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Carter v. Chicago & (and) Illinois Midland Railway: The Appealability of Severance Orders

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Casenotes

Carter v. Chicago & Illinois Midland Railway: The Appealability of Severance Orders

I. INTRODUCTION

Generally, a judgment cannot be appealed until it is final.[1] The application of this final judgment rule is straightforward when a controversy involves a single defendant and a single plaintiff. In such a case, the losing party can appeal immediately upon the court's final judgment.[2] In a case involving multiple parties or claims, however, the judge may sever a claim or party when the continued joint litigation would be inefficient or prejudicial. Alternatively, the judge may order separate trials if one claim or party does not materially relate to the principal action.[3] An order for severance or for separate trials can create problems for a losing party whose claim has been severed or separated when that party seeks an immediate appeal of the case while the initial proceeding

1. Flores v. Dugan, 91 Ill. 2d 108, 112, 435 N.E.2d 480, 482 (1982). The Illinois Supreme Court held that an appellate court does not have jurisdiction to review judgments that are not final unless a supreme court rule provides for an interlocutory appeal. *Id.* The court stated that a dismissal for want of prosecution is not a final judgment and, therefore, is not appealable. *Id.* at 115, 435 N.E.2d at 483. Under section 24 of the Limitations Act, ILL. REV. STAT. ch. 83, para. 24(a) (1987), a plaintiff is allowed one year to refile the same complaint and reargue the same issues to judgment. *Flores*, 91 Ill. 2d at 111-12, 435 N.E.2d at 481.

2. Illinois Supreme Court Rule 301 makes the general assertion that "every final judgment of a circuit court in a civil case is appealable as of right." ILL. REV. STAT. ch. 110A, para. 301 (1987). *See infra* note 25 and accompanying text.

3. Severance of claims and separation of claims or issues are considered to be interdependent. J. FRIEDENTHAL, M. KANE, & A. MILLER, CIVIL PROCEDURE 314 (1985) [hereinafter J. FRIEDENTHAL]. In Fischer & Porter Co. v. Haskett, 51 F.R.D. 305 (E.D. Pa. 1970), the words "separate trials" and "severance" are used interchangeably within the same sentence. *Id.* at 306. "Defendants agree that there should be *separate* trials in this case, but argue that the *severance* should be such that the separate trials would be solely on plaintiff's claim of ownership." *Id.* (emphasis added).

Although the two terms are often used interchangeably, the theory behind these two devices are distinct. J. FRIEDENTHAL, *supra*, at 315. Separation typically occurs when an action is divided into two or more claims or groups of claims. *Id.* Although the groups are tried separately, only one judgment is rendered covering the entire original action. *Id.* With severance, however, the claims in a single action are divided into separate actions, and independent judgments are entered on each of the severed claims. *Id.* at 315-16.

remains pending.[4]

In *Carter v. Chicago & Illinois Midland Railway*,[5] the Illinois Supreme Court held that a judgment on a severed claim or a judgment against a party in a case involving multiple claims or parties must contain an express finding that there is "no just reason for delay" before the severed portion may be appealed.[6] The *Carter* court further held that such a finding would be unnecessary only when the trial court's severance order "clearly and unequivocally stated that the claim, counterclaim or party had indeed been severed" and that it should proceed thereafter separate from the other claims, counterclaims, or parties to the case.[7]

This Note analyzes the implications of the *Carter* decision for judges and practitioners. First, the Note discusses various Illinois Supreme Court interpretations of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules regarding the finality and appealability of orders entered against severed parties or claims. The Note then examines the rationale of the *Carter* opinion. Finally, this Note concludes that the *Carter* court adequately resolved the confusion left by prior decisions concerning appeals of severed actions because the court rejected the notion of invoking a judicial test to determine if an appeal in such instances could be taken.

II. BACKGROUND

A. Severance and the Separation of Trials

The Illinois Rules of Civil Procedure are designed to allow the equitable joinder of parties and claims.[8] Joinder is permitted when the parties' claims arise out of the same general occurrence and

4. The decision to separate the claims or issues, however, is solely in the hands of the trial judge and will not be overturned absent an obvious error. *See* J. FRIEDENTHAL *supra* note 3, at 316. *See also* Ammesmaki v. Interlake S.S. Co., 342 F.2d 627, 630-31 (7th Cir. 1965) (the court of appeals stated that in a personal injury suit brought by an employee against his employer and the owner of the dock where the injury occurred, a single trial lessened delay, expense, and inconvenience, and that a decision to grant a separate trial was for the discretion of the trial judge). *Cf.* Eichinger v. Fireman's Fund Ins. Co., 20 F.R.D. 204 (D. Neb. 1957) (the major concern in considering whether to order a separate trial is obtaining a "just final disposition of the litigation").

5. 119 Ill. 2d 296, 518 N.E.2d 1031 (1988).

6. *Id.* at 307-08, 518 N.E.2d at 1037 (quoting ILL. REV. STAT. ch. 110A, para. 304(a) (1987)).

7. *Id.* at 308, 518 N.E.2d at 1037.

8. Tone & Stifler, *Joinder of Parties and Consolidation of Multi-party Actions*, 1967 U. ILL. L. F. 209, 216-17 (1967). Prior to the adoption of the equitable rules of party joinder in the Civil Practice Act, Illinois common law rules allowed only persons who had joint rights to join as plaintiffs and only those jointly liable to be joined as defendants. *Id.*

involve "common question[s] of law or fact."[9] Permitting the free joinder of parties and claims is intended to promote judicial economy by preventing piecemeal litigation.[10]

The free joinder of claims and parties reduces potential duplication of suits, but it can also result in highly complex and confusing litigation.[11] Even though all the parties and claims in a multiple-claim action may have been related sufficiently to justify joinder when the action began, the action can develop such that the complexity of the issues in the litigation, dissimilarity of the claims of the parties, potential for jury confusion, and danger of prejudice to the parties' rights make the action difficult to manage.[12]

If the judge presiding over a multiple-claim action determines that continued joint litigation of the claims would be inefficient or prejudicial to the parties, the judge may provide for a separate trial on some of the claims.[13] The judge can accomplish this by ordering either the separation of claims[14] or the severance of one or more claims in the action.[15] The judge may choose to order the

9. Section 2-404 of the Illinois Civil Practice Act provides that persons may join as plaintiffs in a single action when each person alleges a right to relief arising out of the same transaction or series of transactions. ILL. REV. STAT. ch. 110, para. 2-404 (1987). Section 2-405 provides for the joinder of defendants under similar circumstances. ILL. REV. STAT. ch. 110, para. 2-405 (1987). Section 2-406 provides for the addition of new parties necessary for the determination of the controversy. ILL. REV. STAT. ch. 110, para. 2-406 (1987). The joinder of additional claims and counterclaims brought by parties to the action against other parties to the action is provided for in section 2-614. ILL. REV. STAT. ch. 110, para. 2-614(b) (1987). *See also* Metro-Goldwyn-Mayer v. Antioch Theatre, 52 Ill. App. 3d 122, 367 N.E.2d 247 (1st Dist. 1977); Opal v. Material Serv. Corp., 9 Ill. App. 2d 433, 133 N.E.2d 733 (1st Dist. 1956).

