SIXTH DIVISION
September 2, 2016

No. 1-15-2145

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS, a Body Corporate and Politic of the State of Illinois, Plaintiff and Counterdefendant-Appellant, v. CONTINENTAL COMMUNITY BANK AND TRUST COMPANY, an Illinois Corporation, as Successor to Maywood-Proviso State Bank, as Trustee Under Trust Agreement Dated November 1, 1983, Known as Trust No. 6173; JACK RIVO; and UNKNOWN OTHERS, Defendants (Jack Rivo, Defendant and Counterplaintiff-Appellee).	)	Appeal from the Circuit Court of Cook County. Nos. 15 L 50227 00 L 050726 (consolidated) Honorable Kay M. Hanlon and Eileen O'Neill Burke, Judges Presiding.

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

ORDER

¶ 1 *Held*: Summary judgment in favor of defendant in this condemnation suit is affirmed, where plaintiff did not pass valid ordinance authorizing condemnation of defendant's property.

¶ 2 Plaintiff and counterdefendant-appellant, The Forest Preserve District Of Cook County, Illinois, a body corporate and politic of the State of Illinois (the District), filed this suit seeking to utilize its power of eminent domain to acquire certain property held in trust by defendant,

Continental Community Bank And Trust Company, an Illinois corporation, as successor to Maywood-Proviso State Bank, as Trustee under Trust Agreement dated November 1, 1983, known as Trust No. 6173 (the Trustee), for the benefit of defendant and counterplantiff-appellee, Jack Rivo (collectively, defendants). After concluding that the District never passed a valid ordinance authorizing the acquisition of the property in question, the circuit court granted summary judgment in favor of Mr. Rivo. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case has been the subject of two prior appeals to this court. See *Forest Preserve District of Cook County v. Continental Community Bank & Trust Co*., No. 1-12-2211 (Sept. 6, 2012) (appeal dismissed for lack of jurisdiction); *Forest Preserve District of Cook County v. Continental Community Bank & Trust Co*., 2014 IL App (1st) 131652-U (appeal dismissed for lack of jurisdiction). In addition, the same or similar issues have been previously addressed by this court with respect to the District's attempt to condemn other properties. See *Forest Preserve District of Cook County v. First National Bank of Evergreen Park*, Nos. 1-04-1536 and 1-04-3777 (consolidated) (2008) (unpublished order under Supreme Court Rule 23); *Forest Preserve District of Cook County. v. Chicago Title & Trust Co.*, 2015 IL App (1st) 131925. We, therefore, restate here only those facts necessary to our resolution of this appeal.

¶ 5 This dispute dates to the 1990's, when the District's board of commissioners (board) began considering connecting two of the District's large recreational properties; Tampier Lake Preserve, and McGinnis Slough, which would be accomplished by purchasing 285 acres of mostly undeveloped property separating those areas. The preserve, the slough, and the proposed green belt between them were located in southwest Cook County, near Orland Park, Illinois. In May 1991, by a 17 to 0 vote, the board purportedly approved an ordinance that enabled the board

to create the green belt. The District then notified the affected property owners, applied for grant money from the State of Illinois Department of Conservation, and borrowed money to finance the property acquisitions.

¶ 6 In 2000, the District began filing eminent domain actions, including this suit in which the District sought to acquire 12.5 acres that are held by the Trustee for the benefit of Mr. Rivo. In 2003, defendants agreed to give the District fee simple title to that property in exchange for $1.4 million, the circuit court entered an agreed judgment order to that effect on March 6, 2003, and defendants subsequently received the funds.

¶ 7 Other property owners who had not entered into settlement agreements opposed the condemnation of their properties. They argued, successfully, that the District never had legal authority to create the green belt because the board had not properly adopted the necessary ordinance. See, e.g., *Forest Preserve District*, Nos. 1-04-1536 and 1-04-3777 (consolidated) (2008) (unpublished order under Supreme Court Rule 23). On October 27, 2003—in light of the success these other property owners had in opposing condemnation of their properties—defendants petitioned for relief from the agreed judgment order entered in this matter, pursuant to section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (2004). The parties ultimately filed cross-motions for summary judgment on this petition.

¶ 8 In an order entered on February 15, 2012, the circuit court granted summary judgment in favor of defendants, denied the District's cross-motion, and vacated the agreed judgment order. The order reflected the circuit court's reasoning that, because the necessary ordinance was not properly adopted (as this court had determined in the *Evergreen Park* decision), the circuit court could not "grant the relief of condemnation and therefore the Court lacked subject matter jurisdiction." The court also reasoned that the court's lack of subject matter jurisdiction meant

that defendants' unconditional release of claims against the District and the agreed order were "invalid." The court further found that the lack of subject matter jurisdiction was a "meritorious defense" to the condemnation settlement, which was the first of the three prongs required for a successful section 2-1401 petition. See *Smith v. Airoom*, 114 Ill. 2d 209, 220-21 (1986) (noting that a section 2-1401 petitioner must show a meritorious defense, due diligence in presenting the defense, and due diligence in filing the petition). The court resolved the due diligence prongs of the section 2-1401 petition by concluding that "any delay by [Mr. Rivo] can be excused based upon [his] reliance on the District's misrepresentations [that it did have authority to proceed with condemnation]."

