



Appellate Practice Corner

Irina Dmitrieva
HeplerBroom LLC, Chicago

Appellate Court Shows Reluctance to Exercise Jurisdiction over Rule 304(a) Orders in FOIA and Domestic Relations Cases

In recent rulings, the Illinois appellate courts reiterated that they are not obligated to review an order in a pending proceeding just because the order includes a trial court's Rule 304(a) finding. Supreme Court Rule 304(a) provides, in pertinent part,

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 decisions discussed below, the appellate courts did not hesitate to decline jurisdiction over Rule 304(a) orders deemed to be non-final, if there were reasons for delaying an appeal, or where a trial judge failed to include the “magic words.”

Zillow, Inc. v. Moultrie County

In *Zillow, Inc., v. Moultrie County*, 2025 IL App (5th) 240307-U, the Illinois Appellate Court Fifth District dismissed a FOIA appeal for lack of jurisdiction, despite the presence of the Rule 304(a) finding, because a plaintiff's petition for statutory attorneys' fees remained pending in the trial court. In that case, Zillow filed a FOIA request with Moultrie County, seeking a complete copy of the county's 2020 assessment files. *Zillow*, 2025 IL App (5th) 240307-U, ¶ 4. The county produced some records but requested a \$2,500 fee for the records it had to obtain from Vanguard Appraisals, Inc., a third-party vendor that maintained an online database of the county's assessment and appraisal data. *Id.* ¶ 5; *see also* www.illinoiscourts.gov/courts/appellate-court/oral-argument-audio. After a bench trial, the court ordered the county to produce all requested information. *Id.* ¶ 6. It also found that Vanguard Appraisals failed to establish that the requested records included proprietary information that was exempt from disclosure. *Id.* The court awarded Zillow reasonable attorney fees but deferred its decision on the amount of those fees and on whether civil penalties should be awarded for the county's alleged willful non-compliance with FOIA. *Id.* To make its order immediately appealable, the court found that “there [was] no just reason for delaying either enforcement or appeal or both.” *Id.* ¶ 9.

On review, the parties were in agreement that appellate jurisdiction was proper pursuant to Rule 304(a). *See* www.illinoiscourts.gov/courts/appellate-court/oral-argument-audio. This did not stop the Fifth District from raising the jurisdictional issue *sua sponte* during oral argument. *Id.* During oral argument, the Fifth District expressed its belief that a FOIA action involves a single claim that has three components—an underlying FOIA request, a request for statutory attorneys' fees, and a request for civil penalties. Consequently, all three components must be addressed at the same time

to avoid a possibility for a second appeal. *Id.* The parties, on the other hand, urged the appellate court to address the merits of the underlying FOIA ruling, for purposes of judicial economy. *Id.*

After allowing supplemental briefing on the question of jurisdiction, the Fifth District issued a Rule 23 order in which it declined to exercise jurisdiction over the FOIA appeal. *Zillow*, 2025 IL App (5th) 240307-U, ¶ 18. The court explained that “Rule 304(a) does not allow a trial court to confer appellate jurisdiction by simply employing the Rule 304(a) language that there is no just reason to delay enforcement or appeal.” *Id.* The court further explained that, by its terms, Rule 304(a) applies only to final orders. Hence, if an order is not final, the inclusion of the Rule 304(a) language would not confer appellate jurisdiction. *Id.* ¶ 12. Additionally, the Fifth District stressed that, in determining whether appellate jurisdiction lies under Rule 304(a), courts consider whether there is any just reason to delay an appeal of that order. *Id.* ¶ 13. In assessing whether there is any just reason for delaying the appeal, courts consider the following factors:

(1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the [trial] court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a set-off against the judgment sought to be made [appealable]; [and] (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Id. ¶ 14.

Applying these factors, the Fifth District concluded that “there [were] just reasons for delaying the appeal.” *Id.* ¶ 15. The court explained that, while the trial court ordered production of the records, it deferred decision on the amount of attorneys’ fees and the propriety of a civil penalty. *Zillow*, 2025 IL App (5th) 240307-U, ¶ 16. The court reasoned that, in ruling on these issues, the trial court was likely to address the same issues of fact and law that were germane to its production order. *Id.* Consequently, “there [was] a possibility of a second appeal in which this court would be required to review the same set of operative facts as those present herein.” *Id.* Accordingly, the Fifth District concluded that appellate review of the FOIA order was premature and that it “would further delay a decision on the remaining remedies, waste judicial resources, and create additional expenses for the parties.” *Id.*

To put the Fifth District’s ruling in perspective, it is not uncommon for FOIA rulings to be appealed before a trial court addresses a plaintiff’s petition for statutory attorneys’ fees and penalties. If an appellate court overturns a FOIA production order, then there is no need for a trial court to address attorneys’ fees and statutory penalties.

For instance, in *Sun-Times v. Chicago Transit Auth.*, 2021 IL App (1st) 192028, ¶ 27, the Chicago Transit Authority used a Rule 304(a) finding to successfully appeal an order directing it to produce surveillance video from its train stations. The Illinois Appellate Court First District agreed with the CTA and ruled that the video footage was exempt from disclosure pursuant to a FOIA exemption for security measures. *Sun-Times*, 2021 IL App (1st) 192028, ¶ 51.

