

No. 1-15-1707

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

WILLIE J. JONES-ALLEN,)	Appeal from
)	the Circuit Court
Plaintiff-Appellant,)	of Cook County
)	
v.)	09-L-005837
)	
ORLANDO J. TORRES, and ROSARIO REVILLA, jointly and)	Honorable
individually,)	Lynn M. Egan,
)	Judge Presiding
Defendants-Appellees.)	

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

O R D E R

Held: Premature appeal dismissed due to unresolved postjudgment motion in the trial court.

¶ 1 Willie J. Jones-Allen was a passenger in a car involved in a three-car collision in 2009 and obtained a \$350,000 default judgment in this personal injury action against the driver of the only moving vehicle, Orlando J. Torres, and the vehicle's owner, Rosario Revilla. About two years after the default was entered, the defendants each filed a motion to quash personal service of process and vacate the judgment as void *ab initio* for lack of personal jurisdiction, pursuant to sections 2-203 and 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-203, 2-1401 (West

2012) (Code). The trial court granted the motions in 2015. Jones-Allen appeals that ruling and other orders of the trial court.

¶ 2 The parties have fully briefed their positions and await our review. We have a duty, however, to consider the issue of our jurisdiction, even if the issue is not raised by the parties. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453, 845 N.E.2d 792, 800 (2006). See also *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 971, 931 N.E.2d 810, 820 (2010) (appellate jurisdiction cannot be conferred by *laches*, agreement, waiver, or estoppel). Jones-Allen simultaneously filed on June 10, 2015 a notice of appeal from the judgment order dated May 11, 2015, and a motion seeking the trial court’s reconsideration of that judgment order.¹ Jones-Allen filed both documents electronically and they bear identical filing marks. The purpose of a motion to reconsider is to allow the decision maker who is most familiar with the reasons for the decision, the trial judge, to review his or her decision without the pressure of the ongoing proceedings and to correct the ruling, if on reconsideration, the judge concludes the earlier ruling was incorrect. *Brown v. Decatur Memorial Hosp.*, 83 Ill. 2d 344, 349, 415 N.E.2d 337, 339 (1980); *Sho-Deen, Inc. v. Michel*, 263 Ill. App. 3d 288, 293, 635 N.E.2d 1068, 1072 (1994) (“[t]he purpose of a post-trial motion is to allow the trial court to review its decision”). In a status report ordered by this court, Jones-Allen has confirmed our impression that his post-judgment motion is still pending in the trial court. The disposition of that motion for reconsideration, whether it be by a ruling of the trial court or by Jones-Allen’s

¹ Jones-Allen’s motion is unquestionably a motion to reconsider the substance of the judgment order rather than to clarify its meaning. Jones-Allen titled his document “Motion to Reconsider May 11, 2015 Order,” he included argument regarding the effectiveness of the private process server’s efforts as to Torres, he characterized Torres’s counteraffidavit as “uncorroborated and self serving” and contrary to the evidence of proper service, and he expressly adopted and reincorporated the memorandum of law he filed in support of his motion for summary judgment as to Torres’s motion to quash service.

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withdrawal of the motion, is pertinent here because a party cannot expect the trial and appellate courts to simultaneously review the same order.

¶ 3 Jones-Allen has, however, attempted to proceed simultaneously in both courts. In the appellate court, Jones-Allen filed a notice of appeal, a docketing statement, and the record of the trial court proceedings, and was then to write his opening appellate brief. Before filing the brief, he filed two motions with the trial court to set a hearing date on his motion for reconsideration and he sent a courtesy copy of the motion for reconsideration to the trial judge.

¶ 4 In the status report that we ordered regarding his motion for reconsideration, Jones-Allen states that it somehow “became apparent” to him that the trial court “would not rule on the Motion for Reconsideration as the matter was on appeal” and that he reluctantly filed a motion to withdraw the motion for reconsideration. The trial court was aware of the appellate proceedings, and instead struck the motion to withdraw the motion for reconsideration. In our opinion, the trial court acted appropriately in disposing of the motion without ruling on its substance, as it is well settled that jurisdiction attached in the appellate court when Jones-Allen filed his notice of appeal. “A notice of appeal is a procedural device *** that, when timely filed, vests jurisdiction in the appellate court in order to permit review of the judgment such that it may be affirmed, reversed, or modified.” *General Motors v. Pappas*, 242 Ill. 2d 163, 173, 950 N.E.2d 1136, 1142 (2011). Once a notice of appeal is filed, appellate jurisdiction attaches *instanter*, and although the circuit court may maintain jurisdiction to further supervise or enforce the appealed order, it cannot maintain jurisdiction to substantively alter or vacate the order. *General Motors*, 242 Ill. 2d at 173, 950 N.E.2d at 1142; *Dragon Construction, Inc. v. Parkway Bank & Trust*, 287 Ill. App. 3d 29, 34-35, 678 N.E.2d 55, 59 (1997) (there is a well-established rule that once an appeal is properly filed, the trial court is divested of jurisdiction with respect to that case); *Rosecky v*

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Dep't of Public Aid, 157 Ill. App. 3d 608, 613, 511 N.E.2d 167, 170 (1987). Thus, jurisdiction attached in the appellate court in June 2015 when Jones-Allen filed his notice of appeal and jurisdiction remains here in the appellate court, until we enter a dispositive order. See *e.g.*, *Rickard v. Pozdal*, 31 Ill. App. 3d 542, 546, 334 N.E.2d 288, 292 (1975) (because jurisdiction of the appellate court attaches upon the filing of the notice of appeal, it follows that upon dismissal of the appeal, the circuit court is revested with jurisdiction over the cause).

