2016 IL App (1st) 160757-U

FOURTH DIVISION
November 23, 2016

No. 1-16-0757

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).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHIRELEY BAR-MEIR and GENICK BAR-MEIR,	)	Appeal from
	)	the Circuit Court
Plaintiffs,	)	of Cook County
	)	
v.	)	
	)	
BENJAMIN FRAUWIRTH, D/B/A WASHTENAW PROPERTIES LLC, OR D/B/A WASHTENAW ENTERPRISE LLC, OR D/B/A WASHTENAW LLC,	)	2015 L 4509
	)	
Defendant-Appellee,	)	
	)	
(GENICK BAR-MEIR,	)	Honorable
	)	Thomas R. Mulroy,
Plaintiff-Appellant).	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed for lack of this court's jurisdiction based on plaintiff's untimely notice of appeal.

¶ 2 On April 30, 2015, plaintiffs, Genick Bar-Meir and his wife, Shireley Bar-Meir, who is not a party to this appeal, brought a landlord-tenant action against Benjamin Frauwirth, and three

LLCs under which they claimed he was doing business, alleging various violations of the Chicago Residential Landlord and Tenant Ordinance (RLTO). Plaintiff, Genick, was dismissed from the lawsuit on October 20, 2015, after defendant filed a motion to dismiss alleging that he had signed a binding arbitration agreement to have the dispute settled by the Chicago Rabbinical Counsel (CRC), and that the matter had been arbitrated and fully decided by the CRC. At that time plaintiff, Shireley, was permitted to amend her complaint, and the case continued as to her.

¶ 3 On November 3, 2015, an amended complaint was filed, purporting to be brought by both plaintiffs. The court entered a case management order on December 15, 2015, setting a written discovery deadline of December 23, 2015, requiring defendants to file an answer within seven days, and continuing the matter for status.

¶ 4 On December 24, 2015, Genick filed a motion to reconsider the "Order of December 15, 2015 which Court [*sic*] dismissed the Plaintiff, Genick Bar-Meir from the case," claiming that the court had allowed him to file an amended complaint, and that during the hearing on December 15, 2015, the court "indirectly dismissed him" and did not accept his new complaint. Genick contended that he should not have been dismissed because the amended complaint had added a new claim that had not been the subject of the prior arbitration, namely that defendant had failed to provide them with a copy of the RLTO. Genick's motion to reconsider was denied on January 26, 2016.

¶ 5 On February 2, 2016, Genick filed a motion to amend his complaint. Genick again contended that his amended complaint stated a "new claim." This motion was denied on February 22, 2016, with the court characterizing Genick's motion as a "motion for reconsideration." On the same date, the court set the matter for pretrial and trial as to Shireley. The record contains nothing further regarding the resolution of the matter as to Shireley.

¶ 6 Genick filed a notice of appeal on March 16, 2016, listing the February 22, 2016 order as the "final order" forming the basis for his appeal.

¶ 7 In this appeal, Genick makes several claims regarding the propriety of the trial court's decisions. Specifically, Genick contends that the court improperly allowed the defendant corporations to be represented by a nonattorney, and that defendants violated "the Rules and Statutes" by filing an "un-verified Appearance" and "un-verified Motion." Genick further argues that the arbitration award was improper, and that the trial court "denied the motion for rejection of the [arbitration] award without any hearing." Genick also contends that the plaintiffs' "equitable rights [were] denied" because "[t]he other plaintiff [presumably Shireley] did not agree to be part of the arbitration." Finally, Genick contends that in his "new Complaint," he included "claims not arbitrated," but the trial court "did not provide an explanation as to why these Claims were dismissed." Genick brings his claims in a *pro se* brief before this court, and defendants have not filed a response brief. However, we will consider this appeal pursuant to the guidelines set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 Before reaching the merits of this case, we must consider our jurisdiction to hear this appeal. This court has a duty to consider its own jurisdiction *sua sponte* whether or not the parties have raised the issue. *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009). Under Supreme Court Rule 303(a)(1) (eff. June 4, 2008), the notice of appeal from a final judgment must be filed within 30 days of the entry of the judgment, or within 30 days of the denial of a timely motion directed against the judgment. An untimely notice of appeal deprives the reviewing court of jurisdiction. *Mitchell v. Fiat-Allis*, 158 Ill. 2d 143, 149-50 (1994); *In re Marriage of Singel*, 373 Ill. App. 3d 554, 556 (2007).