10. *See* Tone & Stifler, *supra* note 8, at 209 (free joinder has helped eliminate "repetition of testimony, duplication of effort, and inconsistent verdicts").

11. *Id.* at 218-20.

12. Tone & Eovaldi, *Separation of Trials and Appeals in Multiparty Actions*, 1967 U. ILL. L. F. 224, 225-29 (1967). The authors also listed undue delay, jurisdictional issues, statute of limitations defenses, and laches defenses as problems that could result from the joint litigation of multiple claims in a single action. *Id.* at 225-27.

13. *Id.* at 224-25.

14. A judge's power to order the separation of claims in a multiple claim action is derived from sections 2-404 and 2-614(b) of the Illinois Civil Practice Act. ILL. REV. STAT. ch. 110, paras. 2-404, 2-614(b) (1987). Section 2-404 provides that if "it shall appear that joinder may embarrass or delay the trial of the action, the court may order separate trials or enter any other order that may be expedient." ILL. REV. STAT. ch. 110, para. 2-404 (1987). Similarly, section 2-614(b) states that "the court may, in its discretion, order separate trial of any causes of action . . . if it cannot be conveniently disposed of with the other issues in the case." ILL. REV. STAT. ch. 110, para. 2-614(b) (1987).

15. A judge's power to sever a claim is derived from section 2-1006 of the Illinois Civil Practice Act. ILL. REV. STAT. ch. 110, para. 2-1006 (1987). Section 2-1006 provides that "an action may be severed . . . as an aid to convenience, whenever it can be done without prejudice to a substantial right." *Id.*

separation of claims for a wide variety of reasons,[16] but the primary reasons for ordering the separation of claims are to prevent the joint litigation of overly complex issues and to avoid prejudice to the parties.[17] The severance of claims may be ordered for the same general reasons as separation of claims.[18] Regardless of the form of the order that the court uses to provide for separate trials, the trial judge's order will not be reversed unless there is a clear abuse of discretion.[19]

The combination of the court's power to permit joinder and it's power to sever or separate claims in a multiple claim action provides a workable mechanism for dealing with multiple claim litigation at the trial stage.[20] The severance or separation of claims, however, can create uncertainty for a party who wants to appeal a judgment entered on one of the groups of claims created by the severance or separation order.[21] This uncertainty arises from the difficulty in applying Supreme Court Rule 304(a), the Illinois rule governing the appealability of final judgments disposing of less than all the claims or parties in an action, in cases where separate trials have been ordered.[22]

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16. Tone & Eovaldi, *supra* note 12, at 225.

17. *Id.* at 229 ("[a]lthough generalizations as to when separate trials should be given are fraught with possibilities of error, it seems fair to say that most decisions . . . have recognized that the goal of disposing of all related claims at one trial may conflict with the goal of a fair trial to all parties").

18. J. FRIEDENTHAL, *supra* note 3, at 316-17.

19. *See, e.g.*, Needy v. Sparks, 51 Ill. App. 3d 350, 356, 366 N.E.2d 327, 335 (1st Dist. 1977) (decision to sever a claim is "within the sound discretion of the trial court"); Glennon v. Glennon, 299 Ill. App. 13, 26, 19 N.E.2d 412, 417 (1st Dist. 1939) (decision to separate the claims or issues is solely in the hands of the trial judge and will not be overturned absent an obvious error).

20. *Compare* Northwest Water Comm'n v. Carlo V. Santucci, Inc., 162 Ill. App. 3d 877, 516 N.E.2d 287 (1st Dist. 1987) (causes of action were consolidated by the trial court for the purposes of discovery and trial of a claim by a subcontractor against the municipal water corporation) *with* Lowe v. Norfolk & W. Ry., 124 Ill. App. 3d 80, 99, 463 N.E.2d 792, 806 (5th Dist. 1984) (trial court abused its discretion in ordering the consolidation of 47 suits for trial, absent any indication that all the plaintiffs suffered physical impairments from exposure to chemicals on one of three separate occasions).

21. *See, e.g.*, Carter v. Chicago & Ill. Midland Ry., 119 Ill. 2d 296, 518 N.E.2d 1031 (1988); Northtown Warehouse v. Transamerica Ins. Co., 111 Ill. 2d 532, 490 N.E.2d 1268 (1986); Lurz v. Panek, 166 Ill. App. 3d 179, 519 N.E.2d 1110 (2d Dist. 1988); Salyers v. Board of Governors, 69 Ill. App. 3d 356, 387 N.E.2d 1129 (4th Dist. 1979); Sadler v. County of Cook, 108 Ill. App. 3d 175, 438 N.E.2d 1351 (1st Dist. 1982).

22. ILL. REV. STAT. ch. 110A, para. 304(a) (1987). *See infra* notes 33-35 and accompanying text.

B. Illinois Supreme Court Rule 304(a)

Rule 304(a) is designed to discourage piecemeal appeals.[23] To achieve this goal, rule 304(a) states that "any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all parties is not enforceable or appealable."[24] This rule prevents an appellate court from obtaining jurisdiction over such judgments by providing that those judgments are subject to revision until "all the claims, rights, and liabilities of all the parties are adjudicated."[25]

Although proponents of the rule sought to prevent unnecessary and premature appeals, they also realized that final judgments[26] on certain groups of claims in multiple-claim actions should be allowed.[27] Therefore, rule 304(a) permits appeal of such final judgments. The rule states that:

> 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 enforcement or appeal.[28]

If the trial court enters a rule 304(a) finding on a judgment, the parties appealing the judgment must file notice of appeal as provided in the rule.[29]

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23. Martino v. Barra, 37 Ill. 2d 588, 229 N.E.2d 545 (1967). Prior to 1956, the Illinois appellate courts were plagued by undesirable piecemeal appeals. *See* Roddy v. Armitage-Hamlin Corp., 401 Ill. 605, 83 N.E.2d 308 (1949) (order of dismissal was appealable although the other count remained to be tried); Hoier v. Kaplan, 313 Ill. 448, 145 N.E. 243 (1924) (certain "extra items" dismissed from a complaint to foreclose a mechanics' lien were held to be appealable, despite pending contract claims). *See generally* ILL. ANN. STAT. ch. 110A, para. 304(a) (Smith-Hurd 1985) (historical and practice notes) (prior to the enactment of section 50(2) a "judgment finally determining the rights of fewer than all of the parties or fewer than all of the claims was appealable and indeed had to be appealed if the rights of the party against whom the judgment had been entered were to be preserved").