Similarly, in *King v. Cook County Health & Hospitals System*, 2020 IL App (1st) 190925, ¶ 8, Cook County Health and Hospitals System used a Rule 304(a) finding to appeal a trial court order directing it to disclose the zip codes of mental health recipients in the Cook County jail. The First District ruled that this information was exempt from disclosure under the Mental Health and Developmental Disabilities Confidentiality Act and federal regulations implementing HIPAA. *King*, 2020 IL App (1st) 190925, ¶ 46. Consequently, the Fifth District’s reluctance in *Zillow, Inc. v. Moultrie County* to address the merits of a FOIA production order until the trial court also awards attorneys’ fees stands in sharp contrast to the First District’s approach.

Rule 304(a) Findings Held Improper in Domestic Relations Cases

Another area of law where the appellate courts showed reluctance to accept Rule 304(a) findings is domestic relations. In *In re Marriage of Tener & Walter*, 2024 IL App (1st) 220890, ¶ 24, the First District dismissed an appeal for lack of jurisdiction, despite the trial court's Rule 304(a) finding. In that case, the husband asked for a wife's mental evaluation, which found her "delusional" and "extremely paranoid." *In re Marriage of Tener & Walter*, 2024 IL App (1st) 220890, ¶ 3. The court appointed her a guardian *ad litem* and ordered the guardian *ad litem* to initiate guardianship proceedings in the probate court. *Id.* ¶¶ 3-4. At the conclusion of the probate proceedings, the guardian *ad litem* and the two law firms she retained petitioned the domestic relations court for an award of attorneys' fees and costs. *Id.* ¶ 6. The court granted their request but stated that there was "no just reason staying enforcement of this Judgment." *Id.*

On review, the First District ruled that the trial court abused its discretion by making a Rule 304(a) finding because Rule 304(a) "governs appeals from actions involving multiple claims," while "a petition for dissolution of marriage advances a single claim: the parties' request for an order dissolving their marriage." *Id.* ¶ 18. The court explained that other issues, such as interim attorney fee awards, are "ancillary to the cause of action and do not represent separate, unrelated claims." *Id.* The First District further explained that "[c]ases involving dissolution of marriage proceedings are inherently more problematic upon appellate review due to the large number of separate issues that are determined in a single proceeding because all of these issues are not decided at the same time." *In re Marriage of Tener & Walter*, 2024 IL App (1st) 220890, ¶ 18 (internal citations omitted). For these reasons, "Illinois courts are hesitant to review orders entered prior to the final dissolution judgment." *Id.* The court concluded that, "[t]he sound policy of resolving all matters incident to dissolution in a single judgment should not be circumvented by the mere inclusion of Rule 304(a) language." *Id.* ¶ 22 (internal citations omitted).

In yet another case involving domestic relations, the First District reminded litigants the importance of including the "magic words" in the Rule 304(a) order. In *Stadtler v. Corley*, 2024 IL App (1st) 240040-U, ¶ 4, a petitioner sought to establish paternity of her two minor children and to set child support. Once the respondent's paternity was established, he requested to change the children's last names to his and to correct their birth certificates accordingly. *Stadtler*, 2024 IL App (1st), ¶ 4. The court granted his motion, based on the court's belief that "children should have the same name as their biological father." *Id.* ¶ 8. At petitioner's request, however, the court added that, "[t]his is a final and appealable order," to allow for an immediate appeal of the name change order. *Id.* ¶ 10.

On review, the First District dismissed the appeal for lack of jurisdiction on the grounds that the trial court's statement was insufficient to invoke Rule 304(a). *Id.* ¶¶ 21, 23. The First District explained: "a circuit court's declaration that an order is 'final and appealable,' without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates." *Id.* ¶ 17 (internal citations omitted). The court continued that, absent some indication from the record that the court intended to invoke Rule 304(a), the trial court's declaration that its order was "final and appealable" amounted "to nothing more than a non-binding interpretation." *Id.* ¶ 18. "Since there was no reference to immediate appealability, the justness of delay, or Rule 304(a) itself in the order, language that it was 'final and appealable' was insufficient to confer jurisdiction pursuant to Rule 304(a)." *Stadtler*, 2024 IL App (1st), ¶ 18.

Practice Tips



Before requesting a Rule 304(a) finding from a trial court, counsel should be cognizant that, in domestic relations cases, the appellate court may be reluctant to accept jurisdiction over an interim order, despite the presence of the Rule 304(a) language. Also, in FOIA cases—at least in the Fifth District—parties may be wise to obtain a trial court’s ruling on the amount of statutory attorneys’ fees and penalties, if any, before appealing the merits of the FOIA order.

About the Author

Irina Dmitrieva is a partner with *HeplerBroom, LLC*. She focuses her practice on appellate litigation and critical trial motions. Irina has represented both government entities and private clients in federal and state appellate courts, including the Illinois Supreme Court, Illinois Appellate Court, and the U.S. Court of Appeals for the Seventh Circuit. Prior to joining HeplerBroom LLC, she handled all appeals on behalf of the Chicago Transit Authority.

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