¶ 9 Based on the record before us, we conclude that Genick's notice of appeal was untimely because he did not file it within 30 days of the entry of the final judgment, or the denial of his post-judgment motion. We initially observe that there is some confusion in the record as to when Genick was dismissed from the case in a final order. From our review, it appears that Genick was dismissed from the case on October 20, 2015. Genick, however, appears to believe that he was dismissed on December 15, 2015, although we find no reference to him in the order entered on that date. Nevertheless, Genick apparently understands that he was dismissed from the case by no later than December 15, 2015. Even assuming that Genick was dismissed on that later date, his notice of appeal, which was filed on March 16, 2016, is untimely.

¶ 10 Genick filed a post-judgment motion to reconsider his dismissal on December 24, 2015, and that motion was denied on January 26, 2016. Following the disposition of that motion, Genick filed a second post-judgment motion and not a notice of appeal.

¶ 11 Illinois Supreme Court Rule 274 (eff. Jan. 1, 2006) contemplates the filing of only one post-judgment motion ("A party may make only one postjudgment motion directed at a judgment order that is otherwise final"), and a second post-judgment motion does not extend the time to file a notice of appeal. See *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981); *People v. Miraglia*, 323 Ill. App. 3d 199, 205 (2001). This court has explained that a trial court cannot permit a litigant "to file a postjudgment motion directed against the final judgment, rule on it, and then rule on a motion to reconsider the denial of that posttrial motion and thereby extend its jurisdiction and the time for appeal." *Id*. In *Sears*, 85 Ill. 2d 253, our supreme court considered an appellant's filing of a second post-judgment motion after the denial of his first post-judgment motion. The *Sears* court held:

"A second post-judgment motion (at least if filed more than 30 days after judgment) is not authorized by either the Civil Practice Act or the rules of this court and must be denied. [Citation.] There is no provision in the Civil Practice Act or the supreme court rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge. Permitting successive post-judgment motions would tend to prolong the life of a lawsuit — at a time when the efficient administration of justice demands a reduction in the number of cases pending in trial courts — and would lend itself to harassment. There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up. Successive post-judgment motions interfere with that policy. And justice is not served by permitting the losing party to string out his attack on a judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing the next month. In the interests of finality, and of certainty and ease of administration in determining when the time for appeal begins to run, we reaffirm the rule *** that successive post-judgment motions are impermissible when the second motion is filed more than 30 days after the judgment or any extension of time allowed for the filing of the post-judgment motion." *Id*. at 259.

¶ 12 Under *Sears*, Genick's second post-judgment motion, filed on February 2, 2016, did not extend the time for filing the notice of appeal. Here, Genick was required to file a notice of appeal by February 25, 2016, 30 days after the denial of his post-judgment motion. However, he did not file his notice of appeal until March 16, 2016, well beyond the 30-day deadline. In these circumstances, we have no jurisdiction to hear this appeal and must dismiss it.

¶ 13 In so holding, we also note that Genick's titling of his second post-judgment motion to reconsider as a motion to amend his complaint does not alter our conclusion. It is well-established that a motion or pleading's substance, not its title, dictates its character. See *Vanderplow v. Kyrch*, 332 Ill. App. 3d 51, 54 (2002). In this case, the trial court characterized Genick's motion as a second motion for reconsideration, and we find nothing in the record to rebut that characterization. Based on our review of the record, it appears that Genick was making the same arguments a second time, and seeking reconsideration of the court's prior denial of his motion for reconsideration, which is precisely what *Sears* instructs against.

¶ 14 We thus conclude that this court lacks jurisdiction to entertain this appeal, and accordingly, it must be dismissed.

¶ 15 Appeal dismissed.