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2012 IL App (3d) 120077-U

Order filed November 16, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> the Estate of)	Appeal from the Circuit Court
LEONARD DAUPHIN,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Deceased)	
)	
(Inez St. Aubin, Della Ziller, and William)	
Dauphin,)	
)	Appeal No. 3-12-0077
Petitioners-Appellees,)	Circuit No. 04-P-30
)	
v.)	
)	
PNC Bank, National Association, Successor in)	
the Interest to National City Corporation d/b/a)	
National City,)	
)	Honorable Michael J. Kick,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The filing of a motion to continue after entry of a final order did not stay the time for filing a postjudgment motion. Trial court lost subject matter jurisdiction before it certified the question to appellate court. Appellate court lacked jurisdiction to answer certified question. Appeal dismissed.

¶ 2 This action is an appeal from the circuit court of Kankakee County pursuant to Illinois Supreme Court Rule 308(a) (eff. Feb. 26, 2010). On March 1, 2011, the trial court granted the respondent's, PNC Bank, National Association, Successor in Interest to National City Corporation, d/b/a National City (PNC Bank), motion for summary judgment. On May 12, 2011, the trial court entered an order granting the petitioners', Inez St. Aubin, Della Ziller, and William Dauphin, leave to file a motion to reconsider. PNC Bank filed its motion pursuant to Rule 308(a) for certification of a question of law on May 27, 2011.

¶ 3 The respondent requested certification, arguing, *inter alia*, that the trial court was divested of jurisdiction pursuant to section 2-1203 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-1203) (West 2002)), as the petitioners failed to file a timely postjudgment motion. As such, the respondent contends that the trial court lacked jurisdiction to rule on the petitioners' motion to continue filed on March 28, 2011, and heard on May 12, 2011. The respondent then filed a Rule 308 motion, requesting that the trial court certify the question of law as to whether or not the trial court, under these circumstances, had the jurisdiction or discretion to grant the unsuccessful party leave to file a motion to reconsider where no previous extensions were granted within 30 days after the entry of judgment. The trial court agreed to certify the question, and the respondent filed a petition for leave to appeal. We find that the trial court lost jurisdiction when no postjudgment motion was filed within 30 days of March 1, 2011. That left the trial court without jurisdiction to certify the question before us. *Ergo*, we lack jurisdiction to address the certified question and, therefore, dismiss this appeal.

¶ 4 BACKGROUND

¶ 5 On March 1, 2011, the trial court entered an order granting PNC Bank's motion for

summary judgment. The order effectively dismissed the petitioners' amended citation to discover assets against PNC Bank. The court's written order of March 1 also included a Supreme Court Rule 304(a) finding that "there was no just reason to delay enforcement."

¶ 6 Following the grant of summary judgment in favor of PNC Bank, counsel for the petitioners filed a motion to continue on March 28, 2011. The motion sought an extension of time until May 30, 2011, for the petitioners to file their postjudgment motion for reconsideration. In support of their motion, the petitioners stated that their attorney had experienced "considerable health problems during the last month," and that he was "scheduled for his second open-heart surgery on March 31, 2011." The motion was not presented to, nor heard by, the trial judge on March 28. Instead, the petitioners noticed the motion to continue for hearing on May 12, 2011, which was the day their attorney was to return to work following his recovery from surgery, and approximately 75 days from the entry of judgment in favor of PNC Bank.

¶ 7 Given counsel's significant health problems and the amount of time he would be away from all pending cases in the Kankakee circuit court, the chief judge issued a memorandum to all circuit judges informing them of counsel's absence, and that he would be on leave from April 1, 2011, through May 12, 2011.¹ This memorandum was internal and, as a result, was not filed under the current litigation or disseminated to counsel for PNC Bank. There is also no correlating docket entry referencing the memo.

¶ 8 On May 6, 2011, PNC Bank filed its objection and response to petitioners' motion to continue. Its objection argued, among other things, that the petitioners' motion to continue was

¹We note parenthetically that a leave beginning on April 1, 2011, was beyond the statutory 30 days discussed below.

not a proper postjudgment motion and, therefore, the petitioners had failed to file a postjudgment motion within the 30-day time-limit provided by section 2-1203(a), and the trial court was without jurisdiction to hear and/or rule on the petitioners' motion to continue.

