

2014 IL App (2d) 140575-U
No. 2-14-0575
Summary Order filed December 19, 2014

NOTICE: This order was filed under Supreme Court Rules 23(c)(1) and (c)(2) 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

ERICKA EYAS and EUGENE EYAS,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiffs-Appellees,)	
)	
v.)	No. 14-LM-843
)	
ED ROTH,)	Honorable
)	James D. Orel,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant, Ed Roth, appeals *pro se* from a judgment in favor of plaintiffs, Ericka and Eugene Eyas, on their complaint in forcible entry and detainer (735 ILCS 5/9-101 *et seq.* (West 2012)). We dismiss the appeal in part and affirm in part.

¶ 2 On March 17, 2014, plaintiffs filed their complaint, seeking possession of an apartment that defendant rented from them. On Friday, March 27, 2014, defendant appeared *pro se* and requested a jury trial. The trial judge told him that he would need to file a jury demand and that a jury trial would have to be on Monday, March 30, 2014, the first open date. Defendant

responded that he could not prepare so soon and wanted a jury trial later. The trial judge replied that he could have a bench trial April 17, but that a jury trial would have to be held March 30. Defendant reluctantly chose a bench trial.

¶ 3 On April 17, 2014, after a bench trial or informal hearing (of which we have no transcript or substitute), the court entered an agreed order granting plaintiffs immediate possession of the apartment but staying the issuance of the “Writ of Restitution” until May 29, 2014, after which “such writ shall issue on Plaintiff’s [sic] request without further notice or order of Court***.”

¶ 4 On June 3, 2014, defendant filed a “Motion to Extend Time,” asking the court to “extend the time for 30 days” because he needed “additional time to find reputable rental property.” The motion did not contest the judgment of April 17, 2014. On June 12, 2014, the court denied the motion. On that day, defendant filed a notice of appeal from (1) “[t]he order of March 27[,] 2014[,] setting a bench trial date of April 27 [sic][,] 2014”; (2) [t]he agreed order of May [sic] 27[,] 2014”; and (3) “[t]he Order of June 12[,] 2014.”

¶ 5 Although neither party questions our jurisdiction to hear this appeal, we must examine our jurisdiction and dismiss the appeal if jurisdiction is wanting. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985). With one pertinent exception to be noted, our jurisdiction is limited to appeals from final judgments. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A final judgment is one that terminates the litigation between the parties on the merits, so that, if affirmed, the trial court has only to proceed with the execution of the judgment. *In re Detention of Hardin*, 238 Ill. 2d 33, 42-43 (2010).

¶ 6 Here, the only final judgment was the agreed order of April 17, 2014, which awarded plaintiffs the relief that their complaint requested, gave them immediate possession of the

property, and stayed only the execution of the order (the “Writ of Restitution”). See *Mid-Northern Management, Inc. v. Heinzeroth*, 234 Ill. App. 3d 240, 245-46 (1992).

¶ 7 A notice of appeal must be filed within 30 days after the entry of the judgment appealed from or, if a *timely* motion directed against the judgment is filed, within 30 days of the entry of the order disposing of the last pending postjudgment motion. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). Here, defendant did not file his notice of appeal within 30 days after April 17, 2014. Moreover, although he did file his notice of appeal within 30 days after the entry of the order denying his “Motion to Extend Time,” that did not enable him to appeal the judgment. Even were this motion to qualify as one “directed against the judgment” (Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008)), it was tardy, having been filed more than 30 days after April 17, 2014. See 735 ILCS 5/2-1203(a) (West 2012).

¶ 8 We lack jurisdiction to consider any appeal of the judgment of April 17, 2014. Defendant’s notice of appeal was ineffectual insofar as it applied to the judgment (which it mistakenly stated was entered on May 27, 2014). The “order” of March 27, 2014, even assuming that there was such an order, was not final and could not be appealed (and the notice of appeal would have been untimely anyway). Any claim of error in this regard was subsumed under the final judgment. Therefore, we dismiss defendant’s appeal insofar as it is directed against the final judgment and the “order” setting the cause for a bench trial.

¶ 9 That leaves only the order of June 12, 2014, as a possible basis for a timely appeal. Because it denied defendant’s motion to stay the execution of the judgment, it was appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010)) as the denial of a request for an injunction. See *Valente v. Maida*, 24 Ill. App. 2d 144, 149-50 (1960). However, on appeal, defendant raises no claim of error as to the denial of the motion. Therefore, any claim of error is

forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Thus, we affirm the order denying defendant's motion to stay the execution of the judgment.

¶ 10 Appeal dismissed in part; affirmed in part.