

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).

2014 IL App (4th) 130838-U

FILED

December 4, 2014
Carla Bender
4th District Appellate
Court, IL

NOS. 4-13-0838, 4-13-0839, 4-13-0840, 4-13-0841 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GERALD JONES,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v. (Nos. 4-13-0838, 0839))	Livingston County
RANDY PFISTER, SALVADOR GODINEZ, and the)	Nos. 12MR116, 12MR88
ADJUSTMENT COMMITTEE,)	
Defendants-Appellees.)	
-----)	
GERALD JONES,)	No. 12MR87
Plaintiff-Appellant,)	
v. (No. 4-13-0840))	
JASON BROCKETT, GLENDAL FRENCH, RANDY)	
PFISTER, SALVADOR GODINEZ, PAUL)	
GRIFFITH, JOHN McNABB, and UNKNOWN)	
GRIEVANCE OFFICERS,)	
Defendants-Appellees.)	
-----)	
GERALD JONES,)	No. 12MR86
Plaintiff-Appellant,)	
v. (No. 4-13-0841))	
SALVADOR GODINEZ, RANDY PFISTER, TODD)	
PUNKE, DONALD REILMAN, BRENDA RICCOLO,)	Honorable
and JOEL STARKEY,)	Jennifer H. Bauknecht,
Defendants-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff, a *pro se* litigant incarcerated in the Illinois Department of Corrections, did not provide the required notarization on a proof of service submitted by a nonattorney litigant, resulting in a failure to comply with Illinois Supreme Court Rule 12(b)(3) (eff. Jan. 4, 2013). Failure to comply with Rule 12(b)(3) deprives this court of jurisdiction.

¶ 2 In August 2011, September 2011, and twice in November 2011, plaintiff, Gerald Jones, received disciplinary reports for his behavior in the Pontiac Correctional Center. In each instance plaintiff appeared before the defendant, Adjustment Committee (Committee) for adjudication on the charges. The Committee found plaintiff guilty in each case. In each case, plaintiff filed a grievance asserting variously his due-process rights were violated at the disciplinary hearing, he was denied equal protection, the Committee was biased, and the charges failed to state the elements of the offense. The grievance officer denied all of the grievances and the warden concurred. Plaintiff appealed to the director of the Illinois Department of Corrections, who issued a final denial of plaintiff's grievances.

¶ 3 Plaintiff filed a *pro se* complaint for a common law writ of *certiorari*, alleging the Committee violated his right to due process and its own regulations. Defendants filed a motion to dismiss. The trial court granted the defendants' motion to dismiss. Plaintiff moved for reconsideration. The trial court denied this motion. Plaintiff filed a notice of appeal by way of placing his notice in the prison mail system. His signature was not notarized.

¶ 4 I. BACKGROUND

¶ 5 On August 23, 2011, plaintiff, an inmate at Pontiac Correctional Center, received a disciplinary report charging him with "assaulting any person," "insolence," and "disobeying a direct order." On August 29, 2011, plaintiff appeared before the Committee for adjudication on the charges. The Committee found him guilty and recommended discipline consisting of revocation of three months of good-conduct credit, one year in C Grade, one year of segregation, one year of audio visual restriction, and six months of contact-visits restriction. This was approved by defendant Warden Randy Pfister.

¶ 6 On September 12, 2011, plaintiff filed a grievance, asserting his due-process rights were violated at the disciplinary hearing. Plaintiff pursued his grievance all the way to the Director of the Department of Corrections, defendant Salvador Godinez, who issued a final denial on February 28, 2012.

¶ 7 On September 28, 2011, plaintiff received a second disciplinary report, charging him with violating the prison's orientation manual by yelling chess numbers from his cell to another. On October 2, 2011, plaintiff appeared before the Committee, where he pleaded "partially guilty." The Committee found plaintiff guilty and recommended he be given one month on C Grade and one month of commissary restriction. Two days later, Warden Pfister approved the discipline.

¶ 8 Plaintiff filed a grievance, asserting he was denied equal protection and several other constitutional rights because the evidence was "falsified." Defendant Pfister concurred in the grievance officer's denial of the grievance. Plaintiff appealed to Director Godinez, who issued a final denial of the grievance on February 28, 2012.

¶ 9 Meanwhile, on November 8, 2011, plaintiff received a third disciplinary report, charging him with disobeying a direct order. On November 14, 2011, plaintiff appeared before the Committee, where he pleaded not guilty. The Committee found plaintiff guilty and recommended he be given three months in C Grade, two months of segregation, and three months of audio/visual restriction. Plaintiff filed another grievance, claiming the Committee was biased. The grievance officer denied the grievance and Warden Pfister concurred. Upon appeal, Director Godinez issued a final denial of the grievance on February 28, 2012.

¶ 10 Finally, on November 15, 2011, plaintiff received a fourth disciplinary report,

charging him with violation of the rule against noise and insolence. On November 21, 2011, plaintiff appeared before the Committee and pleaded not guilty. The Committee found plaintiff guilty and recommended he be given three months in C Grade, one month of segregation, and three months of audio visual restriction. Plaintiff filed a grievance, asserting his conviction was void because the charges failed to state the elements of the offense and the Committee was biased and deprived him of a defense. The grievance officer denied the grievance and Warden Pfister concurred. Plaintiff appealed and Director Godinez issued a final denial of the grievance on February 28, 2012.