¶ 9 Notwithstanding the arguments asserted by PNC Bank, the trial court entertained the hearing on May 12, 2011, and issued an order granting the petitioners' motion to continue. The order also granted the petitioners leave to file a motion to reconsider and set a briefing schedule on the motion to reconsider. In so finding, the trial court pointed to the serious medical issues of petitioners' counsel, and the court believed that, in the interest of justice, it had the discretion to allow the petitioners to file their motion to reconsider despite the fact that it was 75 days outside of the time frame mandated by the rules.

¶ 10 PNC Bank then filed its motion pursuant to Rule 308(a) for certification of a question of law followed by its motion to stay the briefing schedule on the petitioners' motion to reconsider, pending the resolution of PNC Bank's Rule 308 motion. The petitioners filed their response in opposition to PNC Bank's Rule 308 motion on June 22, 2011. Ultimately, the trial court certified the question now pending before this court.

¶ 11 ANALYSIS

¶ 12 This appeal presents the following certified question pursuant to Illinois Supreme Court Rule 308(a):

"Where summary judgment has been entered against a party and the attorney for the unsuccessful party experiences health issues in the 30-day period after summary judgment is entered; where, within 30 days following entry of summary judgment, the chief judge of the circuit court circulates a

memorandum to the circuit court judges advising that said attorney would be undergoing cardiac bypass surgery and would be on medical leave, although said memorandum was never provided to the successful party; where said medical leave extended beyond 30 days after entry of summary judgment; where, although the unsuccessful party filed a motion for an extension of time to file a motion to reconsider within 30 days of entry of summary judgment and no order was entered within that 30-day period granting the unsuccessful party an extension of time in which to file a motion to reconsider the entry of summary judgment against; in light of the circumstances, after 30 days had passed from the entry of judgment, did the trial court have jurisdiction or discretion to grant the unsuccessful party leave to file a motion to reconsider? 'Where more than 30 days have passed since the entry of a final and appealable order granting summary judgment, does the trial court have jurisdiction or discretion to grant the unsuccessful party leave to file a motion to reconsider where no previous extensions were granted within 30 days of the entry of judgment?' "

¶ 13 The appellate court is generally limited to the question certified by the trial court, which, because it must be a question of law and not fact, is reviewed *de novo*. *Brookbank v. Olson*, 389 Ill. App. 3d 683, 685 (2009). In addition, questions of statutory interpretation are subject to *de novo* review. *Kennedy v. Grimsley*, 361 Ill. App. 3d 511, 513 (2005). When reviewing a certified question, the appellate court answers only the question that has been posed; in certain circumstances, however, the court is obligated to go beyond the question presented to consider

the appropriateness of the orders giving rise to the appeal. *Busch v. Mison*, 385 Ill. App. 3d 620, 623 (2008).

¶ 14 As an initial matter, we note that a reviewing court has a duty to consider, *sua sponte*, its jurisdiction over the issues raised by the parties. *Cole v. Retirement Board of Policemen's Annuity & Benefit Fund of the City of Chicago*, 396 Ill. App. 3d 357, 366 (2009). Thus, we find this certified question presents us with an interesting situation, insofar as we cannot actually answer it given our lack of jurisdiction. Paradoxically, by explaining why we cannot answer it, we are, in essence, answering it. We find that the petitioners' motion to continue was not a proper postjudgment motion. Rather, it was a motion to extend the time to file a postjudgment motion, and the request for an extension of time was not granted within the prescribed 30-day time period. Therefore, we find that the trial court was divested of jurisdiction and, thus, lacked the authority to rule on either the petitioners' motion to continue, their request for leave to file a motion to reconsider, and to even certify the question pursuant to Rule 308 before us now. In turn, if the trial court lacked jurisdiction to certify the question, we similarly lack jurisdiction to answer it.

¶ 15 PNC Bank first argues that section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2002)) precluded the trial court from granting the petitioners leave to file their motion to reconsider. We agree.

