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2019 IL App (1st) 190205-U
Order filed: September 20, 2019

FIRST DISTRICT
Fifth Division

No. 1-19-0205

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 JUDICIAL DISTRICT

CHERI CANNATELLO, as Special Administrator of the Estate of Philip Levato, Jr., Deceased, Plaintiff and Sanctions Petitioner-Appellee, v. SEVEN WEST DIVISION, INC., an Illinois Corporation, d/b/a Room Seven, Defendant-Appellant, (Heineke & Burke, LLC, Sanctions Respondent-Appellant).	Appeal from the Circuit Court of Cook County. No. 2017 L 4733 Honorable John H. Ehrlich, Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We dismiss this appeal challenging the imposition of discovery sanctions, where the circuit court's orders were not final and appealable.

¶ 2 Defendant-appellant, Seven West Division, Inc., an Illinois Corporation, d/b/a Room Seven (Seven West), and Seven West's counsel, sanctions respondent-appellant, Heineke & Burke, LLC, (Heineke), appeal from sanctions imposed upon Heineke and one of its attorneys

for certain discovery violations. For the following reasons, we dismiss this appeal for a lack of appellate jurisdiction.[1]

¶ 3 I. BACKGROUND

¶ 4 Plaintiff and sanctions petitioner-appellee, Cheri Cannatello, as special administrator of the estate of Philip Levato, Jr., deceased, filed this wrongful death action against Seven West in 2017. On November 29, 2018, plaintiff filed a motion for sanctions, pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002). The motion asserted various forms of purportedly "obstructionist conduct" on the part of Heineke and one of its attorneys, Anna Manfre. This conduct purportedly occurred during the scheduling and completion of discovery depositions for two witnesses, and the motion asserted that plaintiff's counsel had incurred significant costs due to Heineke's actions. In light of this purported conduct, plaintiff's motion asked the circuit court to "award sanctions against Defendant's counsel in the amount of $5,000.00 to ensure compliance by Defendant's counsel with the rules of discovery and the orders of this Court related to discovery, and for such other relief as is just and fair."

¶ 5 On December 4, 2018, the circuit court entered an order granting plaintiff's motion and imposed specific "sanctions and fines." The court specifically ruled—in relevant part—that Heineke shall: (1) reimburse plaintiff's counsel $1,264.40 for its costs related to the two depositions, (2) pay plaintiff's counsel $735.60 as a "sanction fine," (3) produce the two witnesses referenced in the motion for sanctions for continued depositions, and (4) pay the costs for those two follow-up depositions.

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 6 Thereafter, Seven West filed a motion asking the circuit court to either vacate the December 4, 2018, order, or to "enter an order pursuant to Rule 304 that no just reason exists to delay enforcement or appeal of [that] Order." In an order entered on December 11, 2018, the circuit court struck Seven West's motion. In addition, the court also ordered Ms. Manfre, "per Court's discussion[,] to attend deposition classes & provide an affidavit of completion within 6 months." In a case management order entered on January 2, 2019, the circuit court ordered Heineke to tender to plaintiff's counsel "checks in the amount of $2000, as a sanction directed on December 4, 2018[,] by Friday 1-4-2019."

¶ 7 In response, Heineke and Ms. Manfre filed a joint "Motion for Order of Friendly Contempt" on January 4, 2019. Therein, it was acknowledged that the circuit court's prior orders were sanctions imposed pursuant to Illinois Supreme Court Rule 219. After noting that "[t]he subjects of the sanctions respectfully disagree with the circuit court's decision," Heineke and Ms. Manfre asked the court to find them in friendly contempt so as to allow an immediate appeal. Specifically, they asked for "an explicit finding of friendly contempt for refusal to comply with the imposition of the monetary and additional sanctions in the December 4 and 11 orders and request the court enter an additional sanction against the movants of $1.00 by doing so."

¶ 8 On January 7, 2019, the circuit court entered two orders. In the first, the court specifically denied the motion for order of friendly contempt, and entered a "judgment against [Heineke] in the amount of $2,000." In the second order, a case management order drafted by plaintiff's counsel, the court ordered that the "contempt order entered 12/4/18 against [Heineke] stands."

¶ 9 On February 4, 2019, Heineke and Seven West filed a notice of appeal solely from the "Judgment Order entered on January 7, 2019," in which this court was specifically asked to reverse and vacate the judgment order. On the same day, the circuit court entered a case

management order continuing the matter and further stating as follows: "Defendant having appealed the Court's entry of Judgment against [Heineke], the Court stays all proceedings. Court orders report as to status of Appeal."

¶ 10 II. ANALYSIS

¶ 11 We will first consider whether appellate jurisdiction exists, as that question "must be decided prior to addressing the 'merits' of an appeal." *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 967 (2004) (citing *In re Marriage of Blanchard*, 305 Ill. App. 3d 348, 351 (1999)).

