

NOTICE
Decision filed 12/12/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130434-U

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).

NO. 5-13-0434

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

BLAKE LAW GROUP, P.C.,)	Appeal from the
f/k/a Edward J. Blake, Jr. P.C.,)	Circuit Court of
)	St. Clair County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-MR-328
)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY, JAY ROWELL, THE DEPARTMENT)	
OF EMPLOYMENT SECURITY BOARD OF)	
REVIEW, and KRISTEN E. AUTH,)	Honorable
)	Stephen P. McGlynn,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Employer's untimely filing of postjudgment motion to reconsider did not toll time for filing of appeal, and, therefore, employer's appeal must be dismissed for lack of jurisdiction.

¶ 2 Plaintiff, Blake Law Group, P.C., f/k/a Edward J. Blake, Jr. P.C., employer, appeals the order of the circuit court of St. Clair County sustaining the determination of defendant, the Illinois Department of Employment Security Board of Review (Board). Plaintiff contends on appeal that the determination of the Board to grant claimant, Kristen

E. Auth, unemployment benefits was against the manifest weight of the evidence.

¶ 3 Claimant worked for employer as a legal secretary and receptionist from January 30, 2012, until February 28, 2012, when she was terminated. On March 1, 2012, claimant filed a claim with the Illinois Department of Employment Security for unemployment insurance benefits. Employer responded by filing a protest contending that claimant was ineligible for unemployment benefits because she was discharged for misconduct, specifically her language and conduct to and around clients and her blatant act of giving one of employer's partners the middle finger, as witnessed by another partner. The claims' adjudicator determined that claimant was discharged because her work performance did not meet employer's expectations, and therefore, she was eligible for benefits. Displeased with the outcome, employer pursued an administrative appeal from the adjudicator's determination. After a hearing on the matter, the Department referee determined that claimant was discharged for giving employer's partner the middle finger and that her discharge constituted disqualifying misconduct under section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2012)). This time, claimant appealed to the Board. The Board determined that claimant's poor work performance and poor office demeanor did not rise to the level of disqualifying misconduct under section 602(a) of the Act and, therefore, found her eligible for benefits. The Board further found that the preponderance of the evidence did not establish that claimant's alleged conduct in giving the finger to employer constituted a willful and deliberate violation of the employer's rules and/or policies. The Board took into account that there was conflicting evidence about whether the incident happened and also took

into account that the circumstances alleged were more indicative of an argumentative incident rather than misconduct. As observed by the Board: "while the employer may very well have made a justifiable business decision to discharge the claimant, such does not automatically trigger misconduct." Employer again appealed. On review, the circuit court found that the Board's decision that claimant's conduct did not rise to the level of misconduct barring her from recovering on an unemployment claim was not against the manifest weight of the evidence, and denied employer's petition for administrative review. Employer now appeals to this court.

¶ 4 Defendants argue on appeal that employer's appeal is untimely and, therefore, this court is without jurisdiction. After reviewing the record, we agree. On May 2, 2013, the circuit court entered an order that read: "The Court finds that the Board of Review's decision affirming the findings of the referee was not against the manifest weight of the evidence. Therefore, Plaintiff's petition is denied." (Emphasis in original.) On May 10, 2013, the court entered an amended order to "correct an error." The May 2 order had incorrectly described the Board's decision as affirming the findings of the referee. The May 10 order omitted that description. The ruling now read: "The Court finds that the Board of Review's decision was not against the manifest weight of the evidence. Therefore, Plaintiff's petition is denied." (Emphasis in original.)" The order otherwise made no substantive changes. On June 4, 2013, employer filed a motion to reconsider, which the court subsequently denied on August 26. Employer thereafter filed its notice of appeal on September 5, 2013. Employer's motion to reconsider filed on June 4, however, was untimely and therefore did not operate to toll the time for appeal. Under

Illinois Supreme Court Rule 303(a)(1), a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from." Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). The time for appealing from a final judgment is tolled, however, if a timely posttrial motion directed against the judgment is filed (see Ill. S. Ct. R. 303(a)(1)), but that posttrial motion must also be filed within 30 days after the entry of judgment (735 ILCS 5/2-1203(a) (West 2012)). Without timely notice, a reviewing court lacks jurisdiction. See *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009). In this instance, the final judgment was entered on May 2. For purposes of appeal, a judgment is considered final if it terminates the litigation between the parties on the merits or disposes of the rights of the parties. *Leavell v. Department of Natural Resources*, 397 Ill. App. 3d 937, 950, 923 N.E.2d 829, 842 (2010). The May 2 order did just that—it affirmed the Board's decision and denied employer's petition for reversal, thus concluding the litigation. Employer therefore had until June 3, 2013, to either file a notice of appeal or file a motion to reconsider directed against the judgment. Unfortunately, employer's motion to reconsider was filed June 4, one day late. See *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶¶ 9, 19 (untimely postjudgment motion does not extend time for appeal). We agree that the motion for reconsideration would be timely if we were to use the date of the amended May 10 order, but the amended May 10 order was not a new judgment reopening the 30-day window. See *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 377-78, 899 N.E.2d 227, 231 (2008) (corrected order which made nonmaterial changes did not extend time for seeking rehearing). As a result, because employer did

not file a timely motion directed against the judgment, the notice of appeal was due 30 days after the entry of judgment on May 2. The notice of appeal here was filed more than 30 days after entry of judgment and, therefore, was untimely. Accordingly, we must dismiss the appeal for lack of jurisdiction.

¶ 5 Appeal dismissed.