.7(b)(4) of the IRPC because she "has been deemed unable to handle her personal and financial matters."

¶ 19 Hearing on Motion to Disqualify

¶ 20 On May 13, 2014, the circuit court held a hearing on the motion to disqualify. The court stated, among other things, that even if Peggy lacked standing to pursue the disqualification, "surely the Court could raise it on its own. Surely the guardian ad litem could raise it." The court then observed:

> "I am concerned that a conflict does exist. That [segues] then into the next argument with regards to well, how has this actually been [crystallized] into a claim. [June], if you read the guardian ad litem's report, on two occasions within

> that meeting said I am not incompetent and specifically said on another occasion, I don't need a guardian.
>
> *** [A]ssuming a guardian is appointed [June] has said she would favor Jennifer. That's who she wants. But that's assuming a guardian is appointed. As the very first instance, the two of them are in conflict.
>
> [Jennifer's] cross petition alleges a disability and alleges a need for a guardian. The first issue though is the -- is a guardian necessary . And she's already in conflict with her mother because her mother's position is I don't need a guardian."

Attorney Grayson from the SM firm argued, in part, that "Jennifer didn't start this proceeding to force a guardianship on her mother against her mother's will." Counsel continued:

> "After there was a determination made to question June's ability to handle certain things for herself, Jennifer and June spoke. June decided well, if I am going to have a guardian because of these medical determinations -- and maybe I'm not, you know, as competent as I think I am -- then I want it to be Jennifer. And that's when Jennifer came in and filed a petition."

The court responded, "This is all news to me. *** It's news to me, and it's not how I read your brief. It's assuming a guardian is necessary she wants Jennifer. If there is going to be a guardian, she wants Jennifer." Later in the proceedings, the court stated, in part, "With regards to the conflict that I have identified already with her statement that she doesn't need one to the guardian ad litem and the pending petition, that does present a conflict, and that's the state of the record that I have before me."

¶ 21 The court also noted that, if June were found to be disabled, "in terms of suitability to

serve as guardian of the estate, [Peggy] would argue that evidence regarding the financial transactions between [June] and [Jennifer] are relevant to the [de]termination as to who should be guardian of the estate." The court stated that information regarding the financial transactions would be "likely to come into evidence" and "the validity of these transactions in the last few years is going to be something that's going to be litigated." According to the circuit court, June's and Jennifer's "positions could very well be in conflict."

¶ 22 The court denied Grayson's request to remain as counsel for Jennifer, stating, "I think on the record in front of me that [June] cannot be deemed to be capable of giving informed consent." The court then addressed Grayson: "In this period of time that you have represented both, I think it's sufficient to assume that you have been privy to confidences given in the lawyer-client privilege setting." Grayson responded, "Sure."

¶ 23 Near the conclusion of the May 13, 2014 hearing, Grayson stated, in part, "I would like to ask for an interlocutory appeal on the issue. I think it's an important issue that they be entitled to proceed with their own counsel. I don't think [Peggy] has standing to file a motion ***." The court responded, "What about the Court's ability if it's flagged to me? You don't think that I have the ability to say boy, I think there's a conflict here, or that the guardian ad litem, who has joined in the motion *** doesn't have the ability to raise that in terms of something he thinks is in the best interest of [June]." The court also noted, "I want the record to be clear that I understood the standing issue, but, you know, once the issue was highlighted, I thought why couldn't this be on the Court's own motion. And why couldn't it be on the GAL's motion."

¶ 24 The court entered the disqualification order on May 13, 2014, granting Peggy's motion; the order further provided that the SM firm was "disqualified from representing June Kennedy Goss and Jennifer Paden" and "Pat Hogan is appointed counsel" for June.

