2019 IL App (2d) 190320-U
No. 2-19-0320
Order filed June 12, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC.,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellees,	)	
v.	)	No. 18-CH-427
VILLAGE OF DEERFIELD,	)	Honorable Luis A. Berrones,
Defendant-Appellant.	)	Judge, Presiding.

GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER III,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellees,	)	
v.	)	No. 18-CH-498
VILLAGE OF DEERFIELD and HARRIET ROSENTHAL, in her capacity as Mayor of the Village of Deerfield,	)	Honorable Luis A. Berrones,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The appeal in these consolidated cases was dismissed for lack of jurisdiction. Supreme Court Rule 307 did not allow for appeals from permanent injunctions. There were claims still pending in the trial court in one of the consolidated actions, and the trial court never made Supreme Court Rule 304(a) findings in either of the actions. Although one set of plaintiffs mentioned the possibility that an order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the appellants specifically rejected that possibility, and the record was not conducive to resolving the issue.

¶ 2 The plaintiffs in these consolidated actions challenge the Village of Deerfield's (Village) bans on "assault weapons" and "large-capacity magazines." The trial court entered permanent injunctions in both actions, prohibiting the Village from enforcing the bans. The Village and its mayor, Harriet Rosenthal, appeal pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). We dismiss the appeal for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On April 2, 2018, the Village passed ordinance No. O-18-06. Village of Deerfield Ordinance No. O-18-06 (approved Apr. 2, 2018). With limited exceptions, that ordinance banned specified assault weapons within municipal limits. Any person who already possessed such weapons or large-capacity magazines was given a 60-day grace period to either (1) remove, sell, or transfer those items from the limits of the Village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police.

¶ 5 On April 5, 2018, Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (the Easterday plaintiffs) filed a one-count complaint against the Village seeking injunctive and declaratory relief. They alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Firearm Concealed Carry Act (430 ILCS 66/90 (West 2018)). The Easterday action was designated in the trial court as case No. 18-CH-427.

¶ 6 On April 19, 2018, Guns Save Life, Inc. and John William Wombacher III (the Guns Save Life plaintiffs) filed a seven-count complaint against the Village and Rosenthal seeking injunctive and declaratory relief. The Guns Save Life plaintiffs alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (count II). Although the Guns Save Life plaintiffs maintained that the ordinance did not expressly ban large-capacity magazines (count III), to the extent that it did, they alleged that the ordinance was preempted by section 13.1 of the Firearm Owners Identification Card Act (count IV), section 90 of the Firearm Concealed Carry Act (also count IV), and section 2.1 of the Wildlife Code (count V). In count VI, the Guns Save Life plaintiffs alleged that the ordinance violated the takings clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 15). In count VII, they alleged that the ordinance violated the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)). The Guns Save Life action was designated in the trial court as No. 18-CH-498.

¶ 7 On June 12, 2018, the court entered a temporary restraining order in the Guns Save Life action. The court enjoined enforcement of "any provision of [ordinance No. O-18-06] relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield." The court reasoned, *inter alia*, that "[t]he language in the [Firearm Owners Identification Card Act] and the [Firearm Concealed Carry Act] show the State's intent to preempt and have exclusive authority to regulate the ownership, possession, and carrying of handguns and assault weapons." The court further found that ordinance No. O-18-06 did "not contain specific language prohibiting all large capacity magazines." To the extent that it did, however, the court ruled that such prohibition was preempted by the Firearm Concealed Carry Act. The court nevertheless rejected the Guns Save Life plaintiffs' contention that the

Wildlife Code preempted the ordinance. The court also disagreed with the Guns Save Life plaintiffs' arguments that the ordinance constituted an improper taking for purposes of the Illinois Constitution and the Eminent Domain Act.

¶ 8 By separate order entered on June 12, 2018, the court granted an identical temporary restraining order in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 9 On June 18, 2018, evidently in response to the court's determination that ordinance No. O-18-06 did not expressly ban large-capacity magazines, the Village passed ordinance No. O-18-19. Village of Deerfield Ordinance No. O-18-19 (approved June 18, 2018). That ordinance explicitly banned large-capacity magazines.