¶ 12 To begin with, a reviewing court has jurisdiction to consider only the judgments or orders which are specified in the notice of appeal. *J.P. Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 23. A notice of appeal confers jurisdiction, if the notice as a whole "fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal." *Id.* at ¶ 24 (quoting *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011)).

¶ 13 Furthermore, except as specifically provided by Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 14 However, even a final judgment or order is not necessarily immediately appealable. Illinois Supreme Court Rule 304(a) provides:

> "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. * * * 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." Ill. S. Ct. Rule 304(a) (eff. March 8, 2016).

¶ 15 Because discovery orders are not final, they are not ordinarily appealable. *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981); *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 921 (1999). However, it is well settled that the correctness of a discovery order may be tested through contempt proceedings, as a final order entered in a contempt proceeding that imposes a fine or other penalty is appealable. *Eskandani v. Phillips*, 61 Ill. 2d 183, 194 (1975); Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016). When a party appeals contempt sanctions imposed for violating, or threatening to violate, a pretrial discovery order, the discovery order is subject to review. See *Almgren*, 162 Ill. 2d at 216. This is because review of the contempt finding necessarily requires review of the order upon which it is based. *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 189 (1991).

¶ 16 As noted above, the notice of appeal filed in this matter was specifically filed on behalf of Heineke and Seven West, and specifically challenged only the "Judgment Order entered on January 7, 2019." Nevertheless, Heineke's appellate brief identifies both itself and Ms. Manfre as appellants, and challenges the circuit court orders entered on December 4, 2018, December 11, 2019, and January 7, 2019, including the non-monetary sanction imposed upon Ms. Manfre.

In light of the authority cited above (*supra*, ¶11), it seems unlikely that the notice of appeal filed in this matter granted this court jurisdiction to review the non-monetary sanction imposed upon Ms. Manfre on December 11, 2018, where the notice of appeal specified only the monetary judgment entered against Heineke on January 7, 2019.

¶ 17 That issue is immaterial, however, as we find that we lack jurisdiction to review any of the sanctions imposed by the circuit court. Appellants contend that we have jurisdiction pursuant to Illinois Supreme Court Rules 301 and 304(a), reasoning that this appeal was timely brought from the final judgment entered against Heineke on January 7, 2019. However, the record clearly establishes—and the appellants have conceded both below and on appeal—that all of the sanctions imposed by the circuit court were entered for purported discovery violations, pursuant to Illinois Supreme Court Rule 219 (eff. July 1, 2002), a rule that empowers a circuit court to enforce its discovery orders both by the imposition of sanctions, including a monetary penalty for willful misconduct, as well as through the use of contempt proceedings.

¶ 18 To the extent that the circuit court simply entered monetary and non-monetary penalties against Heineke and Ms. Manfre as discovery sanctions, which is clearly the case and has been conceded by appellants, those orders were interlocutory and were therefore not appealable. *Lewis*, 306 Ill. App. 3d at 924.

¶ 19 Even if we were to consider the judgment entered against Heineke on January 7, 2019 to be a final order, it was clearly final as to fewer than all of the parties or claims at issue below, and the circuit court specifically denied a request to make a finding with respect thereto that there was no just reason for delaying either enforcement or appeal or both, pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). In the absence of such a finding, the circuit court's judgment order was not enforceable or appealable and remains subject to revision at any

time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties below. *Id.*

¶ 20 Rather, as discussed above, the only proper way to have sought immediate review of the circuit court's discovery orders was to obtain a final contempt order imposing a fine or other penalty. *Supra*, ¶ 14. However, the circuit court specifically rejected Heineke and Ms. Mafre's joint motion seeking an order of friendly contempt. The only mention of "contempt" in an order entered by the circuit court below is contained in the January 7, 2019, case management order. That order was drafted by plaintiff's counsel, and ordered that the "contempt order entered 12/4/18 against [Heineke] stands." However, the circuit court's December 4, 2018, order quite clearly imposed discovery sanctions pursuant to Rule 219, and did so specifically in response to plaintiff's motion requesting exactly that type of relief. There is no finding of contempt contained in the record on appeal. "A court's order or opinion must be read in the context of the facts and issues involved." *Arquilla-DeHaan Realtors v. Village of Park Forest*, 89 Ill. App. 3d 682, 687 (1980). It is clear from the context of this matter that the language in the case management order referring to the "contempt order entered 12/4/18 against [Heineke]" was actually intended as a reference to the discovery sanctions.

¶ 21 For all the above reasons, we conclude that we are without jurisdiction to consider the matters raised on appeal.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we dismiss this appeal for a lack of appellate jurisdiction.

¶ 24 Appeal dismissed.