¶ 25 Motion to Reconsider

¶ 26 On June 13, 2014, the SM firm, on behalf of June and Jennifer, filed a "Motion of Respondent and Cross Petitioner for Reconsideration of Order Entered May 13, 2014" (the motion to reconsider). According to the motion to reconsider, the court entered an order on May 13, 2014 "disqualifying [the SM firm] as counsel for both June and Jennifer, not for reasons articulated in [Peggy's] pending and fully briefed motion to disqualify ***, but rather on previously unasserted grounds raised for the first time at oral arguments by [the GAL]. The GAL asserted that there was a conflict on supposed grounds that June opposed appointment of a guardian, while Jennifer sought to be appointed guardian." The motion to reconsider provided, in part:

> "After reviewing [the medical and GAL reports in this case], it became clear to Jennifer that opposition to appointment of a guardian likely would be futile, and only then did Jennifer petition to be appointed guardian. This was perfectly consistent with June's wishes, as the GAL report repeatedly states. *** Accordingly, the Court misapplied the law by ordering the drastic remedy of disqualification because there is no conflict of interest.
>
> Further, June and Jennifer did not have an opportunity to adequately address the issue on which this Court based its decision prior to the decision being made. This Court disqualified [the SM firm] from acting as counsel for June and Jennifer, not for any reason articulated in the Motion. Therefore, the asserted basis for disqualification never was briefed."

The motion to reconsider contended that "[i]t would be highly prejudicial to require Jennifer to find a new attorney and bring new counsel up to speed in the middle of this guardianship

proceeding." The motion further provided that "[n]either the Court nor the GAL specified any information, confidential or otherwise, to which [the SM firm] would have been privy by virtue of its representation of June and that would provide Jennifer with any advantage with respect to the purported conflict between Jennifer and June." The relief requested was that disqualification order be reconsidered and vacated; alternatively, the motion contended that the SM firm should not be disqualified from representing Jennifer.

¶ 27 In her response to the motion to reconsider, Peggy asserted that attorney Grayson from the SM firm admitted during proceedings on June 16, 2014 that there had been no communications with June since the entry of the disqualification order on May 13, 2014, *i.e.*, the SM firm "filed the Motion to Reconsider on June's behalf without ever communicating with June as to her wishes and without June's consent." Peggy argued that the conflict – that "Jennifer was cross-petitioning to be appointed guardian while June previously indicated that she did not want a guardian" – was "previously disclosed in the Report of the GAL" and was "obvious on the face of the guardianship." Peggy also contended that the motion to reconsider "failed to provide newly discovered evidence not available at the time of the hearing." Finally, Peggy argued that, "[d]ue to her incapacity, June has been deemed to be unable to give her informed consent" to the SM firm's continued representation of Jennifer; Peggy contended that the "overriding considerations in this matter is *June's best interests* and avoiding a situation where [the SM firm's] representation of June and/or Jennifer would be to *June's detriment*." (Emphasis in original.)[5]

[5] Peggy also contended that the motion to reconsider was not timely filed because it was filed on June 13, 2014, one day after the June 12, 2014 filing deadline. June and Jennifer responded their motion was not untimely because (a) "[a]n order allowing a motion to disqualify an attorney who represents one of the parties is not a final order" and thus the motion to reconsider was not required to be filed within 30 days; and (b) Nicole Alimissis, a paralegal at the SM firm, filed an

¶ 28 In his response to the motion to reconsider, the GAL indicated, among other things, that he had been provided copies of June's federal and state personal income tax returns for calendar years 2009, 2010, 2011 and 2012 and copies of her gift tax returns for calendar years 2011 and 2012, in accordance with the court's February 20, 2014 order. The GAL stated:

> "[June's] gift tax returns for 2011 and 2012 reveal that she made very very significant gifts to Jennifer in both 2011 and 2012. One of [the SM firm] attorneys has represented to the Court that [June] has approximately $50,000 left in her bank account. Tax motives notwithstanding, to the extent [June] has only $50,000 left in her bank account, the gifts [June] made to Jennifer in 2011, and again in 2012, have left [June] virtually impoverished." (Emphasis in original.)

The GAL further noted that "[o]n February 26, 2014, notwithstanding her appointment as [June's] agent under the Health Care Power and Property Power, Jennifer, filed [*sic*] a Cross-Petition *** naming [June] as the respondent and wherein, under oath, Jennifer stated that [June] is a disabled person."[6]

¶ 29 The GAL also stated that he and Patricia Hogan (Hogan), June's court-appointed attorney, met with June at Jennifer's residence on July 11, 2014. According to the GAL, June indicated the following during the course of the meeting:

> " b. She needs help and depends on Jennifer to assist her with her health care

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affidavit averring that the motion to reconsider was filed on June 11, but "due to a glitch in the electronic filing system" the circuit court "did not accept payment for the filing until approximately 10:16 am on June 13, 2014." For purposes of this order, we agree with the circuit court's assessment: "I don't think it was untimely."

