

No. 1-19-1853

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

JOHNNIE M. ANDERSON, a Disabled Adult)	Appeal from the
)	Circuit Court of
(Robert L. Anderson,)	Cook County, Illinois.
Petitioner-Appellant,)	
)	No. 18 P 6313
v.)	
)	Honorable
Ivan Durant Clisby,)	Aicha Marie MacCarthy,
Respondent-Appellee).)	Judge Presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Walker and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* We lacked jurisdiction over appeal from order dismissing plaintiff's suit without prejudice.

¶ 2 Petitioner Robert Anderson (Robert) brought suit against his adult stepson, respondent Ivan Clisby (Clisby), alleging various grievances stemming, in part, from powers of attorney (POAs) allegedly given to Clisby by Johnnie Anderson (Johnnie) (Robert's wife and Clisby's mother). On Clisby's motion, the trial court dismissed Robert's suit without prejudice. Robert

now appeals. Because a dismissal without prejudice is not a final and appealable order, we dismiss the appeal.

¶ 3

BACKGROUND

¶ 4

On July 12, 2019, Robert filed his *pro se* amended verified complaint, styled as a petition "to: review Ivan D... Clisby's POA, et. seq. of Johnnie M. Anderson" [*sic*]. He alleged that Johnnie was 89 years old, had advanced dementia, and required around-the-clock care. Clisby, who was over 60 years old, claimed that Johnnie had given him POAs for property and healthcare, copies of which he had filed with the court. However, Clisby refused to divulge to Robert any details about Johnnie's income and expenditures.

¶ 5

Robert further alleged that Johnnie used to reside at his house, where the rest of the family helped take care of her, and where she received visits from her friends and grandchildren that "made her spirit shine." Sometime prior to the filing of the complaint, Clisby brought Johnnie to live with him, after which Johnnie's condition deteriorated to a "vegetable state" in which she would not talk or interact with anyone but Clisby.

¶ 6

Robert also alleged a plethora of other grievances against Clisby, including: Clisby left food and silverware "all over" Robert's house; he broke Robert's living room blinds and toilet; he called Robert and other family members "stupid and dumb" and threatened to "kick [the] ass" of his two sisters; he yelled at the family housekeeper; in winter, he would park in Robert's shoveled driveway instead of leaving that parking space for someone elderly or with small children; and, on one occasion, Clisby's friend James kissed Johnnie without Robert's permission.

¶ 7

Robert sought relief in three counts. In count I, "Review/replace Ivan D. Clisby as Johnnie Anderson's POA," he suggested that the court "may want to provide Ivan Clisby with

some corrective requirements" regarding his conduct as Johnnie's agent, though he did not specify what those "corrective requirements" would be. He also sought a declaration that Clisby breached his fiduciary duties to Johnnie by not acting in her best interests, and he requested that the court determine whether Clisby was mentally competent to serve as Johnnie's agent. In count II, "Ivan Clisby medical POA of his mother is inadequate" [*sic*], Robert stated that Clisby's healthcare POA "does not *seem* to meet the legal standard" (emphasis in original), although he did not identify any particular legal deficiencies in the document. He therefore "suggested" that Clisby "be permitted to petition the court for a POA." Finally, in count III, "Ivan Clisby must be required to give a full accounting," Robert sought to obtain an accounting of Clisby's management of Johnnie's property, alleging that Clisby "may have" appropriated Johnnie's funds for his own personal benefit.

¶ 8 Clisby moved to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/29-615 (West 2016)), arguing that Robert's amended complaint "contains no counts stating any legally recognized claim upon which recovery may be granted." On August 14, 2019, the trial court issued an order stating: "This matter is dismissed without prejudice, over plaintiff's objection." It is from this order that Robert now appeals.

¶ 9 ANALYSIS

¶ 10 Although Clisby failed to file an appellate brief, we will consider the appeal on Robert's brief alone. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 11 Before we reach the merits of this appeal, however, we have an independent duty to confirm our jurisdiction and dismiss the appeal if jurisdiction is lacking. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 22. It is well established that, except as provided by statute or

supreme court rule, a court of review lacks jurisdiction to review nonfinal judgments. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) ("Every *final* judgment of a circuit court in a civil case is appealable as of right" (emphasis added)); *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9.

¶ 12 Here, Robert appeals from the trial court's order dismissing his complaint "without prejudice." But it is well established that "[a]n order dismissing an action 'without prejudice' is not deemed final for purposes of appeal." *Paul H. Schwendener, Inc. v. Jupiter Electric Co.*, 358 Ill. App. 3d 65, 73 (2005) (court lacked jurisdiction to review appeal from order dismissing count of plaintiff's complaint without prejudice). Although substance, rather than form, ultimately dictates whether a dismissal order constitutes a final adjudication (see *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 567-68 (1999)), the inclusion of the words "without prejudice" indicate clearly that the trial court intended its dismissal order not to be final. *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982); *Pfaff v. Chrysler Corp.*, 155 Ill. 2d 35, 63 (1992), overruled on other grounds by *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010). Nor do we find any contrary indications in the record.

¶ 13 CONCLUSION

¶ 14 Accordingly, we dismiss this appeal for lack of jurisdiction.

¶ 15 Appeal dismissed.