Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW MCHUGH,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 22A04-0705-CV-264
	)	
REBECCA L. LOCKARD, CLARK COUNTY CASA, INC., NORMA CANTRELL, ERIC J. STUEDEMAN, LESLIE L. STUDEMAN, PERSPECTIVES PERSONAL COUNSELING, TAMARA PIERCE, and E. LEIGH KUHN,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE FLOYD CIRCUIT COURT
The Honorable J. Terrence Cody, Judge
Cause No. 22C01-0502-CT-100

December 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Matthew McHugh ("Father"), for himself and his minor daughter, filed a lawsuit for damages allegedly caused by the actions of Leslie Stuedemann ("Mother") and various other defendants during a custody dispute. One of the defendants is Rebecca Lockard, an attorney who represented Mother during part of the custody case. Father appeals the trial court's grant of summary judgment to Lockard. Concluding that the summary judgment order is an interlocutory order not appealable as of right and that Father did not take the necessary steps to have the order made final or certified for interlocutory appeal, we dismiss.

Facts and Procedural History

Father and Mother had a child out of wedlock in December 1998. Paternity was established in September 1999. Originally, the parties had joint legal custody and physical custody alternated every week. In March 2000, Father was awarded sole legal custody. Shortly thereafter, Mother made the first of several allegations that Father or members of his family were sexually abusing the daughter.

Lockard began representing the Clark County Office of Family and Children ("OFC") in October 1995. On October 2, 2002, Lockard entered an appearance for Mother in the custody case and filed a petition to modify custody. On September 27, 2002, the Clark County OFC opened an investigation of Mother because of her repeated molestation allegations. The investigation was closed on December 26, 2002, and no further action was taken. Lockard claimed she had no knowledge of the investigation.

On February 21, 2003, Mother, by counsel Lockard, sought and was granted an emergency ex parte order suspending Father's parenting time. At a hearing on February 27,

2003, the ex parte order was rescinded and Father was granted extra parenting time to make up for the time that was lost due to the order. Sometime in February 2003, Father contacted Lockard and asked if she represented the Clark County OFC.

On May 9, 2003, Father's attorney advised Lockard that the Clark County OFC had substantiated a charge of neglect against Mother for leaving the daughter home alone for an hour. On that same date, Lockard filed a motion to withdraw her appearance on behalf of Mother, citing a conflict of interest. On four occasions in May and June 2003, Father requested records from the Clark County OFC. The Clark County OFC contacted Lockard regarding the release of these records.

On September 16, 2003, Father filed a grievance against Lockard with the Indiana Disciplinary Commission. Ultimately, the grievance was dismissed by the Disciplinary Commission because "there is not reasonable cause to believe that [Lockard is] guilty of misconduct which would warrant disciplinary action." Appellant's Appendix at 312.

On February 18, 2005, Father filed his complaint against Stuedemann, Lockard, and several others. With respect to Lockard, he alleged counts of negligence, interference with custody, and intentional infliction of emotional distress, and sought punitive damages. On October 10, 2006, Lockard filed a motion for summary judgment. Following a hearing, the trial court took the summary judgment motion and response under advisement and on April 11, 2007, issued an order that reads:

> Come[s] now [Father], pro se. Comes now the Defendant, Rebecca L. Lockard, by Stanley E. Robinson, her attorney. On April 5, 2007, the Court conducted a hearing on the Motion for Summary Judgment filed by the Defendant, Rebecca L. Lockard, on October 10, 2006. Also present at the hearing were Lonnie T. Cooper, attorney for Clark County CASA, Inc. and

> Paul J. Bishop and Tera Rehmel, attorneys for Perspectives Personal Counseling and E. Leigh Kuhn.
>
> Having considered the arguments of Mr. Robinson and [Father], the pleadings, evidentiary designations, the memorandums of law and affidavits submitted by the Defendant, Rebecca L. Lockard, and [Father] in support of and against such motion, the Court finds that there does not exist a genuine issue of material fact and that the Defendant, Rebecca L. Lockard, is entitled to judgment as a matter of law.
>
> IT IS THEREFORE ORDERED that the Motion for Summary Judgment filed by Defendant, Rebecca L. Lockard, be and the same is hereby GRANTED.

Appellant's App. at 230. Father filed a notice of appeal on May 10, 2006.

Discussion and Decision

Although jurisdiction was not raised by Lockard as an issue in her appellee's brief,[1] it is the duty of this court to determine whether it has jurisdiction before proceeding to determine the merits of a case. Allstate Ins. Co. v. Scroghan, 801 N.E.2d 191, 193 (Ind. Ct. App. 2004), trans. denied. This court has jurisdiction over appeals from final judgments and appeals of interlocutory orders as provided by Indiana Appellate Rule 14. Ind. Appellate Rule 5.

Indiana Trial Rule 56 provides, in part:

> A summary judgment may be rendered upon less than all the issues or claims . . . . A summary judgment upon less than all the issues involved in a claim or with respect to less than all the claims or parties shall be interlocutory unless the court in writing expressly determines that there is not just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims or parties.

Ind. Trial Rule 56(C) (emphasis added). The trial court's summary judgment order disposed

[1] Whether Lockard did not notice the jurisdictional defect or was hoping to succeed on the merits, we note that parties cannot waive lack of jurisdiction. Georgos v. Jackson, 790 N.E.2d 448, 451 (Ind. 2003). The lack of appellate jurisdiction can be raised at any time, and when the parties do not raise it, the appellate court can raise the issue sua sponte. Id.

of less than all of Father's claims with respect to less than all the parties named. Father's Notice of Appeal correctly notes that the trial court's summary judgment order is not a final judgment as to all claims and all parties. See App. R. 2(H)(1) ("A judgment is a final judgment if it disposes of all claims as to all parties.").

The Notice of Appeal also states, however, that the order is immediately appealable on the basis of Trial Rule 54(B). Trial Rule 54(B) provides:

> When more than one [1] claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. A judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment, and an appeal may be taken upon this or other issues resolved by the judgment; but in other cases a judgment, decision or order as to less than all the claims and parties is not final.

(Emphasis added.) The trial court's summary judgment order does not include the express language required by Trial Rules 54 and 56 to be considered a final judgment so that an appeal could be immediately taken upon the issues resolved therein. See App. R. 2(H)(2) (A judgment is final if "the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment."). There is no indication in the record provided to us that Father sought to have judgment entered on the order.

Thus, the order is an interlocutory order subject to the requirements of Appellate Rule 14. The order is not appealable of right pursuant to Indiana Appellate Rule 14(A) and Father did not obtain certification of the order for appeal under Indiana Appellate Rule 14(B). We have no jurisdiction over an interlocutory appeal that fails to comply with Appellate Rule 14. Daimler Chrysler v. Yaeger, 838 N.E.2d 449, 449-50 (Ind. 2005). Accordingly, we dismiss this appeal.

Conclusion

The summary judgment order is not a final judgment, is not an interlocutory order appealable of right, and Father did not seek certification and acceptance of the order as a discretionary interlocutory appeal. We therefore lack jurisdiction over Father's purported appeal.

Dismissed.

KIRSCH, J., and BARNES, J., concur.