

No. 1-11-2518

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|----------------------|---|--------------------|
| DENISSE CASTRO, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 11 OP 75877 |
| |) | |
| JOSE COSSIO, |) | Honorable |
| |) | Patrice Ball-Reed, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where record did not disclose a ruling on defendant's posttrial motion, which was filed subsequent to his notice of appeal.
- ¶ 2 Respondent Jose Cossio, *pro se*, appeals from a plenary stalking no contact order entered by the circuit court of Cook County pursuant to section 100 of the Stalking No Contact Order Act (Act) (740 ILCS 21/100 (West 2010)). On appeal, Cossio essentially contends that the court erred in entering that order where he did not engage in a course of conduct that caused severe emotional distress, that the order violates his first amendment right to free speech, and that the

court erred in failing to consider his motion to dismiss and motion *in limine*. Castro has not filed a brief in response; however, we may consider the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 The record shows that on August 11, 2011, petitioner Denisse Castro filed a *pro se*¹ emergency petition for a stalking no contact order to protect herself, Stacey Castro, Antonio Castro and Maria Castro from stalking by Cossio. The circuit court denied Castro's emergency petition; however, the court left the petition pending as a petition for a plenary stalking no contact order and continued the matter for a hearing after service of process and notice to Cossio.

¶ 4 On September 1, 2011, a hearing was held on Castro's petition where both parties appeared and testified *pro se*. At the conclusion of these proceedings, the court "extend[ed]" the no contact order against Cossio to August 30, 2013. Cossio filed a notice of appeal from that order that same day, then filed a motion for reconsideration on September 12, 2011. This motion was continued to October 3, 2011, "for proper service," but there is no indication in the record that the court ruled on it. As a result, we must first consider, *sua sponte*, our jurisdiction over the appeal. *Village of Sugar Grove v. Rich*, 347 Ill. App. 3d 689, 693 (2004).

¶ 5 The record shows that Cossio filed a notice of appeal from the stalking no contact order pursuant to Illinois Supreme Court Rule 303 (eff. Jun. 4, 2008). That rule provides that a notice of appeal must be filed within 30 days after entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, within 30 days after entry of the order disposing of the last pending post-judgment motion. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). Rule 303 further provides that when a timely post-judgment motion has been filed, a notice of appeal filed before entry of the order disposing of the last pending post-judgment

¹ Although the petition contains the name and address of an attorney, the petition is written in the first person, the petition is signed solely by plaintiff and no attorney number is listed.

motion becomes effective when the order disposing of that motion is entered. Ill. S. Ct. R. 303(a)(2); *People v. Walker*, 395 Ill. App. 3d 860, 863-64 (2009), *appeal allowed*, 236 Ill. 2d 542 (2010).

¶ 6 As applied here, Cossio's notice of appeal filed on September 1, 2011, was clearly premature in light of his timely filed motion for reconsideration on September 12, 2011. *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 821 (2010). It was also of no effect since a ruling was never entered on his posttrial motion. Ill. S. Ct. R. 303(a)(2).

¶ 7 A similar set of facts was addressed by our supreme court in *Chand v. Schlimme*, 138 Ill. 2d 469 (1990), albeit under an earlier version of Rule 303. In that case, the plaintiff filed a notice of appeal and a posttrial motion on the same day, and the circuit court subsequently denied her posttrial motion. *Chand*, 138 Ill. 2d at 474. At that time, Rule 303 provided:

" 'When a timely post-trial motion has been filed *** a notice of appeal filed before the entry of the order disposing of the last pending post-trial motion shall have no effect and shall be withdrawn by the party who filed it ***. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the post-trial motion ***.' (Emphasis added.)"

Chand, 138 Ill. 2d at 476, quoting 107 Ill. 2d R. 303(a)(2). Consequently, the supreme court found that the plaintiff's notice of appeal was premature and had no effect, and because she did not file a new notice of appeal, the appellate court had lacked jurisdiction to disturb the circuit court's ruling. *Chand*, 138 Ill. 2d at 476. In reaching that conclusion, the supreme court rejected the plaintiff's claim that she waived her posttrial motion by filing a notice of appeal, noting that Rule 303 superseded any prior case law holding that the filing of a notice of appeal divests the trial court of jurisdiction and constitutes an abandonment of an otherwise effective posttrial motion. *Chand*, 138 Ill. 2d at 477-78.

¶ 8 Although the current version of Rule 303 does not require the appellant to withdraw a

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notice of appeal when a timely posttrial motion is simultaneously pending, we nonetheless find that the reasoning applied in *Chand* obtains here and produces the same result. Under the present formulation of Rule 303, Cossio's notice of appeal was likewise premature and of no effect during the pendency of his timely filed posttrial motion. Ill. S. Ct. R. 303(a)(1), (2). In addition, we may not ascribe waiver to Cossio's apparent failure to obtain a ruling on his posttrial motion, given the clear language of Rule 303. *Chand*, 138 Ill. 2d at 477-78. Accordingly, we dismiss this appeal for lack of jurisdiction. *Chand*, 138 Ill. 2d at 476.

¶ 9 Appeal dismissed.