

NOTICE
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2019 IL App (5th) 180350-U

NO. 5-18-0350

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

MARILYN DIANNE CROSS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Union County.
)	
v.)	No. 14-L-18
)	
WAL-MART STORES, INC.,)	
d/b/a Wal-Mart Store #233,)	
)	
Defendant)	
)	
(Midwest Neurosurgeons, LLC; Midwest Surgery)	Honorable
Center, LLC; and Southeast Missouri Anesthesia)	Mark M. Boie,
Services, LLC, Non-Parties-Appellants).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s judgment granting the Plaintiff’s motion for declaratory judgment against the Non-Parties is void for lack of personal jurisdiction.

¶ 2 Appellants, Midwest Neurosurgeons, LLC; Midwest Surgery Center, LLC; and Southeast Missouri Anesthesia Services, LLC, (collectively, the Non-Parties) appeal from the circuit court’s order finding that the Plaintiff-Appellee, Marilyn Dianne Cross, owed \$0.00 to the Non-Parties for medical treatment they rendered to the Plaintiff. On appeal,

the Non-Parties argue that the judgment entered against them by the circuit court is void for lack of personal jurisdiction. We agree with the Non-Parties and vacate the circuit court's judgment.

¶ 3

BACKGROUND

¶ 4 On December 9, 2014, the Plaintiff filed a complaint against Wal-Mart to recover damages for personal injuries she sustained due to a slip and fall in one of its stores. Following the accident, the Plaintiff received medical treatment from various healthcare providers, including the Non-Parties. The Non-Parties are each limited liability companies organized under the laws of Missouri, and their principal places of business are in Cape Girardeau, Missouri.

¶ 5 On October 3, 2017, the Non-Parties issued lien notices to the Plaintiff's counsel, informing him that they sought liens totaling \$43,126.19 against the Plaintiff's personal injury claim with Wal-Mart. On October 19, 2017, in the underlying cause, Plaintiff then filed a petition to adjudicate liens and inchoate claims pursuant to section 30 of the Health Care Services Lien Act (Act) (770 ILCS 23/30 (West 2016)). In her petition, the Plaintiff stated she had settled her claims against Wal-Mart for \$300,000. The Plaintiff's petition alleged that various medical professionals and medical providers sought a total of \$160,843.75 in liens against the settlement proceeds. The Plaintiff sent copies of the petition to the Non-Parties at their business addresses via certified mail on October 19, 2017.

¶ 6 The Plaintiff filed an amended petition to adjudicate liens on November 8, 2017, wherein she amended her petition to allege that the total due for medical treatment was

\$163,543.75. This sum included the monies sought by the Non-Parties. The Plaintiff sent copies of the amended petition to the Non-Parties at their business addresses via certified mail on November 8, 2017.

¶ 7 On December 20, 2017, the circuit court conducted a hearing on the Plaintiff's amended petition to adjudicate liens and inchoate claims. Jessica James (James), an employee of the Non-Parties, was present at the hearing on behalf of the Non-Parties. James advised the court she was not an attorney and could not act as legal counsel for the Non-Parties. James conceded that she was unable to present evidence that the medical care rendered to the Plaintiff by the Non-Parties was reasonable, necessary, or causally related to the Plaintiff's accident at Wal-Mart in order to establish the rights of the Non-Parties to exert a lien on the settlement proceeds. James told the court that the Non-Parties wanted a continuance and, if this request was not granted, they planned on retaining an attorney to proceed against the Plaintiff in a separate action. The Plaintiff's counsel advised the court that the only issue before the court for determination that day was the enforceability of the liens. Therefore, the Plaintiff's counsel requested the court find that the Non-Parties had failed to satisfy their burden of proof with regard to the liens, as the Non-Parties put forth no evidence regarding the nature of the health care treatment rendered to the Plaintiff.

¶ 8 On that same date, the Plaintiff and Wal-Mart filed a joint stipulation for dismissal, indicating that the parties had agreed to settle the Plaintiff's claim against Wal-Mart, and requested that the action be dismissed with prejudice. The circuit court did not enter the order that day.

