2017 IL App (1st) 153276-U

FOURTH DIVISION
Order filed June 15, 2017
Supplemental Order Upon Granting of Sanction filed November 16, 2017

No. 1-15-3276

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ENCORE CREDIT CORPORATION,	)	
	)	
Plaintiff,	)	
	)	Appeal from
and	)	the Circuit Court
	)	of Cook County
MIDWEST FIRST FINANCIAL,	)	
	)	06-CH-003693
Plaintiff-Appellee,	)	
	)	Honorable
v.	)	Allen Price Walker,
	)	Judge Presiding
RANDALL A. NOBLE, *et al*	)	
	)	
Defendant-Appellant.	)	

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

O R D E R

Held: Appeal was untimely and dismissed where successive post-judgment motion did not extend time to appeal; and frivolous nature of appeal warranted sanctions.

¶ 1 Defendant-borrower Randall A. Noble, whose single family home in Lynwood, Illinois was foreclosed upon in 2013 and sold pursuant to judicial order to 2014, appeals from an order granting the motion of Midwest First Financial Limited Partnership IV, as assignee of lender

Encore Credit Corporation (Midwest), to strike Noble's successive motion for reconsideration. Noble contends the trial court erred in determining it lacked jurisdiction over his second post-judgment motion. He also contends that notices of *pro se* appeals that he filed while the case was still proceeding in the circuit court deprived the court of jurisdiction at the time it approved the sale of the Lynwood property and because he is now "not quite sure what this would mean" to the validity of the judicial deed that was issued to the buyer, this "would appear to need resolution" and he "ask[s] this court to determine the status of the property." Midwest responds that the appeal should be dismissed as untimely and seeks sanctions against Noble and his attorney, Margaret A. Lundahl, for filing a frivolous appeal.

¶ 2 We briefly summarize the key events in this proceeding. Noble bought 2094 Tyler Drive, Lynwood, Illinois, 60411-8561 in October 2005 with the proceeds of a $324,800 mortgage loan. He has never made a payment on the note. His lender filed suit in February 2006. The circuit court granted a default judgment to the lender in 2007 but in 2009 granted Noble's motion to quash service of process and vacate the judgment of foreclosure and sale.

¶ 3 For the next 29 months, the lender tried to personally serve Noble, until finally, with leave of the court, the lender accomplished service by posting at the subject property in March 2012. Represented by attorney S. Steven Proutsos, Noble appeared, answered, and requested a settlement amount. Noble then personally issued a "Private Registered Bonded Promissory Note" in the amount of $500,000, in which he stated the United States Department of Treasury would be paying his mortgage and litigation expenses. The lender declined to exchange the property title for the document that Noble created and instead moved for summary judgment on its complaint. On May 24, 2013, the circuit court granted a judgment of foreclosure and sale for the second time.

¶ 4 Noble next spindled a motion for reconsideration in which he contended judgment was improper while there was a material question as to whether his $500,000 "negotiable instrument" satisfied his debts.

¶ 5 The foreclosure proceedings, including a judicial sale scheduled for August 26, 2013, were automatically stayed when Noble filed a *pro se* Chapter 13 bankruptcy petition on August 23, 2013. After Noble failed to file statements required of bankruptcy petitioners, the bankruptcy trustee and Midwest filed motions for dismissal of the petition. At the hearing, Noble requested and was given additional time to respond. Noble then filed a motion for turnover of funds, indicating that he owned treasury and mutual fund accounts that would cover his debt to the lender, however, when his motion was heard, Noble produced no evidence of the accounts, and the bankruptcy court denied the motion. The dismissal motions were then rescheduled for hearing, but Noble did not file a response or appear at the hearing. The lender then filed a different motion to dismiss the bankruptcy petition in which it argued Noble had petitioned in bad faith with a sole purpose of obstructing the property sale and should be barred for 180 days from repetitioning. The lender pointed out that it was the only listed creditor, Noble had not filed a proposed repayment plan and other documents required of a petitioner, Noble had not made any payments to the lender despite living in the Lynwood home for eight years, and Noble could not feasibly repay a debt which had doubled from the original loan to over $649,000, due to the addition of the lender's property tax and insurance payments, late fees, litigation expenses, and interest. On November 14, 2013, the bankruptcy court granted the lender's motion to dismiss the case and barred Noble from refiling for 180 days.

¶ 6 The lender then scheduled a judicial sale for December 27, 2013, sent notice on November 22, 2013, to Noble's attorney(s) of record, S. Steven Proutsos and/or Spike S. Proutsos, and sold the property on the scheduled date.

¶ 7 On December 23, 2013, attorney Lundahl filed a general appearance as Noble's "additional," not substitute, counsel and a "motion for ruling" on Noble's motion for reconsideration of his $500,000 document, and scheduled the motion for presentment on February 10, 2014.