¶ 16 Section 2-1203(a) provides:

"(a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a

retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203(a) (West 2002).

¶ 17 Case law on the subject is clear and well settled. When a trial court does not grant an extension of time to file a posttrial motion within the initial 30-day period, there is no jurisdiction to later grant a plaintiff additional time or to consider a posttrial motion attacking the final judgment. *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 554-55 (2003) (citing *Trentman v. Kappel*, 333 Ill. App 3d. 440, 443 (2002)). This is true regardless of whether the posttrial motion is filed after entry of judgment in a jury case pursuant to section 2-1202, or after entry of judgment in a nonjury case pursuant to section 2-1203. See *Wilk v. Wilmorite, Inc.*, 349 Ill. App. 3d 880, 883 (2004) (holding that under section 2-1203, a posttrial motion must be filed within 30 days of a final judgment; otherwise, the trial court will lose its jurisdiction to modify or vacate the final order that it entered after the lapse of 30 days).

¶ 18 In *Kunsch*, the plaintiff sought to have his mother's will and trust declared void. A jury verdict in favor of the defendants was entered on March 19, 2002. On April 18, 2002, plaintiff filed a motion requesting an extension of time to file his posttrial motion. The trial court ruled on an ancillary motion of the defendants' on May 1, 2002, and, at the same time, granted the plaintiff an additional 30 days to file his posttrial motion. The trial court subsequently denied the plaintiff's posttrial motion, and the plaintiff filed his notice of appeal on July 23, 2002.

¶ 19 In dismissing the plaintiff's appeal, this court turned to section 2-1202 of the Code (735 ILCS 5/2-1202) (West 2002), which like section 2-1203, provides that a posttrial motion must be filed within 30 days after the entry of judgment or " 'within any further time the court may allow within the 30 days or any extensions thereof.' " *Kunsch*. 342 Ill. App. 3d at 554. Hence, if the

trial court extends the time for filing a posttrial motion beyond the initial 30-day period, that order must be entered within the 30-day period or within any period of extension already given.

Id. The running of the 30-day time period commenced on March 19, 2002, following the entry of the judgment. While the plaintiff filed a motion for extension to file within the 30-day time period, the trial court did not rule on the motion until May 1, 2002, well beyond the time mandated by statute. Thus, the trial court was precluded from granting plaintiff's request.

¶ 20 We find the situation before us now analogous to that of *Kunsch*. The entry of summary judgment, along with a Supreme Court Rule 304(a) finding, was entered on March 1, 2011, in favor of PNC Bank. By including the language of Rule 304(a) that "there was no just reason to delay enforcement," the trial court effectively made its ruling final and appealable. Thus, the 30-day time period as mandated in section 2-1203 began to run on March 1, 2011. While the petitioners filed their motion to continue on March 28, squarely within the time frame, the motion was not ruled upon until May 12, 2011. The trial court was precluded from ruling upon the motion on May 12.

¶ 21 Moreover, we believe the petitioners' motion to continue is not a proper postjudgment motion under section 2-1203(a). A proper postjudgment motion must request a rehearing, retrial, modification or vacatur of the judgment, or similar type of relief against the judgment. *In re Marriage of Singel*, 373 Ill. App. 3d 554, 556 (2007). Here, the petitioners' motion to continue did not request reconsideration or relief from the March 1, 2011, order; it merely requested an extension of time to file a motion that would. As it was reiterated in *Kunsch, supra*, under section 2-1203(a), an initial extension beyond the 30-day limit must be *granted* within that 30-day period. *Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 921-22 (2006). See also *Kwak v.*

St. Anthony DePadua Hospital, 54 Ill. App. 3d 719 (1977) (holding that despite the fact that plaintiff had filed motions for an extension of time before the 30-day period expired, the trial court had been without jurisdiction to hear the motions because plaintiff failed to obtain an order extending the time in which to file *before* the applicable 30-day deadline).

¶ 22 The petitioners counter by arguing that the doctrine of revestment is applicable, and that PNC Bank voluntarily appeared and participated in further proceedings that revested the trial court with both personal and subject matter jurisdiction. Petitioners' reliance on the revestment doctrine is misplaced.

