No. 1-09-1678

THIRD DIVISION
January 19, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CARLOS ZARATE,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
and	)	No. 08 D 3800
	)	
LEANDRE ZARATE,	)	Honorable
	)	Raul Vega,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

O R D E R

HELD: Petitioner filed a *pro se* notice for interlocutory appeal of two orders entered during the pendency of a postdissolution child support dispute; we find that the orders appealed from are neither final nor fall within the interlocutory exception, therefore, this appeal is dismissed for lack of jurisdiction.

In September 2008, the circuit court entered a judgment for dissolution of marriage for petitioner Carlos Zarate and respondent Leandra Zarate. At the present time, the parties are attempting to resolve a dispute over the amount of child support owed by petitioner, who has filed multiple *pro se* motions, including a motion for substitution of judge, which the court denied on June 4, 2009, and a petition for rule to show cause, which was stricken on June 24, 2009. Petitioner has now filed a *pro se* notice for interlocutory appeal of those two orders. Although respondent has not filed a brief in response, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

The record shows that on September 10, 2008, the circuit court entered a judgment for dissolution of marriage. Incorporated as part of that judgment was a marital settlement agreement which provided that petitioner would pay respondent child support.

On January 16, 2009, petitioner filed a *pro se* motion for a reduction in child support, and on February 4, 2009, respondent filed a verified petition for rule to show cause alleging that petitioner has not paid any child support since the dissolution of marriage judgment was entered.

On February 18, 2009, petitioner filed a motion to dismiss respondent's petition based on fraud and misrepresentations made to the court. Petitioner swore that the averments in his motion and

memorandum were true and correct pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2008)). In his motion, petitioner claimed that his salary was miscalculated, that his former attorney rushed him into initialing the dissolution of marriage which was not properly notarized, and that it was signed based on the court being tricked into believing the attorneys were sincere. Petitioner requested that the dissolution of marriage be vacated, that respondent's petition be dismissed, that sanctions be imposed on all parties involved in the conspiracy, and for a hearing on the dissolution of marriage or modification of child support.

On March 20, 2009, respondent filed a motion to strike petitioner's motion to dismiss. She alleged that petitioner signed the marital settlement agreement, and that his pleading failed to clearly set forth the relief being sought.

On March 23, 2009, the court gave petitioner until April 21, 2009, to file a response to respondent's rule to show cause regarding his failure to pay child support. Instead, petitioner filed a motion for reconsideration or to vacate the order due to error, conspiracy, fraud and civil rights violations. Petitioner's motion used the heading of affidavit and petitioner swore, pursuant to section 1-109 of the Code of Civil Procedure, that the facts alleged in his motion and memorandum, which are not contradicted by a counteraffidavit, were to be taken as true despite contrary

averments in the adverse party's pleadings. Petitioner then questioned how he could effectively defend the allegations of fraud if the court dismissed his motion, which is the very evidence establishing the attorneys' wrongdoing, and claimed that the court and the attorneys have conspired against him due to his Mexican American ethnicity.

On April 21, 2009, the court granted petitioner 21 days to file an amended motion to modify the child support. Instead, he filed a motion for disqualification of judge alleging that Judge Raul Vega was prejudiced and biased against him, and was advocating for respondent in order to cover up the misrepresentations, conspiracy and fraud committed by the attorneys. Petitioner requested a new judge.

On June 4, 2009, petitioner's motion for disqualification of judge was assigned to a different judge, who denied petitioner's motion. The matter was then returned to Judge Vega, who set respondent's petition for rule to show cause for hearing on June 24, 2009, and ordered that the hearing also include petitioner's amended motion to modify if he files it in 10 days.

On June 23, 2009, petitioner filed a "petition for rule to show cause due to fraud/misrepresentations to the court/non compliance of court order other irregularities w/ [*sic.*] affidavit & impose sanctions," in which he used the heading of affidavit and swore, pursuant to section 1-109 of the Code of Civil Procedure,

that his pleadings were properly presented to the court with an affidavit, which was not challenged, thereby validating his facts. He also claimed that the white attorneys were deceiving the court and requested sanctions and a contempt finding for all fraudulent acts.