[6] The GAL noted that "[a]t no time prior to the filing of the Cross-Petition, or any time thereafter, has [the SM firm], as [June's] attorneys, sought to enforce the validity of either the Health Care Power or the Property Power by seeking to dismiss the Petition to Re-Open. Instead, notwithstanding [June's] objection to the guardianship, [the SM firm], as Jennifer's attorneys, filed the Cross-Petition."

needs and the management of her finances;

c. She does not want a guardian, however, if a guardian is to be appointed she wants Jennifer to be her guardian;

d. She made significant gifts to Jennifer which were to be placed in trust for designated beneficiaries ***;

* * *

f. Brad Grayson is her attorney;

g. She does not want her confidential information disclosed to her children; and

h. She does not want her confidential information used against her in the subject guardianship proceeding."

The GAL contended that June's objection to the appointment of a guardian "is what has placed the positions of [June], as the Respondent, and Jennifer, as the Cross-Petitioner, in direct opposition and conflict with each other. [The SM firm] cannot represent clients in the same proceeding who have taken positions which are in direct conflict with each other." The GAL further asserted that "[b]ecause [June] has not, as yet, been found to be a disabled person, [June's] preference as to who her guardian should be is totally irrelevant."

¶ 30 Discussing the "very substantial gifts" from June to Jennifer in calendar years 2011 and 2012, the GAL opined: "It is impossible to identify a circumstance where Jennifer would be able to serve as [June's] guardian when the issue of the propriety of the gifts [June] made to Jennifer, and Jennifer's influence upon [June] at the time of the gifts, is called into question, in light of the clear dominant/subservient relationship which presently exists between Jennifer and [June]." The GAL queried, "[W]ho would [the SM firm] be representing, [June], as donor, or Jennifer, as donee, with regard to those gifts when the propriety of the gifts is called into question?" The

GAL also stated, that, even if the "four exceptions set forth in Rule 1.7(b)" of the IRPC could be met to allow the SM firm's concurrent representation of both Jennifer and June in the guardianship proceedings, June had informed the GAL and Hogan that "she did not want her confidential information to be used against her." "Accordingly," the GAL posited, "it is impossible for [the SM firm], who is irrebuttably presumed to have received confidential information from [June], to represent Jennifer with reference to the subject guardianship proceeding."

¶ 31 A reply submitted by the SM firm on behalf of June and Jennifer asserted, in part, that "[i]t is both Jennifer's and June's hope that the Court finds no guardian is necessary. Jennifer happily would withdraw her petition if the Court were to render this finding." The reply contended that the six-month gap between the filing of Peggy's petition and the filing of Jennifer's cross-petition was "indicative of Jennifer's and June's mutual hope that the Court would have adjudicated June to be competent before then." The reply reiterated an argument in the motion to reconsider that "June and Jennifer were denied due process with respect to disqualification of their counsel" because the "reasons articulated" by the GAL in support of disqualification during the May 13, 2014 hearing were not included any written pleading prior to the hearing. The reply further provided that June "had no liquid assets when she moved in with Jennifer" because they had been "depleted by June's other children." Regarding the real estate owned by June "upon moving in to the Paden home in 2006," the reply stated:

> "The real estate, too, was burdened with liens due to unpaid real estate taxes. In fact, both Peggy and Jennifer had to loan money to June so that June could repay debt that she had owed. With the assistance of Jennifer and various professional advisors, June disposed of her encumbered real estate holdings and now enjoys a

comfortable living situation."

The reply also addressed Peggy's assertion that the motion to reconsider "should be denied because it does not add any newly discovered evidence":

> "This is Peggy's attempt at a red herring. Movant's Counsel never has claimed that the Motion adds newly discovered evidence, only that the law was misapplied. It is axiomatic that misapplication of the law is a proper basis for a motion for reconsideration. See *Farmers Automobile Insurance Ass'n v. Universal Underwriters Insurance Co.*, 348 Ill. App. 3d 418, 422 (1st Dist. 2004) (a motion to reconsider is appropriate even where it merely suggests that the court may have erred in a prior ruling)."