24. ILL. REV. STAT. ch. 110A, para. 304(a) (1987).

25. *Id. See also* Mercado v. United Investors, Inc., 144 Ill. App. 3d 886, 494 N.E.2d 824 (1st Dist. 1986); Hernandez v. Fahner, 135 Ill. App. 3d 372, 481 N.E.2d 1004 (1st Dist. 1985); Peter Fischer Import Motors v. Buckley, 121 Ill. App. 3d 906, 460 N.E.2d 346 (1st Dist. 1984); Pecora v. Szabo, 109 Ill. App. 3d 824, 441 N.E.2d 360 (2d Dist. 1982).

26. *See* Village of Burnham v. Cook, 146 Ill. App. 3d 124, 126, 496 N.E.2d 1034, 1036 (1st Dist. 1986) (a final order terminates the litigation between the parties on the merits or disposes of the rights of the parties).

27. *See infra* notes 33-35 and accompanying text.

28. ILL. REV. STAT. ch. 110A, para. 304(a) (1987).

29. *Id.* (rule 304(a) provides that "[t]he time for filing the notice of appeal shall run from the entry of the required finding"). Rule 303(a) requires the notice of appeal to be filed within 30 days after the entry of the judgment appealed. ILL. ANN. STAT. ch. 110A,

The application of rule 304(a) is fairly straightforward in many situations. The Illinois courts have agreed that a rule 304(a) finding cannot make a non-final judgment appealable.[30] Rule 304(a) findings also are inapplicable to orders entered in single-party and single-claim actions.[31] Furthermore, the courts have used a case-by-case approach when considering whether to include a rule 304(a) finding in multiple-claim actions in which all of the controverted issues were litigated jointly.[32] When a multiple claim-action involves separate trials, however, the proper application of rule 304(a) is less clear.

The difficulty with applying rule 304(a) in cases where separate trials have been ordered stems from the language of the rule itself. The rule states that rule 304(a) findings can be made when "multiple parties or multiple claims for relief are involved in *an action*."[33] Some courts, relying on both this wording and federal court interpretations of the Federal Rule of Civil Procedure upon which rule

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para. 303(a) (Smith-Hurd) (1987) (committee comments). Appellate courts, however, have experienced difficulty in interpreting the rule and the supreme court has held that "the time to appeal begins to run only after the court has disposed of the last timely post-trial motion." *In re* Marriage of Uphoff, 99 Ill. 2d 90, 95-96, 457 N.E.2d 426, 428 (1983). *But see* Carter v. Chicago & Ill. Midland Ry., 119 Ill. 2d 296, 518 N.E.2d 1031 (1988). Nonetheless, a party filing an appeal must do so within the 30-day requirement of rule 303. However, the point at which time starts running is different. For severed claims, "the notice of appeal must be filed . . . within 30 days after the entry of the *final judgment* appealed from." ILL. REV. STAT. ch. 110A, para. 303(a)(1) (1987) (emphasis added). When the separated claim is appealed pursuant to rule 304(a) the appeal must be filed within 30 days of the rule 304(a) finding. Recall that rule 303(a) states that "if a timely post-trial motion directed against the judgment is filed . . . [the notice of appeal must be filed] within 30 days after the entry of the order disposing of the last pending post-trial motion." ILL. REV. STAT. ch. 110A, para. 303(a) (1987).

30. *See, e.g., In re* Johnson, 134 Ill. App. 3d 365, 480 N.E.2d 520 (4th Dist. 1985); Newkirk v. Bigard, 125 Ill. App. 3d 454, 466 N.E.2d 243 (5th Dist. 1984); Findley v. Posway, 118 Ill. App. 3d 824, 455 N.E.2d 861 (1st Dist. 1983); Pecora v. Szabo, 109 Ill. App. 3d 824, 441 N.E.2d 360 (2d Dist. 1982). *See also* ILL. ANN. SAT. ch. 110A, para. 304(1) (Smith-Hurd 1985) (historical and practice notes) ("reviewing courts have had to state the proposition that a Rule 304(a) finding does not make a non-final order appealable repeatedly in dismissing appeals taken from non-final orders to which the finding was appended").

31. *See, e.g.*, General Tel. Co. v. Robinson, 545 F. Supp. 788 (C.D. Ill. 1982); Ariola v. Nigro, 13 Ill. 2d 200, 148 N.E.2d 787 (1958).

32. *Compare* McGrew v. Heinold Commodities, Inc., 147 Ill. App. 3d 104, 497 N.E.2d 424 (1st Dist. 1986) (trial judge's order for immediate appeal on exemplary and punitive damages was not immediately appealable when claims for compensatory damages on basis of same alleged violations remained pending) *with* Hise v. Hull,116 Ill. App. 3d 681, 452 N.E.2d 372 (4th Dist. 1983) (a claim under a statute providing for payment of reasonable expenses and attorney's fees that is brought as part of responsive pleading becomes part of the same action and must be disposed of by judgment or by finding that there is no just reason for delaying appeal).