¶ 9 On December 21, 2017, the circuit court entered its order adjudicating the medical liens. The court found it had jurisdiction over the parties and subject matter, and that the medical lien holders had received proper notice of the hearing. The court declared that the liens filed by the Non-Parties were null and void for their failure to offer evidence in support of their liens.

¶ 10 On January 18, 2018, the Non-Parties filed a separate action against the Plaintiff in Rutherford County, Tennessee, which was the Plaintiff's current place of residence. The Non-Parties sought payment of the outstanding balance of the medical bills. The Plaintiff was served in the Tennessee case on January 20, 2018, and filed an answer to the Non-Parties' petition on March 2, 2018.

¶ 11 On February 16, 2018, the Plaintiff filed a motion for declaratory judgment against the Non-Parties in the Union County case requesting that the court enter a judgment declaring that the Plaintiff did not owe the Non-Parties any additional money beyond that already paid by her insurance carrier for the medical treatment provided to her by the Non-Parties. The Plaintiff's motion asserted that the outstanding sums sought by the Non-Parties (1) exceeded the usual and customary charges for said services, (2) did not reflect charges for reasonable and necessary medical treatment, (3) were balance bill charges prohibited by her group health insurance plans, and (4) were balance bill charges in excess of her agreement with the Non-Parties. The certificate of service attached to the

Plaintiff's motion indicates the motion was served only on Wal-Mart's counsel, and not on the Non-Parties.¹

¶ 12 On March 21, 2018, without a hearing on the Plaintiff's motion, the circuit court entered an order granting the Plaintiff's motion for declaratory judgment. The court concluded it had jurisdiction over the Non-Parties and the subject matter because the Non-Parties "previously appeared" in the cause regarding their liens. The court found the Non-Parties had received proper notice of the motion for declaratory judgment and, having failed to file a response, the motion was "confessed." The court's order declared that the amounts paid to the Non-Parties by the Plaintiff's group health insurance providers were reasonable and customary charges for the services rendered, and that such amounts were payment in full for any bills related to the cause of action. The court held that the outstanding balance due to the Non-Parties from the Plaintiff was \$0.00. That same day, pursuant to the Plaintiff's and the Defendant's prior stipulation for dismissal, the circuit court also entered the order dismissing the cause against Wal-Mart with prejudice.

¶ 13 Also on March 21, 2018, counsel for the Non-Parties entered his appearance "for the limited purpose of filing its Motion for Leave to File *Amicus Curiae* Brief." In the motion and *amicus* brief, the Non-Parties argued that the circuit court lacked personal jurisdiction over them because the Non-Parties received notice of the Plaintiff's motion for declaratory judgment via letter and they had not been served with process issued by

¹Although the Plaintiff's motion was not personally served on the Non-Parties, the record indicates the Non-Parties received notice of the Plaintiff's motion for declaratory judgment via mailing sometime after its filing.

the court commanding them to appear and defend any claim asserted against them. Further, the Non-Parties maintained they had not waived service of process, as they had not appeared by counsel in the Union County action, a requirement for any corporate entity. Finally, they had not filed written responses to the Plaintiff's amended petition to adjudicate liens and, therefore, had not generally appeared in the proceeding. The Non-Parties asserted the Plaintiff's motion for declaratory judgment failed to comply with section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2016)), as it was not a pleading setting forth a claim for relief against a person properly joined as a party to the action and, therefore, improperly sought to adjudicate the rights of non-parties, generally.

¶ 14 On April 5, 2018, the Non-Parties filed a motion to set aside the circuit court's March 21, 2018, order granting the Plaintiff's motion for declaratory judgment pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2016)). As grounds for setting aside the March 21 order, the Non-Parties reasserted their position that the circuit court did not have personal jurisdiction over them.

¶ 15 On April 24, 2018, the Plaintiff responded to the Non-Parties' motion to set aside the March 21, 2018, order. The Plaintiff argued the circuit court lost jurisdiction over the cause when the court dismissed the underlying case in a separate order on March 21, 2018, and no one moved to set aside the order of dismissal or appealed from the order of dismissal within 30 days.