¶ 32 In an affidavit appended to the reply, Jennifer averred, "Although I have filed a cross petition seeking to be appointed June's guardian, my hope remains that this Court finds that June is not disabled and that no guardian is necessary." She continued, in part, "I do not believe that June requires a guardian." Jennifer reiterated that she filed her cross-petition "to preserve my right to be appointed guardian, rather than Peggy, or whomever she seeks to have appointed under her Petition, if the Court finds that the appointment of a guardian is necessary."

¶ 33 Hearing on Motion to Reconsider

¶ 34 During a hearing on the motion to reconsider on September 10, 2014, attorney Grayson from the SM firm argued, in part, "we think it's unfair and somewhat hypocritical to take [June's] statements out of context and to accept them when those are convenient for establishing the conflict, but then say in the same breath, she's incompetent to waive any conflict or be able to make decisions as to who her counsel should be and in what circumstances." As to the SM firm's representation of Jennifer, counsel contended, "We are not privy to any confidential information.

There's no confidential information that we could have acquired that possibly could be used by Jennifer against her mother in this proceeding." Peggy's counsel responded, in part, that "[t]here's been no misapplication of law, newly discovered evidence, or anything else that would qualify for a motion to reconsider." After hearing the arguments of counsel, the court concluded, "I think it was absolutely within my duty even if no one else raised it, if I thought there was a conflict that might prevent [June] as well as [Jennifer], but particularly [June], from getting the undivided loyalty of her counsel where she's objecting to guardianship, it was absolutely incumbent on me to speak up." In a written order entered on September 10, 2014, the court denied the motion to reconsider "for the reasons stated on the record" and granted Jennifer 28 days to obtain new counsel.

¶ 35 Interlocutory Appeal

¶ 36 On October 10, 2014, the SM firm, on behalf of June and Jennifer, filed a "Petition for Leave to Appeal and Supporting Legal Memorandum Pursuant to Supreme Court Rule 306(a)(7)" (the PLA). According to the PLA, the circuit court erred in disqualifying the SM firm "from acting as June's and Jennifer's counsel in the underlying guardianship proceeding," asserting that "their interests and desires are aligned perfectly." The PLA further contended that "[e]ven if the Court finds it necessary to disqualify [the SM firm] from representing June, there is no reason to also disqualify [the SM firm] from representing Jennifer," because, in part, "it is impossible to specify any confidential information which [the SM firm] would have gained through representing June that it now could use in its representation of Jennifer and that would be to June's detriment." On October 30, 2014, Peggy filed a response to the PLA arguing, in part, that this court "lacks jurisdiction to hear this appeal because the petition for leave to appeal was not filed within 30 days of the Circuit Court's May 13, 2014 order disqualifying [the SM

firm] as counsel for June and Jennifer, as required by Supreme Court Rule 306(c)(1)." On November 21, 2014, we granted the GAL's motion to join Peggy's response to the PLA, and we allowed the PLA.

¶ 37 On February 17, 2015, we granted June's and Jennifer's request for leave to let the PLA stand as their brief. On March 31, 2015, we permitted the GAL to join in Peggy's appellee brief, which was filed on March 23, 2015. No reply brief has been filed.

¶ 38 ANALYSIS

¶ 39 On appeal, June and Jennifer assert that "there is no conflict of interest" between them "concerning the underlying guardianship proceeding." They further contend that "[e]ven if the Court finds its necessary to disqualify [the SM firm] from representing June, there is no reason to also disqualify [the SM firm] from representing Jennifer." Peggy[7] contends that we lack jurisdiction to consider this appeal because the PLA was not timely filed. Discussing Rules 1.7 and 1.9 of the IRPC, Peggy also argues that the circuit court did not abuse its discretion in denying the motion to reconsider the disqualification order.

¶ 40 Rule 306 of the Illinois Supreme Court Rules, entitled "Interlocutory Appeals by Permission," provides, in part, that a "party may petition for leave to appeal to the Appellate Court from the following orders of the trial court: *** (7) from an order of the circuit court granting a motion to disqualify the attorney for any party." Ill. S. Ct. R. 306(a)(7) (eff. July 1, 2014). In her appellate brief, Peggy contends that June's and Jennifer's appeal should be dismissed for lack of jurisdiction because their PLA was not timely filed, as required by Rule 306(c)(1). Rule 306(c)(1) states, in part, that the petition "shall be filed in the Appellate Court

[7] Although we recognize that the GAL has joined in Peggy's brief, for ease of reference we refer solely to Peggy herein.