33. ILL. REV. STAT. ch. 110A, para. 304(a) (1987) (emphasis added).

304(a) was modelled,[34] have stated that a rule 304(a) finding is unnecessary when a party appeals a final judgment entered on claims in an action in which severance was ordered.[35]

C. Northtown Warehouse v. Transamerica Insurance Co.

In *Northtown Warehouse v. Transamerica Insurance Co.*,[36] the Illinois Supreme Court attempted to clarify the proper rule 304(a) analysis for actions in which parties try to appeal a final judgment on a severed claim. The plaintiff in *Northtown* sued its insurance agent, I.I.A., Inc., and its insurance company, Transamerica Insurance Company ("Transamerica"), after Transamerica refused to pay an insurance claim.[37] Both defendants filed counterclaims against each other.[38] In response to a motion for separate trials, the trial court severed both counterclaims from the plaintiff's claim.[39] The plaintiff's action proceeded to judgment, the jury returned a verdict against both defendants for $287,428, and the defendants tried to appeal that judgment.[40]

The *Northtown* case presented the question of whether a rule 304(a) finding is necessary to appeal a circuit court judgment on an initial claim before the circuit court has resolved a severed counterclaim.[41] The *Northtown* court held that because the original case and the counterclaim created separate causes, the judgment entered on the verdict in the original case was final and was appeala-

34. FED. R. CIV. P. 54(b) (28 U.S.C. § 54(b) (1987)).

35. *See* Davis v. Childers, 33 Ill. 2d 297, 211 N.E.2d 364 (1965); Salyers v. Board of Governors, 69 Ill. App. 3d 356, 387 N.E.2d 1129 (1st Dist. 1979) (appellate court held rule 304(a) inapplicable because the trial court severed the first two counts involving allegations of due process violations from counts III and IV which involved allegations of defamation). *See also* Sadler v. County of Cook, 108 Ill. App. 3d 175, 438 N.E.2d 1351 (1st Dist. 1982) (although the appellate court held that claims involved in an action for alleged wrongful discharge from employment were all part of a single action and a special finding under rule 304(a) was necessary, it recognized that a discretionary severance of claims or causes of action could result in a separate action under rule 304(a)). For federal cases interpreting FED. R. CIV. P. 54(b), see United States v. O'Neil, 709 F.2d 361 (5th Cir. 1983); Hebel v. Ebersole, 543 F.2d 14 (7th Cir. 1976); Spencer, White & Prentis, Inc. v. Pfizer, Inc., 498 F.2d 358 (2d Cir. 1974).

36. 111 Ill. 2d 532, 490 N.E.2d 1268 (1986) [hereinafter *Northtown*].

37. *Id.* at 533-34, 490 N.E.2d at 1268.

38. *Id.*

39. *Id.* at 534, 490 N.E.2d at 1268. A judge's power to order the separation of claims in a multiple claim action is derived from sections 2-404 and 2-614(b) of the Illinois Civil Practice Act. ILL. REV. STAT. ch. 110, paras. 2-404, 2-614(b) (1987). Section 2-1006 of the Illinois Civil Practice Act empowers the judge to sever a claim. ILL. REV. STAT. ch. 110, para. 2-1006 (1987). For the pertinent language of these sections, see *supra* notes 14-15.

40. *Northtown*, 111 Ill. 2d at 538, 490 N.E.2d at 1269.

41. *Id.* at 534, 490 N.E.2d at 1269.

ble without a rule 304(a) finding by the circuit judge.[42]

The *Northtown* court relied on the language of rule 304(a), which states that finding is necessary only when "multiple claims for relief are involved in an action" and the appeal is taken "from a final judgment as to one or more but fewer than all of the . . . claims."[43] The court noted that trial courts may order severance of claims with the intention of creating two separate actions.[44] The *Northtown* court reasoned that if the plaintiff's claim is unrelated to and distinct from the counterclaim, then "an appeal should be allowed from a final judgment entered in the severed action without the findings required by Rule 304(a), just as if the case had proceeded as a single claim action all along."[45]

In holding that a rule 304(a) finding is not necessary when parties appeal a final judgment on a severed claim, the *Northtown* court followed the reasoning of federal cases construing Federal Rule of Civil Procedure 54(b).[46] Adopting the position of the federal decisions, the *Northtown* court held that when the trial court intended to create two separate actions by ordering severance,

42. *Id.* at 538, 490 N.E.2d at 1270 (citing Northtown Warehouse v. Transamerica Ins. Co., 131 Ill. App. 3d 274, 278, 475 N.E.2d 901, 905 (1st Dist. 1984)). The appellate court had dismissed the defendant's appeal for lack of jurisdiction on the grounds that the circuit court did not make a rule 304(a) finding. *Northtown Warehouse*, 131 Ill. App. 3d at 278, 475 N.E.2d at 905. The appellate court reasoned that a special finding under rule 304(a) was necessary because the severed counterclaims of the defendants remained pending. *Id.*

43. *Northtown*, 111 Ill. 2d at 537-38, 490 N.E.2d at 1269-70 (quoting ILL. REV. STAT. ch. 110A, para. 304(a) (1987)).

44. *Id.* at 537, 490 N.E.2d at 1270. The court stated that the trial courts also enter severance orders merely to provide for separate trials. *Id.* The *Carter* court cited the *Northtown* court's failure to address this problem fully as a significant flaw in the *Northtown* opinion. Carter v. Chicago & Ill. Midland Ry., 119 Ill. 2d 296, 304-05, 518 N.E.2d 1031, 1033 (1988). For the *Carter* court's discussion of *Northtown*, see *infra* notes 93-96 and accompanying text.

45. *Northtown*, 111 Ill. 2d at 537, 490 N.E.2d at 1270.

46. *Id.* at 537, 490 N.E.2d at 1270. The federal cases that the *Northtown* court referred to were United States v. O'Neil, 709 F.2d 361 (5th Cir. 1983); Hebel v. Ebersole, 543 F.2d 14 (7th Cir. 1976); Spencer, White & Prentis, Inc. v. Pfizer, Inc., 498 F.2d 358 (2d Cir. 1974). The federal cases indicate that an appeal from a judgment on a validly severed claim or party may be taken without a finding that there is no just reason for delay. *See O'Neil*, 709 F.2d at 368; *Hebel*, 543 F.2d at 17; *Spencer, White & Prentis*, 498 F.2d at 361. Unless the severance amounts to an abuse of discretion the appeal can be taken. *Spencer, White & Prentis*, 498 F.2d at 364. To be heard on appeal without a special finding, the severed claim must bear a separate relationship to the original claim. *Id.* A severed claim that is separate and distinct from the original claim is equivalent to a separate action. *Id.* Therefore, an appeal should be allowed on the severed action in the same manner as if it had proceeded as a single-claim action from the beginning. *Id.* Thus, in Illinois the appeal would be made under rule 303. ILL. REV. STAT. ch. 110A, para. 303 (1987). For the pertinent language of rule 303, see *supra* note 29.

judgment on either of those actions is appealable without a rule 304(a) finding regardless of the unresolved counterclaims.[47] The court specifically limited its holding to severed claims that the trial court intended to proceed as separate actions.[48] Thus, judgments on claims that merely are tried separately would not be appealable without a rule 304(a) finding.