¶ 10 On July 27, 2018, the court consolidated the Easterday action and the Guns Save Life action "for all future proceedings."

¶ 11 On August 17, 2018, the Guns Save Life plaintiffs filed a six-count amended complaint challenging ordinances Nos. O-18-06 and O-18-19. They alleged that the ban on assault weapons was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (count II). They alleged that the ban on large-capacity magazines was preempted by section 13.1 of the Firearm Owners Identification Card Act (count III), section 90 of the Firearm Concealed Carry Act (also count III), and section 2.1 of the Wildlife Code (count IV). Count V alleged that the bans on assault weapons and large-capacity magazines violated the takings clause of the Illinois Constitution. Count VI alleged that the bans violated the Eminent Domain Act. That same day, the Guns Save Life plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction.

¶ 12 Also on August 17, 2018, the Easterday plaintiffs apparently filed both an amended complaint and a renewed motion for a preliminary injunction, neither of which are included in the supporting record.[1]

¶ 13 On October 12, 2018, the court apparently held an evidentiary hearing on the plaintiffs' respective requests for preliminary injunctive relief. Although the supporting record does not include any reports of proceedings or any order entered on October 12, it seems that the court may have reserved ruling on the plaintiffs' requests for preliminary injunctions.

¶ 14 On October 26, 2018, the Guns Save Life plaintiffs filed another motion for summary judgment. The Easterday plaintiffs purportedly filed a separate motion for summary judgment four days later, indicating that they would join the arguments made by the Guns Save Life plaintiffs. The supporting record does not contain the Easterday plaintiffs' motion for summary judgment.

¶ 15 On March 22, 2019, the court entered a permanent injunction in the Guns Save Life action. The court enjoined enforcement of "any provision of Ordinance No. O-18-06 and Ordinance No. O-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances." The court's rulings and rationale were consistent with its rulings and rationale in the June 12, 2018,

[1] The Easterday plaintiffs included a copy of their August 17, 2018, amended complaint in the appendix to their brief. They did not, however, file a supplemental supporting record in accordance with Supreme Court Rule 307(c) (eff. Nov. 1, 2017). "[I]t is well established that attachments to briefs which are not included as part of the record are not properly before the reviewing court and may not be considered to supplement the record." *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25.

temporary restraining orders. For example, the court again found that the ordinances were preempted by the Firearm Owners Identification Card Act and the Firearm Concealed Carry Act but not the Wildlife Code. The court also determined that genuine issues of material fact precluded summary judgment in favor of the Guns Save Life plaintiffs on their constitutional and statutory takings claims. The court set a status date for May 3, 2019.

¶ 16 Also on March 22, 2019, the court entered a separate order granting an identical permanent injunction in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 17 On April 22, 2019, the Village and Rosenthal filed a "Notice of Interlocutory Appeal" in this court. There is ambiguity as to whether the Village and Rosenthal meant to appeal *both* the March 22, 2019, order that was entered in the Guns Save Life action *and* the order of the same date that was entered in the Easterday action, or *just* the order that was entered in the Guns Save Life action.[2] The caption in the notice of appeal included both the Guns Save Life action and the Easterday action, and both sets of plaintiffs were designated as "Respondents-Appellees." However, the Village and Rosenthal asserted that they intended to appeal, pursuant to Supreme Court Rule 307(a) (eff. Nov. 1, 2017), "the March 22, 2019 permanent injunction issued by the Circuit Court of Lake County, which was memorialized in *a written order* on March 22, 2019." (Emphasis added.) The Village and Rosenthal did not attach a copy of any order to their notice of appeal, but instead indicated that "[a] copy of the court's March 22 *order* is contained in the accompanying supporting record." (Emphasis added.) As noted above, the supporting record contains a March 22, 2019, order that was entered in the Guns Save Life action and a separate order of the same day that was entered in the Easterday action.