¶ 5 Even so, except as specifically provided by the Illinois Supreme Court rules, we have jurisdiction only to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb.1, 1994). In other words, generally, an appeal may be taken only after the trial court has resolved all claims. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9, 982 N.E.2d 152 (indicating the Illinois constitution confers appellate jurisdiction over final orders as a matter of right and authorizes the supreme court to issue rules which authorize appeals from other orders); *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 11, 24 N.E.3d 786 (there are exceptions, but generally an appeal may be taken only after the resolution of all claims against all parties).

¶ 6 Jones-Allen's notice of appeal cited Rule 303, which is entitled "Appeals from Final Judgments of the Circuit Court of Civil Cases" and states that a notice of appeal must be filed within 30 days of a final order, unless a "timely posttrial motion directed against the judgment is filed." Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). The judgment order appealed from was a final and appealable order when it was entered on May 11, 2015, however, Jones-Allen's timely filed postjudgment motion on June 10, 2015 called that decision into question and rendered the order temporarily nonappealable. *Yang v. Chen*, 283 Ill. App. 3d 80, 84, 669 N.E.2d 1181, 1184 (1996) (indicating a postjudgment motion was timely filed and remained pending, thus the trial court retained jurisdiction over the judgment order.) In other words, where a timely filed motion to

reconsider remains pending in the trial court, an appeal is premature. A timely postjudgment motion not only extends the trial court's jurisdiction, but also extends the appellate court's potential jurisdiction, the time within which a notice of appeal may be filed, until 30 days after the postjudgment motion is decided. Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *Sears v. Sears*, 85 Ill. 2d 253, 258, 422 N.E.2d 610 (1981); *Yang*, 283 Ill. App. 3d at 85, 669 N.E.2d at 1184. Jones-Allen's notice of appeal was rendered premature by his simultaneously filed motion for reconsideration. In 2007, the Supreme Court amended Rule 303(a)(2) to protect the rights of individuals such as Jones-Allen who file a premature notice of appeal. Ill. S. Ct. R. 303, Committee Comments (adopted Mar. 16, 2007). The rule's saving provision provides that a prematurely filed notice of appeal takes effect later: "When a timely postjudgment motion has been filed by any party, *** a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** becomes effective [only] when the order disposing of said motion *** is entered." Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008). In accordance with Rule 303(a)(2) and the cited case law, we will have jurisdiction to review the trial court's final judgment order only upon disposition of Jones-Allen's motion for reconsideration in the trial court. The Supreme Court mandates strict compliance with its rules governing appeals and neither a trial court nor an appellate court has the authority to excuse compliance with the filing requirements mandated by the rules. *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150, 632 N.E.2d 1010, 1012 (1994). Until Jones-Allen's motion for reconsideration is resolved, we lack jurisdiction to address the merits of his arguments that the trial court erred.

¶ 7 At a status hearing which we scheduled to determine Jones-Allen's intentions for his motion for reconsideration, he agreed that his pending motion prevents us from reviewing the trial court's orders. In a supplemental memorandum of law, he asks that we dismiss the appeal so

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that he may pursue the resolution of his motion that pends in the trial court. When an appeal is untimely, we have no discretion to take any action other than addressing our jurisdiction and dismissing the appeal. *Dus v. Provena St. Mary's Hosp.*, 2012 IL App (3d) 091064, ¶ 10, 968 N.E.2d 1178. Accordingly, we dismiss the appeal.

¶ 8 We emphasize that although Jones-Allen's notice of appeal was premature, the plain wording of Rule 303(a)(2) will render the previously filed notice of appeal "effective" as of the disposition of his motion for reconsideration. Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008). Therefore, once the motion to reconsider is resolved, Jones-Allen could return to this appellate court with a petition for rehearing of today's order and to supplement the record with the appropriate trial court orders showing that the impediment to our jurisdiction has been removed. *In re Marriage of Valkiunas and Olsen*, 389 Ill. App. 3d 965, 968, 909 N.E.2d 195, 198 (2008); *In re Marriage of Schwieger*, 379 Ill. App. 3d 687, 689, 883 N.E.2d 556, 559 (2008). Alternatively, Jones-Allen could timely file a new notice of appeal.

¶ 9 Appeal dismissed.