On June 24, 2009, the court granted respondent's oral motion to strike petitioner's rule to show cause. The court then continued the matter to July 6, 2009, for a hearing on respondent's petition for rule to show cause.

On June 26, 2009, petitioner filed a "notice of appeal for interlocutory order" in which he indicated that he was appealing the court's June 4 and 24, 2009, orders. As an initial matter, we must determine whether the appellate court has jurisdiction over this appeal. *Gibson v. Belvidere National Bank and Trust Co.*, 326 Ill. App. 3d 45, 47-48 (2001).

A reviewing court's jurisdiction extends only to appeals from final judgments unless the appeal is within the scope of one of the exceptions established by our supreme court allowing appeals from interlocutory orders in certain circumstances. *In re Marriage of Waddick*, 373 Ill. App. 3d 703, 705 (2007). We, therefore, must first determine whether the orders appealed from are final.

In general, an order is final and appealable if it determines the merits of the parties' claims, such that the only remaining action is to proceed with the execution of the judgment. *In re*

Estate of French, 166 Ill. 2d 95, 101 (1995). Pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010), if multiple claims are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all the claims if the trial court has made an express written finding that there is no just reason for delaying either enforcement and/or appeal.

Here, defendant appeals from the circuit court's orders entered on June 4 and 24, 2009, which we will review to determine if this court has jurisdiction. The June 4, 2009, order denied petitioner's motion for disqualification of judge. A denial of a motion for substitution of judge is not a final order, but, rather, is an interlocutory order in a pending case which is not appealable because it is reviewable on appeal from the final order. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2004). Thus, even if the trial court had included language in the June 4, 2009, order that there was no just reason to delay appeal or enforcement of it, that language would not have conferred jurisdiction on this court to review that order. *In re Nettleton*, 348 Ill. App. 3d at 969.

We also find that the court's June 24, 2009, order striking petitioner's rule to show cause due to fraud and misrepresentations to the court and continuing the date for the hearing on respondent's rule to show cause was not a final order. To be final, a judgment must dispose of or terminate the litigation or some

definite part thereof, so that, if affirmed, the only thing that remains is to proceed with execution of the judgment. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 793 (2000). Petitioner's rule to show cause complained of the attorneys' allegedly fraudulent conduct in his case and did not deal with any issue pertaining to the pending child support dispute. Thus, the court's order striking petitioner's petition did not dispose of or terminate a definite part of the litigation involved in the child support dispute. Moreover, the order did not contain the express language of Rule 304(a), and the trial court also did not certify petitioner's contentions for a permissive appeal pursuant to Supreme Court Rule 308 (eff. Feb. 26, 2010). *In re Nettleton*, 348 Ill. App. 3d at 969.

Having determined that the June 4, and 24, 2009 orders appealed from are not final, we must next determine whether the interlocutory orders involve matters that can be appealed as a matter of right. Pursuant to Supreme Court Rule 307(a) (eff. Feb. 26, 2010), an appeal may be taken from certain interlocutory orders if the order involves certain injunction issues; appointment or refusal to appoint a receiver or sequestrator and giving or refusing to give powers or property to them; placing or refusing to place a mortgagee in possession of a mortgaged premises; appointing or refusing to appoint an officer of a bank or other financial institution, or granting or refusing to grant custody of the

institution or requiring turnover of its assets; terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings; or certain issues raised in eminent domain cases.

Here, we have a postdissolution child support dispute, and the two interlocutory orders petitioner appeals from involve the court denying his motion for substitution of judge, and granting respondent's oral motion to strike petitioner's rule to show cause and setting the case for a hearing on respondent's rule to show cause for July 6, 2009. These orders do not involve matters that can be appealed as a matter of right under Rule 307(a). Accordingly, the appellate court does not have jurisdiction to review this appeal. *In re Waddick*, 373 Ill. App. 3d at 705.

In light of the foregoing, we dismiss this appeal for lack of jurisdiction.

Appeal dismissed.