¶ 16 On May 7, 2018, the Non-Parties filed a reply memorandum in support of their motion to set aside the March 21, 2018, order granting the Plaintiff's motion for

declaratory judgment, asserting that the circuit court continued to have jurisdiction over the cause because the Non-Parties' motion to set aside was a proper postjudgment motion tolling the time for appeal. Also on May 7, 2018, the Non-Parties filed a motion for extension of time to appeal and leave to appeal from both of the orders entered on March 21, 2018, pursuant to Illinois Supreme Court Rule 303(d) (eff. Jan. 1, 2015). The motion was docketed as appeal No. 5-18-0265. The Non-Parties argued they had a reasonable excuse for not filing a notice of appeal from both of the March 21, 2018, orders within 30 days from their entry because they did not receive a copy of the order dismissing the action, and were unaware that it had been entered. Therefore, they reasonably believed they had taken all reasonable and required steps to secure relief from the March 21 order granting the Plaintiff's motion for declaratory judgment by timely filing a motion to set aside that order. The Non-Parties requested that this court either (1) grant them an extension of time to file an appeal from the March 21, 2018, orders or (2) deny the motion for extension of time based on a finding that the Non-Parties' motion to set aside the March 21, 2018, order granting the Plaintiff's motion for declaratory judgment constituted a timely postjudgment motion directed against a final judgment and an appeal from the March 21, 2018, orders was premature.

¶ 17 On June 28, 2018, the circuit court entered an order denying the Non-Parties' motion for leave to file the *amicus* brief and their motion to set aside the March 21 order granting the Plaintiff's motion for declaratory judgment. On July 3, 2018, the Non-Parties filed a notice of appeal in the current appeal, docketed as appeal No. 5-18-0350, challenging both of the circuit court's March 21 orders, and the court's June 28 order

denying their motion to set aside the March 21, 2018, order granting the Plaintiff's motion for declaratory judgment. On July 16, 2018, in appeal No. 5-18-0265, this court denied the motion by the Non-Parties for leave to file a late notice of appeal, finding that any jurisdictional arguments concerning the March 21, 2018, orders could be addressed in this appeal, appeal No. 5-18-0350.

¶ 18

DISCUSSION

¶ 19 On appeal, the Non-Parties argue that the circuit court erred in entering the March 21, 2018, order granting the Plaintiff's motion for declaratory judgment because the circuit court lacked personal jurisdiction over them. Before this court can consider the propriety of the circuit court's order, we must consider whether this court has jurisdiction to consider the appeal.

¶ 20 An appellate court has a duty to consider its jurisdiction and must dismiss an appeal if jurisdiction is lacking. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024 (2005). Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016) governs appeals from final judgments that do not dispose of an entire proceeding. Rule 304(a) provides as follows:

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. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer

than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.

¶ 21 Illinois Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015) requires a notice of appeal to be filed within 30 days from the entry of a final judgment “or, if a timely posttrial motion directed against the judgment is filed ***, within 30 days after the entry of the order disposing of the last pending postjudgment motion.” Section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2016)), which governs postjudgment motions in cases decided without a jury, provides any party may “file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief” within 30 days after entry of the judgment. The 30-day period for filing a notice of appeal is tolled only by the timely filing of a sufficient postjudgment motion. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522 (2001).

¶ 22 The circuit court’s March 21, 2018, order granting the Plaintiff’s motion for declaratory judgment was a final judgment as to one claim, but fewer than all of the claims, involved in the action. The circuit court did not make an express written finding that there was no just reason to delay either enforcement or appeal. Therefore, the judgment was not enforceable or appealable until entry of a judgment adjudicating all the claims, rights, and liability of all the parties. In this case, the March 21, 2018, order granting the Plaintiff’s motion for declaratory judgment became enforceable and appealable on the day it was entered because the court entered a second order that day disposing of the remaining claims. On April 5, 2018, the Non-Parties filed a timely postjudgment motion seeking to set aside the court’s March 21 order granting the

Plaintiff's motion for declaratory judgment. The Plaintiff argues, however, that this court lacks jurisdiction because the Non-Parties failed to also file a postjudgment motion directed at, or an appeal from, the circuit court's March 21, 2018, order dismissing the Plaintiff's case against Wal-Mart.