Initially, it would appear that the application of the *Northtown* holding could turn entirely on form. Because a separation of claims order is designed specifically to provide separate trials on issues in a *single action*, an order based on the statutory provisions permitting separation of claims logically would not create separate actions.[49] Therefore, judgment entered on either branch of the separated action should not be appealable without a rule 304(a) finding. In contrast, separate trials ordered pursuant to an order for severance should create separate actions. Given that the trial court has the option to order separation of claims, the court presumably would not use a severance order unless the court intended to create separate actions. Under *Northtown*, a final judgment on such a severed action would be appealable without a rule 304(a) finding.[50]

Unfortunately, the facts of the *Northtown* case demonstrate that a purely formalistic application of the opinion cannot be justified. As noted above, the trial court in *Northtown* ordered "severance" in response to a motion for separation of claims. It is not clear from the opinion whether the trial judge decided to sever the claims sua sponte,[51] or whether the judge simply used the word

47. *Northtown*, 111 Ill. 2d at 537-38, 490 N.E.2d at 1270. The appellate court stated that the counterclaims made by the defendants raised separate and distinct issues, which when decided, would not affect the judgment entered in the plaintiff's case. *Id.*

48. *Id.* at 538, 490 N.E.2d at 1270.

49. A judge's power to order the separation of claims in a multiple claim action is derived from sections 2-404 and 2-614(b) of the Illinois Civil Practice Act. ILL. REV. STAT. ch. 110, paras. 2-404, 2-614(b) (1987). For the pertinent language of the sections, see *supra* note 14.

50. This analysis of *Northtown* is strengthened by the court's reference to Salyers v. Board of Governors, 69 Ill. App. 3d 356, 387 N.E.2d 1129 (4th Dist. 1979), in which the appellate court stated that "it is quite clear that where the trial court has made no [rule 304(a)] finding, an appellate court has no jurisdiction and may dismiss the appeal on its own motion." *Id.* at 358, 387 N.E.2d at 1130. The court, however, said that rule 304(a), by its own language, only applies to single actions involving multiple claims. *Id.* The rule, therefore, does not apply when multiple parties or multiple claims no longer are involved in a single action. Consequently, the appellate court in *Salyers* held that the summary judgment entered on counts one and two, which involved issues and parties separate from the two counts that were not severed, was a final judgment appealable without a rule 304(a) finding. *Id.*

51. Under section 2-1006 of the Illinois Civil Practice Act, the trial judge has the power to order severance "as an aid to convenience" even when no party has made such a

"sever" as a generic term to describe the act of providing separate trials.[52]

Because the claims in *Northtown* could have been severed but instead were tried separately pursuant to an order for the separation of claims, the *Northtown* opinion failed to clarify when a party could appeal a final judgment on either a severed or separated claim without a rule 304(a) finding. Less than two years after deciding *Northtown*, the Illinois Supreme Court reexamined that opinion in *Carter v. Chicago & Illinois Midland Railway*.[53] Stating that *Northtown* could have the effect of "requir[ing] that every losing party in a claim tried separately in a multiple-claim case must file a notice of appeal . . . to protect against the possibility of an ultimate determination that the order for separate trials (severance) may have, in fact, created a separate action," the *Carter* court restricted the *Northtown* holding.[54]

III. *CARTER V. CHICAGO & ILLINOIS MIDLAND RAILWAY*

In *Carter v. Chicago & Illinois Midland Railway*,[55] the Illinois Supreme Court held that a rule 304(a) finding is necessary to perfect appeal of a final judgment on a group of claims separately tried, regardless of the section of the code relied upon by the circuit court to bring about the separate trials.[56] The only exception to the requirement of a rule 304(a) finding arises when the circuit court's severance order "clearly and unequivocally" states that the claim, counterclaim, or party has indeed been severed and should proceed separately from the other claims, counterclaims, or parties

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motion. ILL. REV. STAT. ch. 110, para. 2-1006 (1987). *See also* Knab v. Alden's Irving Park, Inc., 49 Ill. App. 2d 371, 390, 199 N.E.2d 815, 825 (1st Dist. 1964). In *Knab*, an implied warranty suit was brought by the parents of a four-year-old boy who was burned when his trousers suddenly caught fire. The appellate court held that the trial judge should have ordered a severance of the third-party complaint by the defendant against the manufacturer who in turn sued the supplier. *Id.* The court stated that "a jury under the circumstances . . . would have to have an exceptional sense of discrimination to separate the ancillary claims of the various parties and still properly determine the issue in the main action." *Id.*

52. Despite the theoretical difference between orders for severance and for separation of claims and between the various provisions enabling the court to enter such orders, courts have used the term sever when merely providing for separate trials. *See, e.g.*, Northtown Warehouse v. Transamerica Ins. Co., 131 Ill. App. 3d 274, 278, 475 N.E.2d 901, 905 (1st Dist. 1984); *Salyers*, 69 Ill. App. 3d at 358, 387 N.E.2d at 1130.

53. 119 Ill. 2d 296, 518 N.E.2d 1031 (1988).

54. *Id.* at 304, 518 N.E.2d at 1037. For a discussion of the importance of timing and appeals, see *supra* note 29.

55. 119 Ill. 2d 296, 518 N.E.2d 1031 (1988).

56. *Id.* at 307, 518 N.E.2d at 1037.

to the case.[57]

A. Development of the Case

The *Carter* case began as a wrongful death action brought by William Carter as the representative of the estates of his wife, Beverly Carter, and his daughter, Tiffany Carter.[58] Mrs. Carter and Tiffany Carter were killed when their vehicle was involved in an accident with one of the defendant's trains. The wrongful death claims were tried together. The jury returned a verdict of $120,000 for the estate of Mrs. Carter and $5,000 for the estate of Tiffany Carter. The court granted a new trial on the issue of damages for the wrongful death of Tiffany Carter, ruling that the jury's verdict was inadequate. Finally, the trial court reduced the damages awarded for Mrs. Carter's death to $12,000 because the jury found her ninety percent comparatively negligent.[59]

B. Appeal of the Judgment on the Wrongful Death of Mrs. Carter

Dissatisfied with receiving only ten percent of the $120,000 verdict for the death of Mrs. Carter, the plaintiff appealed the judgment entered on that claim.[60] At this point the plaintiff first encountered difficulties under rule 304(a). Because the trial court granted a new trial for damages on the claim regarding Tiffany Carter, that claim was not yet resolved.[61] The claims of Mrs. Carter and Tiffany Carter were tried jointly, and the judgment in Mrs. Carter's case resolved less than all the claims between the plaintiff and the defendant.[62] Thus, until the damages for the Tiffany Carter claim were determined in the new trial, the judgment in Mrs. Carter's case was neither final nor appealable under rule 304(a) without a rule 304(a) finding.