¶ 23 As an initial matter, PNC Bank argues that even if revestment did apply, it is outside the scope of the certified question submitted to this court. While we agree in theory, *Busch*, 385 Ill. App. 3d at 623, stands for the proposition that this court has the discretion, in certain circumstances, to go beyond the scope of the question certified on appeal to question the appropriateness of the underlying orders. We are obliged to do so in the instant case and consider revestment as the underlying question is jurisdictional. Thus, if revestment did occur, then the trial court did have jurisdiction to certify the question now before us on appeal. However, it is evident that the revestment doctrine has no application to the facts of this case.

¶ 24 Under the revestment doctrine, "a circuit court may be revested with jurisdiction over a case after it has been dismissed if the parties subsequently ignore the dismissal and continue litigating the case. [Citation.] In order for the doctrine to apply, 'the parties must actively participate without objection in proceedings which are inconsistent with the merits of the prior judgment.' [Citation.] A party's conduct may be considered inconsistent with a prior order 'if the conduct reasonably can be construed as an indication that the parties do not view the prior order

as final and binding.' [Citation.]" *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 927-28 (2009).

¶ 25 The record is devoid of any evidence that would suggest that PNC Bank ignored the finding of summary judgment in its favor and resubmitted itself to the jurisdiction of the trial court. Since that order was entered on March 1, 2011, PNC Bank repeatedly objected to and opposed all efforts by petitioners to reconsider the final and appealable order, arguing that the trial court lacked the jurisdiction to do so. As noted above, a party's conduct may be considered inconsistent with a prior order for purposes of revestment, "if the conduct reasonably can be construed as an indication that the parties do not view the prior order as final and binding." *Djikas v. Grafft*, 344 Ill. App. 3d 1, 12 (2003). Again, at no point have PNC Bank's actions been inconsistent with the March 1 order. As such, the revestment doctrine is inapplicable, and the trial court was not revested with jurisdiction to hear the petitioners' May 12, 2011, motion to continue or address the merits of the underlying grant of summary judgment.

¶ 26 Finally, the petitioners argue that their motion to reconsider filed on May 11, 2011, should be construed as a motion for relief from judgment pursuant to section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2002). This contention is incorrect for a myriad of reasons, most notably that a determination of whether their motion actually was a section 2-1401 petition for relief from judgment is irrelevant to the question certified to this court (assuming, *arguendo*, the trial court had jurisdiction to certify the question). Whether the trial court lost its jurisdiction on day 31 has no bearing whatsoever on the filing of a petition for relief from judgment under section 2-1401; a section 2-1401 petition is considered a new action separate and apart from the proceeding in which the judgment complained of was entered, and petitioners would have up to two years to file. See *Gas Power, Inc. v. Forsythe Gas Co.*, 249 Ill. App. 3d 255 (1993).

Furthermore, if we were to adopt the petitioners' contention that every untimely filed motion for reconsideration per section 2-1203 should be construed as a 2-1401 petition for relief from judgment, the 30-day rule would effectively be swallowed. We decline to do so, and find that any issue regarding a section 2-1401 petition for relief from judgment is outside the scope of the question certified on appeal.

¶ 27 At least at the trial and appellate court levels, jurisdiction is not a discretionary issue. It either exists or it does not. *People v. Lyles*, 217 Ill. 2d 210, 217 (2005) (The appellate court lacks the supervisory powers of the supreme court. Thus, when an appeal is untimely under a supreme court rule, the appellate court has no discretion to take any action other than to dismiss the appeal.). Here, it does not. The trial court lost jurisdiction when petitioners failed to either file a proper postjudgment motion within 30 days of March 1, 2011, or secure entry of an order granting an extension of time to do so within the same time frame. Therefore, any order entered by the trial court after March 31, 2011, is void and is vacated.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the trial court lacked jurisdiction to certify the question and, thus, we lack jurisdiction to answer it.

¶ 30 Trial court's order after March 31, 2011 vacated; appeal dismissed.