¶ 8 Midwest filed a motion seeking an order approving the property sale, an order approving the report of sale and distribution of the proceeds, confirming the sale, and ordering possession.

¶ 9 The circuit court denied Noble's motion to reconsider on February 10, 2014.

¶ 10 On March 11, 2014, the circuit court entered a briefing schedule on the lender's motions regarding the sale and scheduled the matter for hearing on April 7, 2014. Lundahl filed a written response arguing that Noble had not received prior notice of the sale scheduled for December 27, 2013, and the sale had proceeded despite Noble's pending motion for reconsideration. The lender replied that Noble had received proper and effective notice of the judicial sale, in accordance with 735 ILCS 5/15-1507 (West 2012), when the lender mailed notice to Noble's attorney of record on November 22 2013. The lender also pointed out that if Noble's new, additional counsel had reviewed the court file and/or conferred with the lender on or before appearing on December 23, 2013, she would have discovered the judicial sale scheduled for December 27, 2013. The lender also argued that Noble had created confusion and invited error regarding his motion for reconsideration, when he filed for bankruptcy solely to delay, disrupt, confound, and extend the foreclosure process, and that he could not rely on his own acts to defeat the judicial sale.

¶ 11 Although there was no final and appealable order in the foreclosure case, on the same day that Lundahl was in court obtaining a briefing schedule on the lender's motions regarding the sale, March 11, 2014, Noble filed a notice of *pro se* appeal. Noble failed to file any other documents and we dismissed his *pro se* appeal for want of prosecution. *Encore Credit Corp. v. Noble*, 2014 IL App (1st) 140746-U. Noble's *pro se* notice of appeal was ineffective and did not confer jurisdiction on this court, because it was taken from a non-final order. See *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 982, 640 N.E.2d 1313, 1316 (1994) (for purposes of determining the time to file a notice of appeal, an order or judgment is final and appealable if it terminates litigation between parties on the merits of the cause or disposes of the rights of the parties either as to the entire controversy or as to some definite part); *EMC Mortgage Co. v. Kemp*, 2012 IL 113419, ¶¶ 11-12, 982 N.D.2d 152 (absent a specific finding by the circuit court, that is the entry of Rule 304(a) language, the foreclosure of a mortgage is not a final and appealable judgment because it does not dispose of all issues and terminate the litigation; it is the subsequent order which confirms the sale of the property and directs the distribution of the sale proceeds that is final and appealable).

¶ 12 On August 18, 2014, after considering the parties' written and oral arguments, the trial court issued a final order approving the report of sale and distribution, confirming the sale, and ordering Noble's eviction 30 days later. *EMC Mortgage Co.*, 2012 IL 113419, ¶¶ 11-12, 982 N.D.2d 152 (indicating this type of order is final and appealable).

¶ 13 On August 22, 2014, Noble filed notice of another *pro se* appeal, however, he again failed to file any other documents in the appellate court and we dismissed the appeal for want of prosecution. *Encore Credit Corp. v. Noble*, 2014 IL App (1st) 142636-U. This notice of appeal did not confer jurisdiction on this court because Noble next filed a timely post-judgment motion

in the circuit court and did not subsequently amend the notice of appeal. See 735 ILCS 5/2-1203 (West 2012) (providing for the filing of a post-judgment motion seeking rehearing, retrial, modification, or vacation of the judgment, and indicating such a motion stays enforcement of the judgment); Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008) (stating how a timely filed post-judgment motion affects a notice of appeal); *Chand v. Schlimme*, 138 Ill. 2d 469, 478, 563 N.E.2d 441, 445 (1990) (indicating that a Rule 303 notice of appeal which is followed by a timely filed post-judgment motion "has no effect" and does not shift jurisdiction from the trial court to the appellate court; we note that Rule 303 was amended after this decision but the changes have not affected this principle).

¶ 14 More specifically, on September 17, 2014, Noble *pro se* filed a "Motion by Randall A. Noble for [*(sic)*] Vacate Sale." Other than this title, the September motion stated only "Section 5-2-1203 [*(sic)*] Sale conducted fraudulently." On October 17, 2014, the circuit court entered a briefing schedule on Noble's motion and scheduled a hearing date of December 8, 2014. Noble filed an affidavit and a *pro se* memorandum which contained incoherent statements about the loan process and foreclosure proceedings, such as the property belonged to him "free and clear" when he executed the loan documents and that the lender had perpetrated fraud. Noble also reiterated that he had tendered his personal $500,000 "payment" in 2012, but the lender had refused to accept it. On the scheduled hearing date, December 8, 2014, attorney S. Steven Proutsos appeared in open court with Noble and was given leave to withdraw as counsel. Noble's *pro se* post-judgment motion was rescheduled and then denied on February 23, 2015.