[2] As mentioned above, Rosenthal was not a defendant in the Easterday action.

¶ 18 On April 25, 2019, the Village and Rosenthal filed an identical "Notice of Interlocutory Appeal" in the circuit court of Lake County. This time, adding to the confusion about which order or orders were subject to the appeal, the Village and Rosenthal attached a copy of the March 22, 2019, order that was entered in the Guns Save Life action. The Village and Rosenthal did not attach the order that was entered in the Easterday action.

¶ 19 II. ANALYSIS

¶ 20 A. Motions Taken With the Case

¶ 21 The Village and Rosenthal filed their notice of appeal on April 22, 2019—30 days after the entry of the March 22 orders—with the clerk of the *appellate court*. Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides that "[t]he notice of appeal must be filed with the clerk of the *circuit court*." (Emphasis added.) The Village and Rosenthal did not file their notice of appeal in the circuit court until April 25, 2019.

¶ 22 In their appellee's brief, the Guns Save Life plaintiffs argue that the failure to file a timely notice of appeal with the clerk of the circuit court deprived this court of jurisdiction. In support of their position, the Guns Save Life plaintiffs rely primarily on *First Bank v. Phillips*, 379 Ill. App. 3d 186 (2008) (appeal dismissed for lack of jurisdiction where a notice of appeal was filed in the appellate court on day 30 but the notice was not filed in the circuit court until one week later), and *Swinkle v. Illinois Civil Service Commission*, 387 Ill. App. 3d 806 (2009) (following *First Bank*).

¶ 23 In their reply brief, the Village and Rosenthal explain that, on the evening of April 22, 2019, their counsel e-filed the supporting record in the appellate court and then also "inadvertently" filed the notice of appeal in the appellate court "rather than opening a second electronic filing in the Circuit Court." According to the Village and Rosenthal, when their

counsel learned of his error the next morning, he "worked with the Clerk of the Appellate Court to correct it." Addressing the authority cited by the Guns Save Life plaintiffs, the Village and Rosenthal maintain that those cases failed to account for *Harrisburg-Raleigh Airport Authority v. Department of Revenue,* 126 Ill. 2d 326 (1989) (a notice of appeal that is mailed within 30 days of a final judgment will be deemed timely filed even though the circuit court receives that notice outside of the 30-day window), and *People v. White*, 333 Ill. App. 3d 777 (2002) (a notice of appeal that was mailed to the appellate court within the 30-day window was deemed timely filed, even though it was not stamped in the circuit court until a week and a half later). The Village and Rosenthal claim that *Harrisburg-Raleigh* and *White* "affirm the principle that a timely but erroneous filing in the appellate court does not divest the appellate court of jurisdiction."

¶ 24 On May 16, 2019, contemporaneously with the filing of their reply brief, the Village and Rosenthal filed a "Rule 303(d) motion for extension of time in certain circumstances." Supreme Court Rule 303(d) (eff. July 1, 2017) provides, in relevant portion:

> "On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing."

The Village and Rosenthal request in their motion that we enter an order "excusing the erroneous filing in this Court, accepting the Notice of Interlocutory Appeal as timely and establishing the jurisdiction of this Court." In addition to reiterating the arguments that they present in their reply brief, the Village and Rosenthal submit an affidavit from their counsel. He avers as follows. He prepared and filed the notice of appeal in the appellate court on April 22, 2019. That same

evening, he ensured that all parties were served with copies of the notice of appeal. In his haste to ensure that the notice of appeal was timely filed, he neglected to make sure that it was filed in the correct court. On the morning of April 23, 2019, he contacted an unnamed appellate court clerk and informed her of the error. The clerk informed him that "she would contact the Circuit Court of Lake County and apprise them [*sic*] of the appeal." He again spoke with the clerk in the appellate court on the afternoon of April 23, 2019, and she informed him that she had contacted the circuit court and "made them [*sic*] aware of the error." Based on his discussions with the clerk in the appellate court, he was under the impression that he need not take any further action as it pertained to the notice of appeal. He was then made aware that his understanding was incorrect, and he subsequently filed the notice of appeal with the circuit court on April 25, 2019.