The appellate court dismissed the appeal because the trial court had not made a rule 304(a) finding.[63] The plaintiff later obtained a rule 304(a) finding on the judgment and proceeded with his appeal, but the appellate court affirmed the trial court's decision.[64] Thus, the plaintiff was left with a judgment of $12,000 for the death of

57. *Id.* at 307-08, 518 N.E.2d at 1037.
58. *Id.* at 297, 518 N.E.2d at 1032.
59. *Id.*
60. *Id.* at 298, 518 N.E.2d at 1032.
61. *See id.*
62. *Id.*
63. *Id.*
64. *Id.*

Mrs. Carter; moreover, the only chance for increasing the recovery from the wrongful death actions was the new trial for damages on the Tiffany Carter claim.

C. New Trial on Damages for Tiffany's Estate

Apparently, the defendant's strategy was to avoid any increased liability on the Tiffany Carter claim while the plaintiff was appealing the judgment on the wrongful death claim of Mrs. Carter.[65] First, the defendant petitioned the appellate court for leave to appeal the order granting a new trial for damages on that claim.[66] After the court dismissed the defendant's petition, the defendant filed a counterclaim for contribution against Beverly Carter's estate based on the jury's finding in the initial action that Mrs. Carter was ninety percent responsible for the accident.[67] If the defendant's counterclaim was successful, the defendant could obtain reimbursement from the estate of Beverly Carter for ninety percent of any damages granted in the new trial for damages on the Tiffany Carter claim.[68]

The appellate court severed the defendant's counterclaim from the damages trial on the Tiffany Carter claim.[69] The trial for damages proceeded, and the jury returned a new verdict of $200,000 for the plaintiff.[70] In order to appeal this new verdict, the defendant requested that the court make a rule 304(a) finding that there was "no just reason" for delaying his appeal.[71]

The defendant requested a rule 304(a) finding because the defendant's counterclaim against Mrs. Carter's estate for contribution was still pending.[72] The defendant apparently considered the pending counterclaim against Mrs. Carter's estate and the new trial for damages in the Tiffany Carter estate to be parts of a single action despite the fact that the two claims were severed.[73] Because

65. *See id.* at 299, 518 N.E.2d at 1033.
66. *Id.*
67. *Id.*
68. *See id.* at 298, 518 N.E.2d 1033.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 298-99, 518 N.E.2d at 1033.
73. *See id.* Later, on the same day that the court entered the rule 304(a) finding permitting the defendant's appeal of the new judgment for damages in the Tiffany Carter claim, the trial court dismissed defendant's counterclaim against Mrs. Carter's estate for contribution. The court relied on Laue v. Leifheit, 105 Ill. 2d 191, 196, 473 N.E.2d 939, 942 (1984), for the proposition that a contribution claim not asserted during the original action is barred. *Carter*, 119 Ill. 2d at 300, 518 N.E.2d at 1033. The defendant also appealed the dismissed counterclaim pursuant to rule 303. *Id.* at 299, 518 N.E.2d at

the new judgment for damages for Tiffany Carter's estate was "final . . . as to *one* . . . but fewer than *all* of the claims" in this action, the defendant interpreted rule 304(a) as precluding appeal of that judgment unless a rule 304(a) finding was made.[74]

The appellate court waited for the Illinois Supreme Court's opinion in *Northtown Warehouse v. Transamerica Insurance Co.*[75] prior to considering the defendant's appeal on the new judgment for damages in the Tiffany Carter claim.[76] Furthermore, the plaintiff used the rule set forth in *Northtown* to challenge the timeliness of the defendant's appeal.[77] The *Carter* plaintiff contended that the judgment on the last motion filed was a final order under *Northtown*; therefore, the defendant should have filed his appeal within thirty days from the denial of the motion under rule 303(a)(1).[78] Accordingly, the plaintiff contended that the defendant's appeal under the time limit prescribed by rule 303(a).[79]

In response to the plaintiff's argument, the defendant relied on the fact that on the day the trial court denied the post-trial motion in the new trial for damages, the defendant's contribution counterclaim against Mrs. Carter's estate was still pending.[80] As previously stated, the defendant reasoned that a rule 304(a) finding was

1033. The dismissal of the counterclaim, which was the last controversy decided before the trial court, terminated the litigation. Thus, the rights of Carter and Illinois Midland were absolutely determined, and the only thing remaining was the execution of the $200,000 judgment against Illinois Midland. For the definition of a final judgment, see *supra* note 27. Consequently, the defendant believed that the appeal on the dismissed counterclaim should be taken under ILL. REV. STAT. ch. 110A, para. 303 (1987) (addressing appeals from final judgments of the circuit court in civil cases). *Carter*, 119 Ill. 2d at 299, 518 N.E.2d at 1033. For the language of rule 303, see *supra* note 29.

74. *Carter*, 119 Ill. 2d at 300, 518 N.E.2d at 1034.

75. 111 Ill. 2d 532, 490 N.E.2d 1268 (1986).

76. Carter v. Chicago & Ill. Midland Ry., 144 Ill. App. 3d 437, 439, 494 N.E.2d 892, 894 (4th Dist. 1986).

77. *Id.*

78. *Id.* at 438, 494 N.E.2d at 893. The defendant had filed a post-trial motion on the new judgment of $200,000 for the Tiffany Carter claim. *Id.* This motion was denied on February 14, 1985. *Id.* The defendant obtained a rule 304(a) finding for the judgment on the Tiffany Carter claim on March 28, 1985. *Id.* The defendant's appeal was taken under rule 304(a) from the judgment in favor of Tiffany Carter's estate within 30 days from the rule 304(a) finding, but more than 30 days after the defendant's post-trial motion was denied. If the defendant did not need a rule 304(a) finding in order to appeal the new judgment, the timing of the appeal was governed by rule 303(a)(1). *See id.* Rule 303(a)(1) requires a defendant to file a notice of appeal within thirty days of the denial of the last post-trial motion in the case. *See* ILL. REV. STAT. ch. 110A, para. 303(a)(1) (1987). Because the *Carter* defendant's notice of appeal was not filed within that time period, the appeal would be time barred unless rule 304(a) governed the appeal. *See supra* note 29 and accompanying text.

