

This Order Is Not Precedential  
And Is Not To Be Cited

FILED

No. 2--02--0275

FEB 20 2003

ROBERT J. MANGAN, CLERK  
APPELLATE COURT 2nd DISTRICT

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

<u>In re</u> MARRIAGE OF	)	Appeal from the Circuit Court
WILLIAM JIREK,	)	of Du Page County.
	)	
Petitioner-Appellant,	)	
	)	No. 97--D--2336
v.	)	
	)	
LINDA M. JIREK,	)	Honorable
	)	John T. Elsner,
Respondent-Appellee.	)	Judge, Presiding.

RULE 23 ORDER

In this post-judgment domestic relations action, petitioner, William Jirek, appeals the judgment of the circuit court of Du Page County, which awarded respondent, Linda M. Jirek, attorney fees and costs. We dismiss the appeal because we lack jurisdiction.

On December 2, 1998, the parties were granted a judgment of dissolution. Petitioner filed a petition for change of custody on May 10, 2001. Respondent filed a petition to increase child support and, later, a petition for rule to show cause, in which she sought, inter alia, reimbursement for medical expenses for the children and past due child support. Respondent also requested attorney fees necessitated by the filing of the petition. Thereafter, the parties resolved the custody dispute and the issue involving reimbursement of medical expenses.

On October 9, 2001, the trial court modified the original judgment of dissolution to reflect the resolution of the disputed issues. However, the court reserved the issues regarding attorney

fees and the arrearage of child support and set the matter for hearing to November 28, 2001.

There is no record of proceedings for the November 28 hearing. The order entered on that date allowed respondent's attorney to file a fee petition and set a hearing on the fee petition for January 16, 2002. The order, however, did not make any determinations that the court previously had reserved in the October 9 order. On January 16, following the hearing on the fee petition, the trial court awarded respondent attorney fees and costs in the amount of \$2,500. On January 28, 2002, respondent filed a new petition for rule to show cause in which she alleged that petitioner was in arrearage of \$2,314 in child support payments and requested attorney fees necessitated by the filing of the petition. Thereafter, on February 11, 2002, petitioner filed a motion to reconsider the January 16 order.

On February 27, the trial court denied petitioner's motion to reconsider. In addition to denying the motion to reconsider, the trial court granted petitioner until March 20, 2002, to file or serve responsive pleadings to respondent's petition for rule, which had been filed on January 28, and set a hearing on respondent's petition for April 9, 2002. The February 27 order did not state that it was a final order and did not include a special finding pursuant to Supreme Court Rule 304(a) (155 Ill. 2d R. 304(a)).

On March 3, 2002, petitioner filed a notice of appeal, in which he appealed from the January 16 order, which had awarded attorney fees to respondent, and from the February 27 order, which had denied petitioner's motion to reconsider. In his statement of

jurisdiction, respondent states that his appeal was brought pursuant to Supreme Court Rules 301 and 303 (155 Ill. 2d Rs. 301, 303). We note that respondent has not filed an appellate brief.

Although the question has not been raised, it is our duty to determine whether we have jurisdiction in the subject matter of this appeal. Archer Daniels Midland Co. v. Barth, 103 Ill. 2d 536, 539 (1984). Every final judgment in a civil case is appealable pursuant to Rule 301, and jurisdiction is vested in the appellate court to hear the appeal of that final judgment upon the filing of a notice of appeal. A "final judgment" is one that fixes absolutely the rights of the parties in the lawsuit; it is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. Flores v. Dugan, 91 Ill. 2d 108, 113 (1982).

Rule 301 as to the appealability of final orders is qualified by Supreme Court Rule 304(a) (155 Ill. 2d R. 304(a)) when a final judgment or order does not dispose of all matters presented to the court. That rule states:

"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 enforcement or appeal. \*\*\* 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." 155 Ill. 2d R. 304(a).

A "claim" under the terms of Rule 304 has been defined as "any right, liability or matter raised in an action." Marsh v. Evangelical Covenant Church, 138 Ill. 2d 458, 465 (1990). If an order does not resolve every right, liability, or matter raised, it must contain an express finding that there is no just reason for delaying an appeal; otherwise, the order is not appealable. Marsh, 138 Ill. 2d at 465. A request for attorney fees is a claim within the meaning of Rule 304(a). See Marsh, 138 Ill. 2d at 467-68.

We find that the notice of appeal filed by petitioner on March 3, 2002, was premature and did not vest jurisdiction in this court pursuant to Rule 301. A final judgment had not been rendered when that notice was filed because a claim for respondent's January 28 petition for rule to show cause and additional attorney fees remained pending before the trial court. A Rule 304(a) appeal could not have been taken since the orders appealed from did not contain the Rule 304(a) certification. Even if we were to find that the trial court's order, which awarded attorney fees but which left for later resolution the claim of child support arrearage and additional attorney fees, was a final judgment, it was not appealable because it disposed of fewer than all of the claims and there was no written finding that there was no just reason to delay enforcement of appeal of the order. See In re Marriage of Dering, 117 Ill. App. 3d 620, 629 (1983). We therefore do not reach the merits of the appeal. The appeal must be dismissed.

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Appeal dismissed.

BYRNE, J., with McLAREN and O'MALLEY, JJ., concurring.