¶ 25 The Guns Save Life plaintiffs object to the motion. They argue that the Village and Rosenthal failed to comply with Rule 303(d)'s requirement to submit a motion "accompanied by the proposed notice of appeal." Moreover, the Guns Save Life plaintiffs assert that opposing counsel acknowledged having realized his mistake on April 23, 2019, yet he "attempted to sweep the issue under the rug" by submitting an appellant's brief on April 29 with "a carefully worded Statement of Jurisdiction that said nothing about the matter." According to the Guns Save Life plaintiffs, the Village and Rosenthal may not invoke the grace of this court pursuant to Rule 303(d) when their counsel failed to transparently identify in the appellant's brief his clients' "novel" jurisdictional theory. The Guns Save Life plaintiffs further argue that opposing counsel's proffered reason for filing the notice of appeal in the wrong court—acting with too much haste—is a "flimsy excuse." According to the Guns Save Life plaintiffs, *First Bank* and its progeny are well-reasoned and ought to have more precedential value than the older cases that

the Village and Rosenthal cite. The Guns Save Life plaintiffs also contend that *White* is factually distinguishable.

¶ 26 On May 22, 2019, we ordered the Village's and Rosenthal's motion to be taken with the case.

¶ 27 Later that day, the Village and Rosenthal filed an "amended Rule 303(d) motion for extension of time in certain circumstances." Unlike their original motion, the amended motion is indeed accompanied by a proposed notice of appeal. The proposed notice of appeal is identical to the ones which were filed in the appellate court on April 22, 2019, and in the circuit court on April 25—except that it does not include the following sentence: "A copy of the court's March 22 order is contained in the accompanying supporting record." No copy of any court order is attached to the proposed notice of appeal accompanying the amended Rule 303(d) motion.

¶ 28 We did not receive any response to the amended Rule 303(d) motion. On June 3, 2019, we ordered the amended motion taken with the case.

¶ 29 Having considered the parties' respective arguments, we now grant the Village's and Rosenthal's amended Rule 303(d) motion, and we deny their original motion as moot. The amended motion was timely filed within 60 days of March 22, 2019. It appears that counsel made an honest mistake in his attempt to file a notice of appeal, albeit at the 1lth hour. See *Bank of Herrin v. Peoples Bank of Marion*, 105 Ill. 2d 305, 308 (1985) (the rule governing late notices of appeal encompasses "an honest mistake of counsel."). We have no reason to believe that the Village, Rosenthal, or their counsel recognized the potential jurisdictional ramifications of the mistake until the Guns Save Life plaintiffs raised the issue in their appellee's brief. Counsel is an officer of the court, and we will grant him the benefit of presuming that he did not mean to "sweep the issue under the rug."

¶ 30 We need not comment on any tension in the caselaw that the parties cite in support of their respective positions. Assuming that the Village's and Rosenthal's failure to file a notice of appeal in the correct court was initially an impediment to our jurisdiction, we have now removed that particular impediment by granting the amended Rule 303(d) motion. Neither *First Bank*, *Swinkle*, *Harrisburg-Raleigh*, nor *White* involved a motion for leave to file a late notice of appeal.

¶ 31 B. Remaining Jurisdictional Issues

¶ 32 Notwithstanding a valid notice of appeal, we are powerless to address the merits of the parties' dispute as to the propriety of the permanent injunctions. The Illinois Constitution establishes that the appellate court has jurisdiction over "final judgments" entered in the circuit courts, and it empowers our supreme court to enact rules providing for other types of appeals. Ill. Const. 1970, art. VI, § 6. "[A]bsent a supreme court rule, the appellate court is without jurisdiction to review judgments, orders, or decrees that are not final." *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22. Even if the Easterday plaintiffs had not flagged the following jurisdictional issues for us, we would still have an independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction were lacking. *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 12.

