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SIXTH DIVISION
December 12, 2014

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JERRY PURNELL and JEAN PURNELL,)	Appeal from the
)	Circuit Court of
Plaintiffs/Appellants,)	Cook County.
)	
v.)	
)	
EDGAR D. COLEMAN, JOHN GLOSS, Individually)	
and as an Agent of 20 North, Inc., KENNETH)	
MONTGOMERY, Individually and as an Agent of)	
John Gloss, 20 NORTH, INC., and CHICAGO TITLE)	
LAND TRUST COMPANY,)	No. 06 CH 12036
)	
Defendants/Appellees,)	
)	
(Willie Purnell,)	
)	
Plaintiff,)	
)	
v.)	
)	
Attorney's Title Guaranty Fund, Inc., all of the assigns)	
or agents of the above defendants, and any and all)	
persons and parties with interests in 20 North Mason)	
Street, Chicago, Cook County, Illinois,)	The Honorable
)	Lee Preston,
Defendants.))	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶1 *HELD*: This court lacks jurisdiction to consider plaintiffs' appeal of the underlying quiet title action where plaintiffs failed to file a notice of appeal within 30 days of the circuit court's denial of their motion to reconsider its prior judgment and the consolidation of the quiet title action with a forcible entry and detainer action did not affect the time for filing an appeal because the actions did not merge, but were consolidated only for convenience and economy.

¶2 The underlying matter concerns a quiet title action filed in 2006 relative to a residential property located at 20 N. Mason Avenue in Chicago, Illinois. The parties disputed whether title to the subject property was wrongfully transferred from plaintiff Jerry Purnell to defendant Edgar Coleman and then sold to other parties. Following a bench trial, the circuit court ultimately entered a judgment in favor of plaintiff Jerry Purnell and against defendant Edgar Coleman, awarding Jerry \$100,000 in damages. The circuit court, however, entered judgment against plaintiffs, Jerry Purnell and Jean Purnell¹, in favor of the remaining defendants, John Gloss, Kenneth Montgomery, 20 North, Inc., and Chicago Title Land Trust Co. (Chicago Title). The circuit court denied plaintiffs' subsequent motion to reconsider and plaintiffs appealed.

¶3 Prior to addressing the merits of plaintiffs' appeal, we must first consider defendants' motion to dismiss the appeal for lack of jurisdiction, which this court has taken with the case.

¶4 FACTS

¶5 As stated, the quiet title action was filed in 2006. The case was assigned to the chancery division under case number 06 CH 12036. Also, in 2006, defendant 20 North, Inc. filed a forcible entry and detainer action, which was given case number 2006 M1-713271. On August 14, 2006, the circuit court granted plaintiffs' motion to consolidate the quiet title action and the

¹ Willie Purnell was originally named as a plaintiff, but was deceased by the time the court's judgment was entered and no estate had been opened in his name; therefore, his claims were dismissed without prejudice.

forcible entry and detainer action, and stayed all proceedings in the forcible entry and detainer action "until further order of court."

¶6 On September 24, 2012, the circuit court entered an order finding that legal title to the subject property belonged to defendant 20 North, Inc. The case number listed on the order was 06 CH 12036. On October 23, 2012, plaintiffs filed a motion to reconsider, which the circuit court denied on December 4, 2012. The circuit court's December 4, 2012, order denying the motion to reconsider stated the "case is continued for case management *** for all pending matters." Plaintiffs subsequently filed a motion "to refer remaining forcible matters back to forcible detainer." On March 11, 2013, the circuit court entered an order stating that "all matters in Purnell, et al. v. Gloss et al. are final and appealable; Supreme Court Rule 304" and that a response brief for plaintiffs' motion to refer the forcible entry and detainer action back to "municipal" was due in 14 days.

¶7 On April 10, 2013, plaintiffs filed a notice of appeal of "all matters in this case whose final and appealable order date was March 11, 2013." Then, on April 23, 2013, the circuit court dismissed the forcible entry and detainer action in response to 20 North, Inc's motion to voluntarily non-suit the case. In the April 23, 2013, order, the circuit court advised "this order does not, in any manner, affect the proceedings or judgment previously entered in consolidated case 06 CH 12036." On May 13, 2013, plaintiffs filed a "notice of filing notice of appeal" stating that plaintiffs' attorney filed a notice of appeal pursuant to Supreme Court Rule 303 on April 10, 2013, and indicating that copies of the notice were sent to the list of parties attached in the service list. The record contains an envelope addressed to the attorney for 20 North, Inc. and Kenneth Montgomery bearing plaintiffs' attorney's return address and a postmark of May 15,

2013. According to the attorney for 20 North, Inc. and Montgomery, the notice of filing was received on May 17, 2013.

¶8 On June 4, 2013, 20 North, Inc. and Montgomery filed with this court a motion to dismiss plaintiffs' appeal for lack of jurisdiction. On June 24, 2013, Chicago Title also filed a motion to dismiss the appeal based on lack of appellate jurisdiction. On June 25, 2013, this court granted defendant Gloss' *pro se* motion of joinder with 20 North, Inc. and Montgomery's motion to dismiss plaintiffs' appeal for lack of jurisdiction. Then, on June 26, 2013, this court entered an order stating that the motion to dismiss for lack of jurisdiction was taken with the case.