*** within 30 days after the entry of the order."[8] Ill. S. Ct. R. 306(c)(1) (eff. July 1, 2014). According to Peggy, "June and Jennifer appear to believe that because they filed their petition for leave to appeal within 30 days after the September 10, 2014 order denying their motion for reconsideration of the May 13, 2014 order, this Court now has jurisdiction pursuant to Supreme Court Rule 306(a)(7) to hear their appeal." Peggy argues, however, that "Illinois courts have held that the filing of a motion to reconsider an interlocutory order does not extend the 30-day time period for filing the petition for leave to appeal pursuant to Supreme Court Rule 306."

¶ 41 Although a motion panel of this court granted the PLA, "the question of our jurisdiction to hear a case may be revisited at any time before final disposition of the appeal." *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 57 (1999); see also *In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 349 (2009) ("The panel that hears the appeal has an independent duty to determine whether it has jurisdiction and to dismiss the appeal if it does not.").

¶ 42 "[T]he law is well-settled in Illinois that a motion filed subsequent to the entry of an interlocutory order will not postpone the time within which to file a timely notice of appeal." *Buckland v. Lazar*, 145 Ill. App. 3d 436, 438 (1986); see also *Law Offices of Jeffery M. Leving, Ltd. v. Cotting*, 345 Ill. App. 3d 495, 499 (2003); *National Seal Co. v. Greenblatt*, 321 Ill. App. 3d 306, 308 (2001); *Odom v. Bowman*, 159 Ill. App. 3d 568, 571 (1987); *Leet v. Louisville & Nashville R. Co.*, 131 Ill. App. 3d 763, 765 (1985). Although none of the cases cited by Peggy addresses Rule 306(a)(7) specifically, courts have held that the timeliness requirement of Rule 306 applies to the various subsections of Rule 306(a). See, *e.g.*, *CE Design, Ltd. v. Mortgage Exchange, Inc.*, 375 Ill. App. 3d 379, 384 (2007) (stating that "[t]he timeliness

[8] Rule 306(c)(4) provides that "[t]he above time limits may be extended by the reviewing court or judge thereof upon notice and a motion, accompanied by an affidavit showing good cause, filed before the expiration of the original or extended time." Ill. S. Ct. R. 306(c)(4) (eff. July 1, 2014). No such notice, motion or affidavit was filed by the appellants.

requirement in subsection (c) of Rule 306 applies in the same way to all petitions filed pursuant to all subsections of Rule 306(a), except subsection (a)(5), which is governed by subsection (b)"); *In re Leonard R.*, 351 Ill. App. 3d 172, 175 (2004).

¶ 43 The Illinois Supreme Court in *Kemner v. Monsanto Company*, 112 Ill. 2d 223 (1986), however, held that a ruling on a subsequent motion, under certain limited circumstances, may restart the time period for filing a petition for leave to appeal. The petitioner in *Kemner*, a chemical manufacturing company sued in connection with a train derailment and chemical spill, filed an initial motion to dismiss Illinois lawsuits on the grounds of *forum non conveniens* (FNC). *Id*. at 229. The circuit court denied the motion in 1981. *Id.* at 229. Because "no provision existed in 1981 for appeal to the appellate court from an interlocutory order denying a motion to dismiss on the grounds" of FNC, the petitioner filed a motion for leave to petition for a writ of mandamus filed with the Illinois Supreme Court, which was denied. *Id.* In 1982, the petitioner filed a second motion to dismiss based on FNC, alleging, among other things, that: (a) additional discovery identified no nonparty witness identified subject to compulsory process in Illinois; and (b) a 1981 decision of the Illinois Supreme Court had changed and clarified the law regarding dismissal based on FNC. *Id.* at 230. The circuit court denied the motion, and the petitioner appealed, based on Rule 306, which had been amended in 1982. The Illinois Appellate Court and the Illinois Supreme Court each denied the petitioner's petitions for leave to appeal. *Id.* at 230-31.