¶ 33 The Village and Rosenthal propose that we have jurisdiction pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). Presumably, they are relying on Rule 307(a)(1), which allows for appeals from *interlocutory* orders "granting, modifying, dissolving, or refusing to dissolve or modify an injunction." Both of the orders that the court entered on March 22, 2019, however, were permanent injunctions, not interlocutory orders. "[A] permanent injunction is a final order, appealable only pursuant to Supreme Court Rules 301 or 304." *Skolnick v. Altheimer & Gray*,

191 Ill. 2d 214, 222 (2000); see also *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416-17 (1991) ("Because [Rule 307] is addressed only to interlocutory orders, the order appealed from must not be in the nature of a permanent injunction. *** If an injunction is permanent in nature, it is a final order appealable only under Rules 301 or 304(a), if those rules are otherwise applicable."). Rule 307 thus does not give us jurisdiction over this appeal.

¶ 34 Although the March 22, 2019, order in the Guns Save Life action was a permanent injunction, there was plainly no "final judgment" in the action within the meaning of the Illinois Constitution and Supreme Court Rule 301 (eff. Feb. 1, 1994). A judgment is final where the trial court has determined the issues presented by the pleadings and fixed absolutely the parties' respective rights. See *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 504 (2009). The trial court found that genuine issues of material fact precluded summary judgment on the takings and Eminent Domain Act claims presented in counts V and VI of the Guns Save Life plaintiffs' amended complaint. It likewise appears that the court did not enter a final order with respect to counts II and IV of the amended complaint, which alleged preemption under the Wildlife Code. Although the court rejected the plaintiffs' legal theories presented in counts II and IV, the Village and Rosenthal did not file a cross-motion for summary judgment. The court set a status date for further proceedings. There was thus no final judgment entered in the Guns Save Life action that would have rendered the permanent injunction appealable pursuant to Supreme Court Rule 301.

¶ 35 We next look to Supreme Court Rule 304(a) (eff. Mar. 8, 2016) to see if we have jurisdiction. That rule 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."

Neither the March 22, 2019, order in the Guns Save Life action nor the separate order entered that day in the Easterday action contained Rule 304(a) language. That rule thus does not provide a basis for our jurisdiction.

¶ 36 The Easterday plaintiffs suggest that the court's March 22, 2019, order in their case was immediately appealable pursuant to Supreme Court Rule 301. According to the Easterday plaintiffs, although the two actions were consolidated in the trial court, they did not merge into a single action. Therefore, the Easterday plaintiffs propose, the judgment resolving all claims in their action was immediately appealable, even though there was no final judgment entered in the Guns Save Life action. From that premise, the Easterday plaintiffs then argue that the Village missed its opportunity to appeal the final order ("It is clear from all the circumstances surrounding this appeal that the final order of a permanent injunction in *Easterday* is not being, and has not been, appealed.").

¶ 37 In their reply brief, without any meaningful analysis, and without citing authority regarding the effects of consolidation, the Village and Rosenthal reject the possibility that there was a final judgment in the Easterday action. They continue erroneously to invoke Rule 307 as the basis for our jurisdiction, and they argue that the March 22, 2019, order in the Easterday action is indeed part of this purported interlocutory appeal.

¶ 38 As mentioned above, there is ambiguity as to whether the Village meant to include as part of this appeal the March 22, 2019, order that was entered in the Easterday action. We must construe the notice of appeal liberally and as a whole. *Henderson v. Lofts at Lake Arlington Towne Condominium Ass'n*, 2018 IL App (1st) 162744, ¶ 61. Given that all three versions of the

notice of appeal that the Village and Rosenthal filed designated the Easterday plaintiffs as "Respondents-Appellees" and purported to appeal from a permanent injunction entered on March 22, 2019, we conclude that the Village indeed attempted to appeal the permanent injunction that was entered in the Easterday action.

