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2016 IL App (3d) 150346-U

Order filed June 2, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

MARK HOWARD,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois.
)	
v.)	Appeal No. 3-15-0346
)	Circuit No. 14-MR-541
JOHN/JANE DOE, Mailroom Supervisor,)	
and TARRY WILLIAMS, Warden,)	The Honorable
)	Roger Rickmon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Inmate’s appeal dismissed for lack of jurisdiction where clerk received notice of appeal more than 30 days after trial court entered dismissal order and inmate’s “Proof/Certificate of Service” did not contain clerk’s complete address and was neither notarized nor certified.

¶ 2 Plaintiff Mark Howard, an inmate at Western Illinois Correctional Center, filed a complaint for declaratory judgment and a motion for preliminary injunction against the mailroom supervisor, mailroom staff and warden of the Northern Reception and Classification Center

(NRC), alleging that they failed to process his legal mail when he was temporarily housed at NRC. Defendant Tarry Williams, warden of NRC, filed a motion to strike plaintiff's complaint and motion as moot because plaintiff is no longer at NRC. On April 15, 2015, the trial court entered an order dismissing plaintiff's complaint and motion.

¶ 3 Plaintiff completed a "Proof/Certificate of Service," stating that he mailed his notice of appeal to "Clerk of the Court [of] Will County" on May 4, 2015, and listed an address for the clerk that did not contain a street number or zip code. The clerk received plaintiff's "Proof/Certificate of Service" and notice of appeal on May 22, 2015. Defendant Williams filed a motion to dismiss plaintiff's appeal for lack of jurisdiction, arguing that plaintiff's notice of appeal was not timely filed. We agree with defendant and dismiss plaintiff's appeal for lack of jurisdiction.

¶ 4 **FACTS**

¶ 5 Plaintiff Mark Howard is an inmate at Western Illinois Correctional Center. In February 2014, he was temporarily housed at NRC. In March 2014, plaintiff filed a complaint for declaratory judgment and a motion for preliminary judgment against defendants, the mailroom supervisor, mailroom staff, and warden of NRC, alleging that they failed to properly process his legal mail. After filing his complaint and motion, plaintiff returned to Western Illinois Correctional Center.

¶ 6 Defendant Williams, warden of NRC, filed a motion to strike plaintiff's complaint and motion as moot because plaintiff was no longer a resident of NRC and did not allege that he was likely to return to NRC. Plaintiff filed a response, claiming that the likelihood of him being transferred back to NRC "is evident" because NRC is "the only place IDOC houses its court writs for Cook County," and he currently represents himself in two cases pending in Cook

County. The trial court entered an order on April 15, 2015, granting defendant’s motion and dismissing plaintiff’s complaint as “moot because the Plaintiff currently resides at a different facility and has made no showing that he is likely to be transferred back to NRC.”

¶ 7 Plaintiff prepared a “Proof/Certificate of Service” dated May 4, 2015, which stated: “PLEASE TAKE NOTICE that on May 4, 2015, I placed the attached or enclosed documents in the institutional mail at Western Ill. Correctional Center, properly addressed to the parties listed above for mailing through the United States Postal Services.” The “Proof/Certificate of Service” indicated that it was sent to “Clerk of the Court, Will County Ct.hse., W. Jefferson St, Joliet, IL.” The document was not notarized or signed by plaintiff and contained no other pertinent language. The clerk received plaintiff’s notice of appeal on May 22, 2015.

¶ 8 Defendant Williams filed a motion to dismiss plaintiff’s appeal, arguing that plaintiff’s notice of appeal not timely filed since the clerk did not receive it until seven days after it was due and plaintiff’s “Proof/Certificate of Service” did not comply with section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)) and Illinois Supreme Court Rule 12(b) (Ill. S. Ct. R. 12(b) (eff. Sept. 19, 2014)). Plaintiff filed a response to defendant’s motion, attaching a form from Western Illinois Correctional Center showing that he sent mail to the clerk on May 6, 2015, and May 18, 2015. According to plaintiff, he “mailed his notice of appeal timely” but had a problem with the address. The record contains an envelope addressed to “Clerk of the Court, 14 West Jefferson St., Will County Court House, Joliet, I” with plaintiff’s return address. The envelope was returned to plaintiff by the post office and marked, “RETURN TO SENDER; ATTEMPTED – NOT KNOWN; UNABLE TO FORWARD” on May 13, 2015.

¶ 9 ANALYSIS

¶ 10 Appellate review begins when a notice of appeal is filed. *Huber v. American Accounting Ass’n*, 2014 IL 117293, ¶ 8; Ill. S. Ct. Rule 301 (eff. Feb. 1, 1994). A timely filed notice of appeal “divests the trial court of jurisdiction and confers jurisdiction upon the appellate court.” *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326, 341 (1989). Without a properly filed notice of appeal, the appellate court lacks jurisdiction and must dismiss the appeal. *Huber*, 2014 IL 117293, ¶ 8.