¶9 ANALYSIS

¶10 With the facts described above, we consider whether this court has jurisdiction to consider plaintiffs' appeal.

¶11 "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Company v. Illinois Farmers Insurance Company*, 232 Ill. 2d 209, 213 (2009). This court has a duty to consider its jurisdiction at any time and should dismiss an appeal if jurisdiction is lacking. *Hwang v. Tyler*, 253 Ill. App. 3d 43, 45 (1993). For an appeal to be timely, Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) requires the notice of appeal be filed within 30 days after the entry of the final judgment appealed from, or if a timely postjudgment motion was filed, within 30 days after the order disposing of the last pending postjudgment motion directed against the judgment or order. However, when applicable, Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides, in relevant part, that "[i]f 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."

Rule 304(a), however, is not necessarily required for all actions involving multiple claims or parties. *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996) (citing *Northtown Warehouse & Transportation Co. v. Transamerica Insurance Co.*, 111 Ill. 2d 532 (1986)).

¶12 Section 2-1006 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1006 (2006)) provides that "[a]n action may be severed, and actions pending in the same court may be consolidated as an aid to convenience, whenever it can be done without prejudice to a substantial right." Illinois courts have recognized three forms of consolidation where several actions are pending: (1) in cases involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) in cases involving the same event in its general aspects, the court may tie the cases together but with separate docket entries, verdicts and judgments, limiting the consolidation to a joint trial; and (3) in cases that could have been brought as a single action, the court may merge the cases into one action, thereby losing their individual identity, to be disposed of as one suit. *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008) (citing *Northwest Water Commission v. Carlo v. Santucci, Inc.*, 162 Ill. App. 3d 877, 890-91 (1987)). Where two cases are consolidated only for convenience and economy, the cases do not merge into a single action but, rather, retain their distinct identities. *Filos*, 285 Ill. App. 3d at 532.

¶13 In this case, the record demonstrates that the quiet title action and the forcible detainer action were consolidated based on the first form of consolidation, namely, on the ground they involved the same subject matter and the disposition of the forcible entry action was dependent on the disposition of the quiet title action. The matters retained their case numbers and were consolidated only for convenience and economy; the cases did not merge. *Shannon v. Stookey*,

59 Ill. App. 3d 573, 577 (1978) (where consolidation is done only for convenience and economy, the causes are not merged into a single suit and the rights of the parties are not changed). The circuit court's December 4, 2012, order disposed of the last pending postjudgment motion in the quiet title action bearing case number 06 CH 12036, namely, plaintiffs' motion to reconsider the September 24, 2012, order, which confirmed 20 North Inc. owned the subject property.

Although the December 4, 2012, order contained a case management date for "all pending matters," the only matter that remained pending was the forcible entry and detainer action, which had been stayed until further notice of the court. This conclusion is supported by plaintiffs' own motion "to refer remaining forcible matters back to forcible detainer," in which they argued that since the matter of ownership had been decided by the chancery court in the quiet title action, the forcible entry and detainer action must proceed in municipal court to determine the possessory rights to the property. Because the circuit court's December 4, 2012, order denying reconsideration of its September 24, 2012, order, conclusively determined all matters related to the quiet title action, the order was appealable without Rule 304(a) language. *Filos*, 285 Ill. App. 3d at 532. Pursuant to Rule 303(a)(1), plaintiffs, therefore, were required to file their notice of appeal within 30 days from December 4, 2012. Plaintiffs, however, did not file their notice of appeal until April 10, 2013.

¶14 We recognize that plaintiffs' late notice of appeal referenced the circuit court's March 11, 2013, as the order from which they were appealing. The March 11, 2013, order did contain Rule 304(a) language, but also referenced the pending matter of whether plaintiffs' request to transfer the forcible entry and detainer action back to "municipal" was appropriate. That question was never answered because 20 North, Inc. voluntarily requested that the forcible entry and detainer action be non-suited. Moreover, as stated, the Rule 304(a) language was unnecessary as the

circuit court's December 4, 2012 order, completely disposed of the quiet title action. Indeed, the circuit court's April 23, 2013, order dismissing the forcible entry and detainer action recognized that the previously entered judgment in case number 06 CH 12036 was unaffected by the forcible entry and detainer proceedings.

¶15 In sum, this court does not have jurisdiction to consider plaintiffs' appeal.

¶16 **CONCLUSION**

¶17 Where plaintiffs failed to timely file their notice of appeal pursuant to Rule 303(a)(1), this court lacks jurisdiction to consider their appeal.

¶18 Appeal dismissed.