¶ 44 In 1984, the *Kemner* petitioner filed in the circuit court a motion to reconsider the 1983 order denying its second motion to dismiss. *Id.* at 231. The petitioner maintained that, since the 1983 order, our supreme court had issued three opinions dismissing cases under the doctrine of FNC; the petitioner further submitted that two other cases which arose out of the same train

derailment were dispositive of the FNC issue. *Id.* The petitioner also asserted that its motion to reconsider "contained additional information which was not available at the time of its second motion to dismiss," *i.e.*, the motion "listed 108 Missouri physicians from whom medical records had been obtained and whose testimony allegedly would demonstrate that plaintiffs' complaints were not related to their alleged chemical exposure" and "listed 43 Missouri residents with knowledge concerning plaintiffs' allegations who had been deposed." In December, 1984, the circuit court denied the motion, adopting its prior 1981 and 1983 orders. *Id.* In January, 1985, the petitioner filed a petition for leave to appeal, which was dismissed by the appellate court for lack of jurisdiction. *Id.* The petitioner then sought leave to appeal to the Illinois Supreme Court, which was granted. *Id.*

¶ 45 Our supreme court in *Kemner* "considered the propriety of the appellate court's dismissal for lack of jurisdiction of [the petitioner's] appeal from the December 13, 1984, order denying its motion to reconsider." *Id.* at 235-36. The court initially observed that "[t]he time limit for filing the petition for leave to appeal" under Rule 306 is "jurisdictional." *Id.* at 236. The court then noted that the appellate court had relied on the fact that the petition was filed more than 30 days after the entry of the 1983 order denying the petitioner's second motion to dismiss and had held that the "latest petition for leave to appeal was untimely." *Id.* The appellate court "reasoned that the 30-day period within which to file a petition for leave to appeal from an order denying a motion to dismiss on [FNC] grounds may not be *tolled* by filing a motion to reconsider the order denying the motion to dismiss." *Id.* (Emphasis in original.) Our supreme court concluded, however, that the appellate court erred in dismissing the petitioner's appeal for lack of jurisdiction. *Id.* at 238. The court noted that the 1984 motion to reconsider "alleged new information and cited new authorities decided since the denial of the second motion." *Id.* at 239.

The court also observed that the 1984 motion was not an attempt to extend the appeal period from the 1983 order because "[a] petition for leave to appeal had already been filed and denied as to that order." *Id.* The court stated:

> "The fact that a circuit court ruling was obtained and a timely appeal sought as to each motion leads us to conclude that each motion was in substance a new original motion seeking dismissal on the basis of [FNC]. Accordingly, all three orders denying [the petitioner's] motion to dismiss on [FNC] grounds were each interlocutory in nature and therefore the last two orders were independently appealable under our present Rule 306. The fact that the third forum motion (September 28, 1984) was captioned a 'motion to reconsider' is not controlling. In fact the second forum motion (September 13, 1982) which was considered on its own merits, asked the court to reconsider its previous ruling in the first forum motion. The character of a pleading is to be determined more from its content than from its label." *Id.*

Remanding the matter to the appellate court, our supreme court observed, "It may be that the appellate court on remand will deny [the petitioner's] petition for leave to appeal on the basis that the allegedly new factual information and additional authorities are not sufficient to reverse the circuit court's prior forum rulings. However, that fact does not justify the appellate court's dismissal for lack for jurisdiction." *Id.* at 240.

¶ 46 Two years after *Kemner*, the Illinois Supreme Court in *McClain v. Illinois Central Gulf Railroad Company* (121 Ill. 2d 278 (1988)) concluded that an order denying the defendant's "latest [FNC] motion was not just a reconsideration of previous motions and orders." *Id.* at 286. Citing *Kemner*, our supreme court noted that, "[a]part from the additional witnesses" named in

the latest motion, the trial court had "two new matters before it": a ruling regarding a third-party complaint and a recent appellate court decision relevant to the case. *Id.* at 286-87. Also, similar to *Kemner*, the *McClain* defendant's attempts to appeal the denial of "its immediately preceding [FNC] motion" had been denied by the Illinois Appellate Court and the Illinois Supreme Court. *Id.* at 286. The *McClain* court concluded that, "taken as a whole, the trial court's order" denying the latest FNC motion "was not merely a reconsideration of the prior orders, and thus it was appealable under *Kemner*." *Id.* at 287.