¶ 11 The timeliness of a notice of appeal is governed by Illinois Supreme Court Rules. *Id.* ¶ 9. Rule 303 states that “[t]he notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last postjudgment motion[.]” Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 12 Here, the trial court’s final judgment dismissing plaintiff’s complaint was entered on April 15, 2015. Plaintiff did not file a postjudgment motion. Thus, plaintiff was required to file his notice of appeal no later than May 15, 2015. The clerk of the circuit court of Will County received defendant’s notice of appeal on May 22, 2015. Although the clerk received plaintiff’s notice of appeal after May 15, 2015, it is timely if it was mailed on or before May 15, 2015 and defendant provides proof of mailing in compliance with Rule 12(b). See Ill. S. Ct. R. 373 (eff. Sept. 19, 2014).

¶ 13 Rule 12(b)(4) provides that service is proved “in case of service by mail by a *pro se* petitioner from a correctional institution, by affidavit, or by certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)) of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered.” Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19, 2014).

Section 1-109 of the Code of the Code of Civil Procedure (Code) entitled “Verification by certification” provides:

“Unless otherwise expressly provided by rule of the Supreme Court, whenever in this Code any *** affidavit, return or proof of service, or other document or pleading filed in any court of this State is required or permitted to be verified, or made, sworn to or verified under oath, such requirement is hereby defined to include a certification of such pleading, affidavit or other document under penalty of perjury as provided in this Section.

Whenever any such pleading, affidavit or other document is so certified, the several matters stated shall be stated positively or upon information and belief only, according to the fact. The person or persons having knowledge of the matters stated in a pleading, affidavit or other document certified in accordance with this Section shall subscribe to a certification in substantially the following form: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.” 735 ILCS 5/1-109 (West 2012).

¶ 14 To satisfy Rule 12(b)(4), a *pro se* prisoner’s proof of mailing must include an affidavit or a section 1-109 certification. See *People v. Payne*, 2015 IL App (2d) 120856, ¶ 38 n.3. Where a proof of mailing contains nothing that is certified or sworn to, it is “simply insufficient” under

Rule 12(b). See *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 216 (2009).

¶ 15 Minor defects will be excused; however, proof of mailing must be made in substantial compliance with Rule 12's requirements. *Igrassia v. Ingrassia*, 156 Ill. App. 3d 483, 502 (1987). While a court can overlook a typographical error, misspelling or other inadvertent mistake, it may not overlook a defendant's failure to prove by certificate or affidavit that he complied with the jurisdictional 30-day notice requirement in Rule 303. *Secura Insurance Co.*, 232 Ill. 2d at 217; see also *Huber*, 2014 IL 117293, ¶ 19 (finding that notice of appeal was untimely because plaintiff failed to comply with the affidavit or certificate requirements of Rule 12(b)).

¶ 16 Here, plaintiff's "Proof/Certificate of Service" is deficient in two significant ways. First, it does not contain the complete address of the clerk. This is a deviation from Rule 12(b)(4), which requires a *pro se* prisoner to state "the complete address to which the document was to be delivered." Ill. S. Ct. R. 12(b)(4) (eff. Sept 14, 2014). The incomplete address was more than a minor defect, such as a typographical error, because it was not only on plaintiff's proof of mailing but also on the envelope plaintiff sent to the clerk. The lack of a complete address for the clerk caused plaintiff's notice of appeal to be returned to plaintiff, instead of being sent to the clerk.

¶ 17 Additionally, plaintiff's "Proof/Certificate of Service" does not comply with Rule 12(b)(4) because it is neither notarized nor certified. Rule 12(b)(4) requires *pro se* prisoners to prove service "by affidavit, or by certification as provided in section 1-109 of the Code." Ill. S. Ct. R. 12(b)(4) (eff. Sept 14, 2014). To constitute an affidavit, a document must be notarized. *In re Marriage of Sheth*, 2015 IL App (1st) 132611, ¶ 30. Plaintiff's "Proof/Certificate of Service" is not notarized; therefore, it is not an affidavit. See *id.* Similarly, plaintiff's "Proof/Certificate of

Service” is not certified because it does not contain the certification language required by section 1-109 of the Code and is not signed by plaintiff. See 735 ILCS 5/1-109 (West 2012). Without an affidavit or a section 1-109 certification by plaintiff, plaintiff did not satisfy Rule 12(b)(4). See *Payne*, 2015 IL App (2d) 120856, ¶ 38 n.3.

¶ 18 Plaintiff’s failure to comply with the requirements of Rule 12(b) means that he cannot take advantage of Rule 373’s mailing rule. See *Secura Insurance Co.*, 232 Ill. 2d at 216. Therefore, the date the clerk received his notice of appeal serves as the date of filing. See Ill. S. Ct. R. 373 (eff. Sept. 19, 2014). In this case, the clerk received plaintiff’s notice of appeal on May 22, 2015. Since this date is more than 30 days after the court entered its April 15, 2015 dismissal order, plaintiff’s notice of appeal was untimely, and we lack jurisdiction to consider plaintiff’s appeal.

¶ 19 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.

¶ 20 Appeal dismissed.