

2012 IL App (2d) 121138-U
No. 2-12-1138
Order filed November 8, 2012

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
SECOND DISTRICT

THE PEOPLE <i>ex rel.</i> LISA MADIGAN,)	Appeal from the Circuit Court
Attorney General of the State of Illinois,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CH-1062
)	
BIGFISH CARLSON PROPERTIES, LLC,)	
and EDWIN CARLSON, JR.,)	Honorable
)	Eugene G. Doherty,
Defendants-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* Motion to file a late Rule 308 application for leave to appeal, filed one day after the rule's 14-day deadline, was untimely. Appellate court lacked jurisdiction to address application, and the motion is denied.
- ¶ 2 The trial court, in an interlocutory order, certified three questions for permissive appellate review pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010). Fifteen days after the court's order (one day after the rule's deadline), defendants moved in this court to file a late

application for leave to appeal. Because we lack jurisdiction to consider the application, we deny the motion.

¶ 3

I. BACKGROUND

¶ 4 This motion arose out of a complaint brought by the Attorney General against defendants, alleging that they dumped construction and demolition debris at a site owned by Bigfish in Winnebago County without a permit and in violation of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.* (2010)).

¶ 5 On October 2, 2012, the trial court entered an interlocutory order under Rule 308, certifying three questions for appellate review and finding that they presented questions of law as to which there is substantial ground for differences of opinion, and, further, that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

¶ 6 On October 17, 2012, 15 days after the trial court's order, defendants moved to file a late application for leave to appeal. They argued that they were unable to present a timely application for appeal because their attorney "had simultaneous briefing matters on another case."

¶ 7 On October 23, 2012, the Attorney General filed a response to defendants' motion, arguing that defendants' motion should be denied because this court lacks jurisdiction over the untimely application. For the following reasons, we agree with the Attorney General and deny defendants' motion.

¶ 8

II. ANALYSIS

¶ 9 Rule 308 provides an avenue for permissive appeal from an interlocutory order not otherwise appealable when an application for leave to appeal is filed and the trial court has found that: (1) the "order involves a question of law as to which there is substantial ground for difference of opinion"

and (2) “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” Ill. S. Ct. R. 308 (eff. Feb. 26, 2010). The rule further provides that appeal is sought “by filing an application for leave to appeal with the clerk of the Appellate Court within 14 days after the entry of the order in the trial court or the making of the prescribed statement by the trial court, whichever is later. An original and three copies of the application shall be filed.” Ill. S. Ct. R. 308 (eff. Feb. 26, 2010). Rule 308 is strictly construed and sparingly exercised. *Kincaid v. Smith*, 252 Ill. App. 3d 618, 622-23 (1993).

¶ 10 *People ex rel. Pressol GmbH v. Pressl*, 328 Ill. App. 3d 274 (2002), cited by the Attorney General, is on point. There, as here, the defendants filed their Rule 308 application one day after the 14-day period for filing such applications. The plaintiff objected and requested that the application be dismissed for lack of jurisdiction. The defendants moved to treat the application as timely filed, stating in an affidavit that the late filing was due to a family emergency. Initially, the appellate court entered an order treating the application as timely filed and granted the defendants’ application for leave to appeal. *Id.* at 275. However, the appellate court reconsidered and held that it had “no inherent power under the rule to forgive a party’s failure to comply with the 14-day time limit even for good cause shown,” and it dismissed the appeal. *Id.* at 277. The *Pressol* court cited other cases for the proposition that the appellate court lacks jurisdiction to address the merits of an appeal where Rule 308’s 14-day deadline is not met. *Id.* at 276. It further noted that Rule 308 contains no provision allowing for an extension of time for filing an application (citing Illinois Supreme Court Rules 303(d) (eff. May 30, 2008) and 306(e) (eff. Feb. 16, 2011)) and that the court’s interpretation is in keeping with the general interpretation that the rule is to be strictly construed. *Id.* at 276-77.

¶ 11 We find *Pressol* well-reasoned and conclude that we would have no jurisdiction to consider defendants' application.

¶ 12

III. CONCLUSION

¶ 13 For the foregoing reasons, we deny defendants' motion to file a late application for leave to appeal.

¶ 14 Motion denied.