¶ 9 The District sought reconsideration of the ruling, and when that request was denied, the District filed its first notice of appeal in this matter. In that 2012 appeal, the District cited Illinois Supreme Court Rule 301 (Ill. S. Ct. R. 301 (eff. Feb 1, 1994)), and 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. Oct. 1, 2011)), as the basis for appellate jurisdiction over the circuit court order that granted summary judgment to defendants on their petition for relief from the agreed judgment.

¶ 10 However, prior to the District's appeal, the Trustee had filed a petition for attorney fees in the circuit court. Before *this* court, the Trustee therefore filed a motion to dismiss the District's first appeal, arguing that it was premature while the fee petition remained pending in the circuit court. The District did not respond to the Trustee's motion in this court, and another panel of this appellate court granted the Trustee's motion to dismiss the appeal. *Forest Preserve District*, No. 1-12-2211 (Sept. 6, 2012) (appeal dismissed for lack of jurisdiction).

¶ 11 When the parties returned to the circuit court, the defendants supplemented their attorney fee request with a detailed accounting totaling $93,000 owed to attorney Gregory A. Bedell, who

had assisted the Trustee between 2003 and 2012 in the section 2-1401 proceedings. In addition, Mr. Rivo filed counterclaims stemming from the condemnation proceedings, including allegations that he was entitled to millions of dollars in damages and to reacquire title from the District. Mr. Rivo also filed a motion for summary judgment on the District's complaint for condemnation.

¶ 12 In response, the District filed a combined motion which sought to vacate the prior ruling granting the Trustee's section 2-1401 petition to strike Mr. Rivo's counterclaims, and to deny Mr. Rivo's motion for summary judgment in this condemnation action.

¶ 13 These motions were heard in 2013. In a three-part order entered on April 18, 2013, the circuit court essentially refused to delve into the 2012 ruling and stated that if the District "was so assured of the incorrectness of the previous ruling on the 2-1401 petition, the plaintiff should have raised those arguments through an appeal." Noting, however, that "Plaintiff's first appeal was dismissed and Plaintiff never filed another appeal." The court deemed any objection to the prior ruling to have been waived and she refused to "re-litigate issues which have already been properly decided in previous proceedings." The court then denied the district's combined motion to vacate the prior ruling granting the Trustee's section 2-1401 petition and to strike Mr. Rivo's counterclaims, and granted Mr. Rivo's motion for summary judgment on the condemnation complaint. The ruling on the motion for summary judgment was entered after the court concluded that the District could not prove an element of its case because it never passed a valid ordinance authorizing condemnation of Mr. Rivo's property.

¶ 14 The District filed its second notice of appeal in this matter on May 16, 2013. However, this court once again dismissed the District's appeal for lack of appellate jurisdiction. *Forest Preserve District*, 2014 IL App (1st) 131652-U, ¶ 10. Upon remand, Mr. Rivo filed a motion

seeking a finding pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2015)), while the District filed a motion seeking reconsideration of the grant of summary judgment in favor of Mr. Rivo on its condemnation complaint. In an order entered on June 26, 2015, the circuit court denied the District's motion and granted Mr. Rivo's motion, finding that there was no just reason to delay appeal of "[t]he 4-8-13 order granting summary judgment." On July 27, 2015, the District filed a notice of appeal pursuant to Rule 304(a) in which it sought to "reverse the summary judgment order entered April 18, 2013, appealable pursuant to the court's June 26, 2015 Rule 304(a) determination."

¶ 15 II. ANALYSIS

¶ 16 On appeal, the District contends that the circuit court improperly granted Mr. Rivo's motion for summary judgment on the District's condemnation complaint. However, all of the arguments the District has made on appeal effectively challenge the circuit court's order granting the Trustee's section 2-1401 petition to vacate the original agreed judgment order, and/or refusal to reconsider that order. For the following reasons, we find that the District cannot attack any of the various rulings on the 2-1401 petition, and that the circuit court properly granted summary judgment in favor of Mr. Rivo on the condemnation complaint.

A. Jurisdiction

¶ 17 We first address the scope of our jurisdiction over the issues raised by the District on appeal.

¶ 18 Except as specifically provided by the 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) *et seq.*; *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).

¶ 19 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. R. 304(a) (eff. Jan. 1, 2015).

¶ 20 Where the circuit court's Rule 304(a) finding is made only with respect to some claims but not others, the reviewing court lacks jurisdiction over the claims with respect to which the trial court did not issue a Rule 304(a) finding. *Wofford v. Tracy*, 2015 IL App (2d) 141220, ¶ 23. Moreover, "[a] notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011).