¶ 23 Rule 304(a) recognizes that the circuit court can enter more than one "final judgment." This can occur, as in this case, when the court enters a final judgment as to some, but not all, of the parties or claims involved in an action. Here, the circuit court entered two final judgments on the same day, one granting the Plaintiff's motion for declaratory judgment against the Non-Parties, and one dismissing the Plaintiff's cause of action against Wal-Mart. Rule 303(a)(1) only requires the filing of a timely postjudgment motion "directed against the judgment" being attacked which, in this case, was the circuit court's final judgment granting the Plaintiff's motion for declaratory judgment against the Non-Parties. Nothing in the circuit court's second March 21 order dismissing the Plaintiff's case against Wal-Mart purports to adjudicate the rights or claims of the Non-Parties against the Plaintiff, and it was not necessary for the Non-Parties to file a postjudgment motion or appeal from that order. The Non-Parties had 30 days to appeal from or file a postjudgment motion directed against the judgment being attacked, and their April 5, 2018, motion to set aside the circuit court's order granting the Plaintiff's motion for declaratory judgment constituted a timely and sufficient postjudgment motion against that judgment. This postjudgment motion tolled the time for filing an appeal until 30 days after the circuit court's ruling on the motion. Therefore, the circuit court still had jurisdiction when it entered its June 28, 2018, order denying the Non-Parties' motion to

set aside, and the notice of appeal filed in this case by the Non-Parties on July 3, 2018, was timely. Based on the foregoing, this court has jurisdiction to consider the merits of the appeal.

¶ 24

Personal Jurisdiction

¶ 25 On appeal, the Non-Parties contend that the circuit court's judgment declaring that the Plaintiff had satisfied her financial obligations to them was void for lack of personal jurisdiction because they did not receive proper service of process and they did not enter a general appearance in the case.

¶ 26 Whether a trial court has personal jurisdiction over a party is a question of law, which we review *de novo*. *White v. Ratcliffe*, 285 Ill. App. 3d 758, 764 (1996). To enter a valid judgment, a court must have jurisdiction of the subject matter of the litigation and jurisdiction over the parties. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). Absent a general appearance, personal jurisdiction is acquired by service of process in the manner directed by statute. *Thill*, 113 Ill. 2d at 308. Any judgment rendered without proper service is void *ab initio* for lack of jurisdiction over a defendant. *Ratcliffe*, 285 Ill. App. 3d at 763. A judgment entered without service of process is void even when the party against whom judgment is entered had notice of the proceeding. *Ratcliffe*, 285 Ill. App. 3d at 763-64.

¶ 27 The Non-Parties are foreign limited liability companies organized under the laws of Missouri. Section 1-50 of the Limited Liability Company Act provides that “[a]ny process, notice, or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company shall be served either upon

the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section.” 805 ILCS 180/1-50(a) (West 2016).

¶ 28 A general appearance, however, waives the service of process requirement. *In re Estate of Ahern*, 359 Ill. App. 3d 805, 812 (2005), *as modified on denial of reh’g* (Sept. 22, 2005). Any motion or pleading by a party that contains either allegations or defenses serves as a waiver to any objection to personal jurisdiction and submits that party to the jurisdiction of the court. 735 ILCS 5/2-301(a-5) (West 2016). “Any action taken by a litigant that recognizes a case as being in court amounts to the entry of a general appearance unless the action was for the sole purpose of objecting to jurisdiction over the person.” *In re Marriage of Snider*, 305 Ill. App. 3d 697, 699 (1999). If a party takes affirmative action dealing with substantive issues, the party’s special appearance is waived. *In re Marriage of Snider*, 305 Ill. App. 3d at 699.

¶ 29 While non-attorneys provide valuable services to corporations, a corporation or limited liability company must be represented by counsel in legal proceedings. *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2014 IL App (1st) 123654, ¶ 17, *aff’d*, 2017 IL 117720, ¶ 17 (applying the rule that a corporation must be represented by counsel in legal proceedings to a limited liability company). Similarly, only an attorney can enter an appearance on behalf of a corporation or limited liability company. *Stone Street Partners, LLC*, 2014 IL App (1st) 123654, ¶ 21, *aff’d*, 2017 IL 117720, ¶ 21.