¶ 11 On August 2, 2012, plaintiff filed a *pro se* complaint for a common law writ of *certiorari*, alleging the Committee violated his right to due process and its own regulations by (1) failing to support its determinations with "some evidence"; (2) refusing to review allegedly exculpatory video-camera footage; (3) acting arbitrarily or with bias; (4) sustaining the charges even though they failed to allege substantial elements of the offenses; (5) failing to ensure he was given 24-hour notice of an incident report used against him; and (6) applying the prison's rule against yelling even though it was unconstitutionally vague and overbroad.

¶ 12 On February 19, 2013, defendants filed a motion to dismiss, arguing the Committee's decisions were not against the manifest weight of the evidence and plaintiff received all necessary due-process protections. On July 30, 2013, the trial court granted the motion to dismiss, explaining the Committee based its decisions on sufficient evidence and plaintiff's due-process rights were not violated. On August 12, 2013, plaintiff moved for reconsideration, arguing the court failed to consider the grounds he raised for relief and its decision was inconsistent with the authorities he cited. On August 23, 2013, the court denied his

motion.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On September 26, 2013, the trial court received plaintiff's *pro se* notice of appeal, accompanied by a document entitled "Proof/Certificate of Service." That document stated on September 17, 2013, the notice of appeal from the decision in this case was addressed to the circuit clerk and placed in the prison mail, but the signature was not notarized.

¶ 16 Defendants argue this appeal should be dismissed for lack of jurisdiction because plaintiff failed to show he timely filed his appeal within the meaning of the supreme court rules.

¶ 17 On February 27, 2014, the defendants moved to dismiss this appeal for want of jurisdiction. This court denied the motion on March 18, 2014. However, the panel may revisit that ruling at any time before disposition of the appeal. *Hwang v. Tyler*, 253 Ill. App. 3d 43, 45, 625 N.E.2d 243, 244-45 (1993).

¶ 18 The timely filing of a notice of appeal is jurisdictional (Ill. S. Ct. R. 301 (eff. Jan. 4, 2013); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 212, 217, 902 N.E.2d 662, 664, 666 (2009)).

¶ 19 Rule 303(a)(1) provides the notice of appeal in civil cases must be filed with the clerk of the circuit court within 30 days after either entry of the final judgment or, if a timely postjudgment motion is filed, the order disposing of the that motion. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). If the last day falls on a Saturday, Sunday, or legal holiday, the due date will be extended to the following business day. 5 ILCS 70/1.11 (West 2012); *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶ 9, 990 N.E.2d 826.

¶ 20 By operation of these rules, plaintiff's notice of appeal from the trial court's August 23, 2013, denial of his timely postjudgment motion was due on or before Monday, September 23, 2013. The circuit court clerk did not receive the notice of appeal until three days later, on September 26, 2013. However, Rule 373 provides when papers are received after the due date, the time of mailing is considered to be the time of filing. Ill. S. Ct. R. 373 (eff. Dec. 29, 2009); *Secura*, 232 Ill. 2d at 214, 902 N.E.2d at 665. When a litigant is incarcerated, his documents are deemed mailed on the date he places them in the prison mail system. *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 6, 976 N.E.2d 643. Thus, plaintiff needed to establish he placed his notice of appeal in the prison mail system on the date asserted in his proof of service to show his appeal was timely.

¶ 21 In order to take advantage of Rule 373, the date of mailing must be proved in a particular way. Rule 373 expressly instructs "[p]roof of mailing or delivery to a third-party commercial carrier shall be as provided in Rule 12(b)(3)" (Ill. S. Ct. R. 373 (eff. Dec. 29, 2009)). Rule 12(b)(3) provides manner of proof of service is provided "in case of service by mail ***, by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the document in the mail." Ill. S. Ct. R. 12(b)(3) (eff. Jan. 4, 2013).

¶ 22 In this case, plaintiff, proceeding *pro se*, was required to submit an affidavit with his proof of mailing. He provided a "Proof/Certificate of Service." It was not notarized and, thus, did not meet the requirements of an affidavit. Without the affidavit, we do not have jurisdiction. *Secura*, 232 Ill. 2d at 217, 902 N.E.2d at 666-67.

¶ 23 Despite the fact plaintiff was an inmate and it would be more difficult for him to obtain notarization of his signature, this was still required at the time plaintiff filed his notice of

appeal. These difficulties have been addressed recently by the supreme court in adopting an amendment to Rule 12 by adding subsection (b)(4). This subsection is applicable to inmates who are trying to serve legal papers by mail from a correctional institution. The new section 12(b)(4) provides an inmate may provide certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)). This certification need not be notarized but must include an acknowledgment the statements provided by the person mailing the papers are true and correct and the statements certified to may be used in the same manner as any statements subscribed and sworn to under oath. 735 ILCS 5/1-109 (West 2012). The addition to Rule 12(b) in new subsection (4) was effective September 19, 2014. It is clear plaintiff, at the time of mailing, was required to provide notarization of his certificate of service in order to prove it was mailed on time. Without this proof of service, we do not have jurisdiction.

¶ 24

III. CONCLUSION

¶ 25 Plaintiff's notice of appeal was filed more than 30 days after the denial of his motion to reconsider, and we lack jurisdiction to consider his appeal.

¶ 26 Appeal dismissed.