79. *Carter*, 144 Ill. App. 3d at 438, 494 N.E.2d at 893.

80. *Id.* at 439, 494 N.E.2d at 893.

required because the denial of the last motion in the case did not dispose of all the issues between the parties.[81] Challenging the applicability of the *Northtown* holding, the defendant asserted that its appeal under rule 304(a) was both appropriate and timely.[82]

Following the decision in *Northtown*, the appellate court dismissed the defendant's appeal as untimely.[83] The appellate court stated that because the denial of the defendant's post-trial motion was a final order, the timing of the appeal was governed by rule 303 and should have been taken within thirty days after the denial of the last motion in the case.[84] The supreme court granted the defendant's petition for leave to appeal the appellate court's decision in order to reexamine the *Northtown* decision and the interpretation of rule 304(a) therein.[85]

D. The Supreme Court's Decision

The supreme court began its reexamination of *Northtown* by reviewing the purpose behind rule 304(a). The court noted that rule 304(a) and its predecessor, section 50(2) of the Civil Practice Act,[86] were designed to prevent piecemeal appeals and to clarify when a litigant may appeal a judgment that determines less than all the matters involved in an action.[87] Rule 304(a) and Federal Rule of Civil Procedure 54(b) share the same underlying policy;[88] however, the Illinois Legislature used different language in order to avoid the confusion experienced by the federal courts interpreting rule 54(b).[89] Consequently, the Illinois Legislature designed the rule 304(a) to "apply to final judgments or decrees determining fewer than 'all the claims or rights and liabilities.' "[90] In contrast, rule

81. *Id.*
82. *Id.*
83. *Id.* at 442, 494 N.E.2d at 896.
84. *Id.* at 440-41, 494 N.E.2d at 895.
85. Carter v. Chicago & Ill. Midland Ry., 119 Ill. 2d 296, 300, 518 N.E.2d 1031, 1034 (1988).
86. ILL. REV. STAT. ch. 110, para. 50(2) (1955) (repealed 1967).
87. *Carter*, 119 Ill. 2d at 302, 518 N.E.2d at 1034 (citing Jenner, Tone & Martin, *Historical & Practice Notes*, ILL. ANN. STAT. ch. 110A, para. 304(a) (Smith-Hurd 1985)). For a discussion regarding the policy behind rule 304(a) and its predecessor section 50(2) of the Civil Practice Act, see *supra* notes 23-29 and accompanying text.
88. *Carter*, 119 Ill. 2d at 302, 518 N.E.2d 1034-35.
89. *Id.* at 302, 518 N.E.2d at 1035 (citing Ariola v. Nigro, 13 Ill. 2d 200, 206-07, 148 N.E.2d 787, 790 (1958)). For a discussion of the difficulties encountered by federal courts when adjudicating appeals from a severed or separated claim or party, see Spencer, White & Prentis, Inc. v. Pfizer, Inc., 498 F.2d 358 (2d Cir. 1974).
90. *Carter*, 119 Ill. 2d at 302, 518 N.E.2d at 1035 (quoting ILL. REV. STAT. ch. 110A, para. 304(a) (1987)).

54(b) applies to an "entry of final judgment upon one or more but less than all of the claims."[91] The *Carter* court reasoned that this language was a notification to litigants that a rule 304(a) finding is mandatory in almost all cases that originate from a multiple-claim controversy.[92]

The supreme court then considered whether the holding in *Northtown* furthered the goals of rule 304(a).[93] The court anticipated that the *Northtown* holding, as applied by the appellate court in *Carter*, would result in uncertainty in the future for parties on appeal.[94] The *Carter* court recognized that the *Northtown* court had neglected to consider that certain multiple claims may not be severable in the true sense of the word.[95] Because of this flaw in *Northtown*, the *Carter* court concluded that the holding in *Northtown* did not aid litigants in deciding how to appeal a judgment adjudicating fewer than all the matters involved.[96] Therefore, the supreme court reversed the order of the appellate court dismissing the defendant's appeal and remanded with directions to consider the merits of the appeal.[97]

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91. Ariola v. Nigro, 13 Ill. 2d 200, 204, 148 N.E.2d 787, 790 (1958) (quoting FED. R. CIV. P. 54(b)).

92. *See Carter*, 119 Ill. 2d at 308, 518 N.E.2d at 1037.

93. *Id.* at 304, 518 N.E.2d at 1035.

94. *Id.* The appellate court in *Carter* dismissed the appeal notwithstanding the rule 304(a) finding because the court considered the rule 304(a) finding inapplicable. Accordingly, the appellate court determined that the timing provisions in rule 303 barred the appeal. *Id.* at 300, 518 N.E.2d at 1033-34 (citing Carter v. Chicago & Ill. Midland Ry., 144 Ill. App. 3d 437, 494 N.E.2d 892 (1986)). *See supra* notes 83-84 and accompanying text.

95. The supreme court stated that the various rules of procedure dealing with severability and separate trials are not distinct from each other and should not be relied upon by judges in determining whether to allow an appeal without a special finding under rule 304(a). *Carter*, 119 Ill. 2d at 306-07, 518 N.E.2d at 1036-37. Furthermore, the court stated that the words and phrases appellate courts used previously to determine whether an action was severed and could proceed thereafter as a separate case did not help practitioners or circuit judges in determining whether a rule 304(a) finding was necessary. *Id.* at 305, 518 N.E.2d at 1036. The *Carter* court specifically rejected reliance on phrases such as "separate actions" or "separate issues and parties" to determine whether an action has been severed so that the action would proceed as a separate case. *Id.* (citing Sadler v. County of Cook, 108 Ill. App. 3d 175, 438 N.E.2d 1129 (1st Dist. 1982); Chicago Miniature Lamp Works, Inc. v. D'Amico, 78 Ill. App. 3d 269, 397 N.E.2d 138 (1st Dist. 1979); Salyers v. Board of Governors, 69 Ill. App. 3d 356, 387 N.E.2d 1129 (4th Dist. 1979)). Additionally, the *Carter* court noted that *Northtown* categorized the motion for severance as a motion under section 2-614(b). *Id.* at 307, 518 N.E.2d at 1037 (citing Northtown Warehouse v. Transamerica Ins. Co., 111 Ill. 2d 532, 534, 490 N.E.2d 1268, 1269). Section 2-614(b), however, deals with the ordering of separate trials, not with severance. *Id.*

96. *Carter*, 119 Ill. 2d at 307-08, 518 N.E.2d at 1037.