¶ 21 As noted above, in its April 18, 2013, order, the circuit court both denied the District's combined motion seeking to vacate the prior ruling granting the Trustee's section 2-1401 petition and strike Mr. Rivo's counterclaims, and also granted Mr. Rivo's motion for summary judgment on the condemnation complaint. While the District has ostensibly appealed from the latter

ruling, its arguments on appeal are exclusively focused upon the circuit court's original order granting the section 2-1401 petition and denying the District's various attempts to have that order reconsidered or vacated. For any number of reasons, we have no jurisdiction to consider such arguments.

¶ 22 First, the circuit court only made a Rule 304(a) finding with respect to that portion of "[t]he 4-8-13 order granting summary judgment." In addition, the District's notice of appeal was specifically brought pursuant to Rule 304(a) and sought only to "reverse the summary judgment order entered April 18, 2013, appealable pursuant to the court's June 26, 2015[,] Rule 304(a) determination." Under the above cited authority, this court therefore only has jurisdiction over the circuit court's ruling on Mr. Rivo's motion for summary judgment.

¶ 23 Furthermore, for this court to now consider the propriety of the circuit court's February 5, 2012, order granting the section 2-1401 petition, or any of the subsequent orders rejecting the District's attempts to have that order overturned, would run counter to long-standing precedent. As our supreme court has explained:

> "Section 2–1401 of the Code of Civil Procedure [citation] authorizes a party to seek relief from a final judgment, such as a default judgment, when brought more than 30 days after judgment has been entered. [Citation.] The filing of a section 2–1401 petition is considered a new proceeding, not a continuation of the old one. [Citations.] Thus, a circuit court's ruling on such a petition is deemed a final order and provision has been made for immediate review of these orders in Supreme Court Rule 304(b)(3), which states that appeal may be taken from 'a judgment or order granting or denying any of the relief prayed in a petition under section 2–1401 of the Code of

> Civil Procedure' [Citation.]." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 101-02 (2002).

Furthermore, "[w]hen a party has failed to take a timely appeal from an order that is final for purposes of appeal, the appellate court is without jurisdiction to consider the propriety of that earlier final order in an appeal from a subsequent order, even in the same case. [Citation.] When an appeal has not been perfected, the judgment is *res judicata*. *Busey Bank v. Salyards*, 304 Ill. App. 3d 214, 218 (1999)

¶ 24 Here, while the District did attempt to appeal from the original order granting the section 2-1401 petition, it failed to appeal pursuant to Rule 304(b)(3) and its appeal was dismissed. *Forest Preserve District*, No. 1-12-2211 (Sept. 6, 2012) (appeal dismissed for lack of jurisdiction). The District's subsequent failure to perfect a timely, valid appeal from the circuit court's order granting the section 2-1401 petition thus deprives this court of jurisdiction to review that ruling in the context of this appeal. Indeed, it renders that ruling *res judicata*.

¶ 25 B. Summary Judgment

¶ 26 Having concluded that we only have jurisdiction to review the portion of the April 18, 2013, order granting Mr. Rivo's motion for summary judgment on the District's condemnation complaint, we now turn to that issue.

¶ 27 Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005(c) (West 2014). If the plaintiff fails to establish an element of the cause of action, summary judgment for the defendant is proper. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114 (1995). An order granting a motion for summary judgment is subject to a *de novo* standard of review. *Id.*

¶ 28 As this court has previously recognized, "[t]he law is clear that a public body may not exercise the power of eminent domain unless it has manifested its determination to exercise that power by some official action of record. [Citations.] [Indeed], the supreme court described an enabling ordinance as the foundation of an eminent domain action." *Illinois State Toll Highway Authority v. DiBenedetto*, 275 Ill. App. 3d 400, 405 (1995). Here, the circuit court granted summary judgment in favor of Mr. Rivo after concluding that, because no valid ordinance had been passed authorizing condemnation of Mr. Rivo's property, the District could not establish an essential element of its case.

¶ 29 As noted above, the circuit court previously came to this same conclusion in granting the section 2-1401 petition, a conclusion that is now *res judicata*. Moreover, the District has made no argument on appeal that a valid ordinance was ever passed, and has therefore forfeited this issue. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued on appeal are forfeited). *Res judicata* and forfeiture aside, the trial court's conclusion was clearly correct. See *Forest Preserve District*, 2015 IL App (1st) 131925, ¶ 84 (where, in an appeal involving a challenge raised by another property owner to the condemnation of their property pursuant to the same ordinance at issue here, this court concluded that "the May 1991 ordinance was unquestionably invalid"). We, therefore, find that the circuit court properly granted summary judgment in favor of Mr. Rivo on the District's complaint for condemnation.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 32 Affirmed.