¶ 30 Here, the record is clear, and the Plaintiff does not contest, that the Non-Parties were never named parties to the lawsuit and were never served with process. The

Plaintiff's position in the circuit court and with this court is that her judgment against the Non-Parties can stand because the Non-Parties (1) had notice of the underlying action, (2) "put the subject matter of their bills before the court" by asserting liens in the underlying personal injury case, and (3) "submitted to personal jurisdiction" by James' appearance at the December 20, 2017, hearing on the Plaintiff's amended petition to adjudicate liens and inchoate claims under the Health Care Services Lien Act.

¶ 31 As already noted, however, a judgment entered without proper service of process is void even when the party against whom the judgment is entered had notice of the proceedings. See *Ratcliffe*, 285 Ill. App. 3d at 763-64. Therefore, the fact that the Non-Parties may have been aware of the proceeding does not excuse the Plaintiff's failure to serve them.

¶ 32 Nor can it be said that the Non-Parties submitted to the jurisdiction of the court by asserting liens in the underlying personal injury case. In October 2017, the Non-Parties notified the Plaintiff of their intention to seek liens against any proceeds resulting from the Plaintiff's personal injury claim against Wal-Mart. The Plaintiff subsequently filed, in her underlying suit against Wal-Mart, an amended petition to adjudicate liens and inchoate claims pursuant to section 30 of the Health Care Services Lien Act.

¶ 33 Under the Act, the circuit court had the power to adjudicate the rights of all interested persons and enforce the liens of health care professionals and providers. 770 ILCS 23/30 (West 2016). A petition to adjudicate liens can be served upon the interested adverse persons by "personal service, substitute service, or registered or certified mail." 770 ILCS 23/30 (West 2016). A proceeding to adjudicate liens under the Act is an *in rem*

proceeding, which does not require personal service of process. *Smith v. Hammel*, 2014 IL App (5th) 130227, ¶ 14. In an *in rem* proceeding, the circuit court's power is limited to adjudicating the parties' rights to a given piece of property and the court can not adjudicate any parties' personal claim or liability in that proceeding. *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶¶ 19-20. A creditor may enforce his contract in any appropriate common law action, independent of a statutory lien, so long as he receives only one satisfaction. *Jayko*, 2012 IL App (1st) 103665, ¶ 20.

¶ 34 The Plaintiff's filing of the amended petition to adjudicate the liens initiated an *in rem* proceeding, and the circuit court's power was limited to adjudicating the medical providers' rights to the settlement proceeds. The fact that the Non-Parties sought liens against the settlement proceeds did not alter the inherent nature of that proceeding. As an *in rem* proceeding, the circuit court did not have the power to adjudicate any parties' personal claim or liability. The Plaintiff is incorrect that the assertion of liens by the Non-Parties constituted an automatic submission by the Non-Parties to an expansion of the circuit court's power.

¶ 35 Finally, it cannot be said that the Non-Parties submitted to the court's jurisdiction when James appeared at the hearing on Plaintiff's amended petition to adjudicate liens and inchoate claims under the Act. The Plaintiff's contention that James' appearance at the hearing to adjudicate the liens was a "general appearance" by the Non-Parties sufficient to waive service of process is misplaced. The Non-Parties are limited liability companies, which can only appear in legal proceedings via an attorney. See *Stone Street Partners, LLC*, 2014 IL App (1st) 123654, ¶¶ 17, 21. It is undisputed that James, while an

employee of the Non-Parties, was not an attorney and was unable to present evidence and argument on behalf of the Non-Parties at the hearing. As a non-attorney, James' attempted "representation" of the Non-Parties at the hearing does not legally constitute an "appearance" on behalf of the Non-Parties, waiving the right of the Non-Parties to service of process to acquire personal jurisdiction.

¶ 36 In this case, the circuit court never obtained personal jurisdiction over the Non-Parties because the Plaintiff never served process on the Non-Parties, and the Non-Parties never waived service of process by entering a general appearance. The Non-Parties properly preserved their objection to the circuit court's jurisdiction by filing a limited appearance seeking leave to file an *amicus* brief challenging the court's jurisdiction. Accordingly, we vacate the circuit court's March 21, 2018, order granting the Plaintiff's motion for declaratory judgment against the Non-Parties.

¶ 37 Order vacated.