97. *Id.* at 308, 518 N.E.2d at 1037.

IV. ANALYSIS

The *Carter* court rejected the "sweeping" language used in *Northtown* because that language permitted an appeal of judgments whenever an appellate court, using a case-by-case analysis, determined that the trial court had intended to treat the claim as a separate action.[98] The court recognized, however, that the result of the *Northtown* rule, permitting appeals without a rule 304(a) finding, was beneficial in certain cases.[99] Therefore, the *Carter* court chose to restrict the *Northtown* rule to a limited, easily recognized class of cases in which separate trials had been ordered.[100] The court defined this class as those cases in which a trial court ordered severance pursuant to the Illinois provisions for the severance of actions *and* explicitly stated in the severance order that the claim or counterclaim had indeed "been *severed* (in the narrow sense of the word) and that the severed claim, counterclaim or party shall proceed thereafter separate from the other claims, counterclaims or parties to the case."[101] Finally, the *Carter* court stated that even when the severance is ordered pursuant to the proper code provision and the order uses the word "sever" or "severance," the circuit judge still should provide the certainty of a rule 304(a) finding or an explicit statement of severance in the narrow sense.[102] By setting up this new test, the *Carter* court hoped to establish the greater certainty for parties making appeals in multi-claim controversies that was expected from the enactment of rule 304(a).[103]

The most significant aspect of the *Carter* decision is the fact that *Carter* creates an exception to the usual case-by-case approach for determining when a rule 304(a) finding is necessary to perfect an appeal. The *Carter* court adopted the *Northtown* court's recognition that a judgment on separately tried claims should be final and appealable without a rule 304(a) finding in some cases. The *Carter* court made the *Northtown* rule easily applicable by refining the *Northtown* "separate and distinct claim test"[104] as claims that have been "severed" pursuant to a particular code provision and that

98. *Id.* at 305-06, 518 N.E.2d at 1036.

99. *Id.* at 307-08, 518 N.E.2d at 1037.

100. *Id.*

101. *Id.*

102. *Id.* at 308, 518 N.E.2d at 1037. In cases involving judgments as to fewer than all of the parties or claims, rule 304(a) should be the general rule, and rule 303(a)(1) should be the exception. *Id.* Therefore, the *Carter* court stated that the language in *Northtown* indicating otherwise must give way to the *Carter* holding. *Id.*

103. *Id.* at 307-08, 518 N.E.2d at 1037.

104. *See supra* note 45 and accompanying text.

have been described by the trial court as claims which should proceed separately from the other claims of the case.[105]

By restricting the *Northtown* rule, the *Carter* court furthered the goals of rule 304(a). First, the rule will still operate to discourage piecemeal appeals because the trial court remains obligated to review the facts and circumstances of most cases and enter a rule 304(a) finding before judgment resolving only part of an action may be appealed. Second, parties seeking to appeal in multiple-claim actions can ascertain with certainty that there is only one set of circumstances in which a rule 304(a) finding will *not* be required before such an appeal can proceed. Finally, the decision in *Carter* is likely to promote judicial economy by reducing the number of cases in which an appellate court must dismiss an appeal of a final judgment adjudicating less than all the issues in controversy for lack of jurisdiction in the absence of a rule 304(a) finding.

The *Carter* decision, however, does not eliminate all of the uncertainty surrounding the appeal of a final judgment when other matters in the action remain pending. The uncertainty in the application of rule 304(a) arises from the case-by-case analysis required in most situations. Litigants will continue to struggle with the question of whether the judgment to be appealed resolves issues wholly independent from the remaining claims. Accordingly, the trial court will determine whether a just reason to delay an appeal exists. The litigants, however, no longer must question whether a rule 304(a) finding is necessary for an appeal.

V. IMPACT

To take advantage of the decision in *Carter*, attorneys representing parties in actions with severable claims should take great care when filing motions for severance. First, the attorney must be certain that the order is grounded in the provision for severance rather than a provision for separate trials. Next, the attorney should request that the severance order state that the claim has indeed been severed. Finally, the attorney should request that the order specify that the severed claims can proceed thereafter separate from the original claims.[106] If the circuit court chooses not to comply with any of these requests, the judgment is not 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

105. *See supra* notes 93-96 and accompanying text.

106. *See Carter*, 119 Ill. 2d at 307-08, 518 N.E.2d at 1037.

parties."[107]

The trial court should continue to use its sound discretion when ordering the severance and separation of trials. The trial court may enter a severance order with all the elements in *Carter* if it so chooses. Presumably, the trial court will recognize the significance of a severance motion requesting a severance order that satisfies *Carter* and will use care, both in deciding whether to grant the motion and in writing the order. Notably, a trial court's failure to issue a severance order satisfying *Carter* does not preclude the possibility of an immediate appeal of the judgment on the claims in question. Rather, the parties can still request a rule 304(a) finding after the court enters judgment on the group of claims. Still, the court can avoid the necessity of considering motions requesting rule 304(a) findings in appropriate cases by using care when drafting severance orders. If the circuit court decides that there is just reason for delay and does not allow an appeal, then the petitioner will have to wait until the initial claim is resolved before taking an appeal on the severed claim.

VI. CONCLUSION

Carter v. Chicago & Illinois Midland Railway[108] held that a rule 304(a) finding was necessary to make the judgment of a separately tried issue appealable, regardless of the section of the code relied upon by the trial court to bring about the separate trial of a claim or counterclaim.[109] Prior to *Carter*, the appellate courts of Illinois expressed much confusion as to the necessity of an express finding that there was "no just reason for delaying"[110] before the decision on a severed claim or party could be appealed.[111] After *Carter*, judges and practitioners will be able to determine with greater certainty whether the requirements of rule 304(a) are satisfied. Furthermore, practitioners will no longer have to worry about whether an appellate court will throw out their appeals absent a rule 304(a) finding on the judgment. Finally, the *Carter* court has stated that the general policy of rule 304(a) should control, and that permitting an immediate appeal of a judgment on certain severed claims

107. ILL. REV. STAT. ch. 110A, para. 304(a) (1987).
108. 119 Ill. 2d 296, 518 N.E.2d 1031 (1988).
109. *Id.* at 307, 518 N.E.2d at 1037.
110. ILL. REV. STAT. ch. 110A, para. 304(a) (1987).
111. *Carter*, 119 Ill. 2d at 307, 518 N.E.2d at 1037.

without a rule 304(a) finding will be a limited exception rather than the standard.

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