¶ 47 Simply put, we do not view the motion to reconsider as "in substance a new original motion" (*Kemner*, 112 Ill. 2d at 239) which would trigger a later appeal deadline in accordance with *Kemner* and its progeny. As an initial matter, we note that the appellants did not file a reply brief expressly addressing Peggy's jurisdictional argument. "[I]t is not our obligation to act as advocate for a party[.]" *Byrd v. Hamer*, 408 Ill. App. 3d 467, 488 (2011).

¶ 48 However, in their appellant's brief, June and Jennifer contend that "the initial order of disqualification presented an insufficient record from which [they] could have sought leave to appeal because it was based upon arguments that were not previously raised in any motion or briefed." According to the appellants, "the Court concluded, based upon oral statements made by the GAL at the hearing on Peggy's motion, that a conflict of interest existed in [the SM firm's] dual representation of June and Jennifer because Jennifer was cross petitioning to be appointed as June's guardian and because, according to the GAL, June said that she did not need a guardian and did not want a guardian appointed." The appellants contend that, "[h]aving not had an opportunity to brief and argue that issue with any advance notice, June and Jennifer then moved for reconsideration of the May 13, 2014 order."

¶ 49 Unlike in *Kemner*, the appellants did not attempt to appeal the circuit court's May 13,

2014 disqualification order, despite the SM firm attorney's statement at the May 13, 2014 hearing that "I would like to ask for an interlocutory appeal on the issue." Furthermore, we do not view the motion to reconsider as "rais[ing] new matter." *McClain*, 121 Ill. 2d at 286. In their motion to reconsider, the appellants stated that the reason the court entered the disqualification order — *i.e.*, "June opposed appointment of a guardian, while Jennifer sought to be appointed guardian" — was "previously unasserted" and "raised for the first time at oral argument." Even assuming *arguendo* we agreed with the appellants' characterization of the "novel arguments" raised at the hearing on the motion to disqualify counsel, the motion to reconsider raised no new facts and cited no new law that would warrant an extension of the time to appeal under *Kemner*. In fact, in their reply in support of their motion to reconsider, June and Jennifer expressly stated that their counsel "never has claimed that the [motion to reconsider] adds newly discovered evidence, only that the law was misapplied. It is axiomatic that misapplication of the law is a proper basis for a motion for reconsideration." The appellants' position is more akin to that of the plaintiffs in *CE Design, Ltd. v. Mortgage Exchange, Inc.* (375 Ill. App. 3d 379, 385-86 (2007)); the *CE Design* plaintiffs asserted that "their motion to reconsider addressed the new legal issues and authorities the trial court 'unexpectedly' raised at the initial hearing on class certification." *Id.* The court disagreed, noting:

> "Plaintiffs based their motion for reconsideration on 'legal error.' The motion simply attempted to point out to the trial court why it erred in interpreting existing authorities. The motion did not introduce a new factual matter or cite to a change in the law. Consequently, the motion, in substance, was not a new and independent motion for class certification. Accordingly, the 30-day appeal period did not start anew." *Id.* at 386.

See also *National Seal*, 312 Ill. App. 3d at 309 (noting that "the critical factor in *Kemner* was that the defendant pursued appeals of each of the three orders, not that the successive motions alleged new facts" and "[m]oreover, the motion to reconsider does not allege any new facts but merely includes more details in support of the arguments raised in the original motion"); *Buckland*, 145 Ill. App. 3d at 441 (finding that defendant's motion for reconsideration could not be considered a "new, independent [FNC] motion").

¶ 50 "Rule 306 fosters expediency in disposing of appeals from interlocutory orders by requiring litigants to perfect an appeal within 30 days from the entry of the order." *Buckland*, 145 Ill. App. 3d at 439. Because the appellants' motion to reconsider does not qualify under the *Kemner* exception, their petition for leave to appeal under Rule 306 should have been filed within 30 days of the May 13, 2014 disqualification order. The October 10, 2014 PLA was untimely, and we thus lack jurisdiction to consider the instant appeal.

¶ 51 CONCLUSION

¶ 52 For the reasons stated above, this Court lacks jurisdiction over the instant appeal, and the appeal is thus dismissed.

¶ 53 Appeal dismissed.