¶ 39 With that said, we cannot determine from the record before us whether the March 22, 2019, order in the Easterday action was appealable without a Rule 304(a) finding. Given that the Village and Rosenthal mistakenly pursued this appeal as an accelerated interlocutory matter, they filed a supporting record pursuant to Supreme Court Rule 328 (eff. July 1, 2017), rather than the more comprehensive record required by Rule 321 (eff. Feb. 1, 1994). The supporting record does not contain, for example, the Easterday plaintiffs' amended complaint or their motion for summary judgment. We therefore cannot independently verify that the March 22, 2019, order resolved all of these plaintiffs' claims.

¶ 40 That is not the only problem. The Easterday plaintiffs insist that the two actions did not merge, even though they were consolidated. The supporting record, however, does not allow us to determine which form of consolidation the trial court intended.

> "Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be

disposed of as one suit." *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008).

The first form of consolidation is not at issue here, as the trial court did not stay any proceedings. That leaves the second and third forms.

¶ 41 The difference between those forms can affect appellate jurisdiction. Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 781 (2010). In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. See *S.G.*, 401 Ill. App. 3d at 783; *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364-65 (1985). Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. See *S.G.*, 401 Ill. App. 3d at 781; *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996). In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. See *S.G.*, 401 Ill. App. 3d at 782; *Busch*, 385 Ill. App. 3d at 625; *Filos*, 285 Ill. App. 3d at 532. Other relevant considerations may include the wording of the consolidation order (*Busch*, 385 Ill. App. 3d at 625), whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases (*S.G.*, 401 Ill. App. 3d at 782-83).

¶ 42 The supporting record does not contain a motion for consolidation. Nor does the record contain any reports of proceedings. Thus, we have no way of knowing why the parties and/or the trial court believed that consolidation was appropriate or whether the court's intent was to merge the actions. The supporting record does contain the second page of a July 27, 2018, order

indicating that the Guns Save Life action was consolidated with the Easterday action "for all future proceedings." In some of their trial court memoranda, however, the Village and Rosenthal recounted that the court consolidated the actions on July 20, 2018. The supporting record does not contain a July 20 order, so this reinforces our concern that the court may have made relevant findings or comments that we do not have in front of us. Absent a complete record of the trial court proceedings, we lack sufficient information to determine whether the two actions merged or whether the order purportedly resolving all claims in the Easterday action was appealable without a Rule 304(a) finding. See *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25 ("Generally, in a direct appeal from the trial court, the transcript of the record must reveal the basis for the jurisdiction of the appellate court."); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) ("Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.").

¶ 43 In summary, Rule 307 does not allow for appeals from permanent injunctions. There are claims still pending in the trial court in the Guns Save Life action, and the trial court never made Rule 304(a) findings in either of the consolidated actions. Although the Easterday plaintiffs mention the possibility that the March 22, 2019, order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the Village and Rosenthal specifically reject that possibility, and the record is not conducive to resolving the issue. We thus discern no basis for our jurisdiction.

¶ 44 Irrespective of whether the two actions merged, Deerfield's and Rosenthal's appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield and Rosenthal may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the

Guns Save Life action). If the two actions did not merge, Deerfield and Rosenthal may not appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). We presume that, in either event, Deerfield and Rosenthal can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield and Rosenthal may invoke the saving provisions of Rule 303(a)(2). See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007). Under that rule, we may give effect to Deerfield's and Rosenthal's premature notice of appeal upon the resolution of all claims. Thus, if Deerfield and Rosenthal cannot file a timely notice of appeal, they may move within 21 days to establish our jurisdiction by supplementing the record to show that all claims have been resolved. Should Deerfield's and Rosenthal's motion be well founded, we may grant it, vacate this order, and proceed to the merits.

¶ 45 With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.) Again, if the two actions merged, we presume that Deerfield can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield may invoke Rule 303(a)(2) as outlined above.

¶ 46 III. CONCLUSION

¶ 47 For the forgoing reasons, we hereby dismiss this appeal for lack of jurisdiction.

¶ 48 Appeal dismissed.