¶ 15 On March 24, 2015, Noble *pro se* filed the motion now at issue on appeal. This motion was entitled "Motion by Randall Noble for [*(sic)*] Motion to Reconsider" and included one statement, "Defendant's motion to vacate the order approving the sale pursuant to section 2-

1203." In a memorandum filed that same day, Noble stated that he "wanted to bring *** facts to the court's attention *** when the [previous section 2-1203] motion was heard and decided on February 23, 2015," but he "wasn't allowed to do so." Noble's 12-page memorandum consisted of statements with no apparent relevance, including numerous statements about a different lender that had no involvement with his mortgage loan, Washington Mutual, and he asked for several million dollars in damages against Midwest. Noble did not indicate there was any impropriety in the sale of the Lynwood property, nor did he substantiate his suggestion that the court did not allow him to present "facts" during the reconsideration hearing in February 2015. Noble scheduled the second reconsideration motion for presentment nine months later on December 29, 2015. Rather than waiting for the December date, Midwest filed a motion on June 16, 2015, to strike Noble's *pro se* motion (see 735 ILCS 5/2-615 (West 2014)), on grounds that an unsuccessful litigant is entitled to but one post-judgment motion, a successive post-judgment motion does not extend the court's subject matter jurisdiction, and the court lost subject matter jurisdiction 30 days after denying the first motion for reconsideration. When Midwest's motion was called in open court on July 27, 2015, Lundahl appeared, and Midwest objected to her "tag team" approach to Noble's representation. The court ordered Lundahl to file a supplemental appearance within seven days, which she did, and also entered a briefing schedule and hearing date. On November 13, 2015, the circuit court ruled that it had no jurisdiction to hear Noble's successive post-judgment motion. This appeal followed.

¶ 16 Midwest contends that we lack jurisdiction over the current appeal because Noble's successive post-trial motion did not toll the time to appeal from the circuit court's final and appealable order approving the sale of the property and distributing the proceeds of the sale. Midwest also seeks sanctions against Noble and attorney Lundahl for bringing an appeal

consisting of "endless continuances," "incoherent legal positions," and "abysmal legal support" plainly intended to harass, vex, and cause unnecessary expense.

¶ 17 After considering Midwest's argument, we conclude that we lack jurisdiction to consider the merits of Noble's appeal and we dismiss the appeal for that reason. Circuit courts do not have authority "to hear successive post-judgment motions, even where each is filed within 30 days after the denial of the previous motion." *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 57, 550 N.E.2d 1080, 1083 (1990). Circuit courts are precluded from considering successive post-judgment motions because permitting a losing litigant to return to the trial court indefinitely would tend to prolong the life of a lawsuit, harass the prevailing party, and interfere with the efficient administration of justice. See *Sears v. Sears*, 85 Ill. 2d 253, 259, 422 N.E.2d 610, 612 (1981). "There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up." *Sears*, 85 Ill. 2d at 259, 422 N.E.2d at 12; *Chand*, 138 Ill. 2d at 480, 563 N.D.2d at 446 ("appeals may not be unendingly delayed by a party's filing of redundant [postjudgment motions in the circuit court]"). The circuit court loses jurisdiction 30 days after entering a final judgment order, or, 30 days after disposing of a timely-filed post-judgment motion. *Bell v. Hill*, 271 Ill. App. 3d 224, 228, 648 N.E.2d 170, 173 (1995). Therefore, when the circuit court ruled on Noble's first post-judgment motion on February 23, 2015, the orders entered on August 18, 2014, regarding the sale became final and appealable, and the filing of his second post-judgment motion on March 24, 2015, did not extend that court's jurisdiction. Instead, March 24, 2015, was the deadline for Noble to file his appeal, which he did not do. The timely filing of a notice of appeal is mandatory and jurisdictional. *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 10, 968 N.E.2d 1178. Pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008), a notice of appeal must be filed within 30 days after the entry

of the final judgment appealed from, or, if a timely post-trial motion directed against judgment is filed, within 30 days after the entry of the order disposing of the last pending post-judgment motion directed against that judgment or order. Strict compliance with the rules that govern the time limits for filing a notice of appeal is required, and neither a circuit court nor an appellate court has the authority to excuse a party's disregard of a deadline for appealing. *Dus*, 2012 IL App (3d) 091064, ¶ 10, 968 N.E.2d 1178. Noble's notice of appeal filed on November 18, 2015, was not timely because it was filed more than 30 days after the entry of the order on February 23, 2015, which disposed of the last timely post-judgment motion directed against the judgment. Noble's notice of appeal was nine months late. Consequently, we dismiss his appeal due to lack of jurisdiction.

¶ 18 Given this conclusion, we need not address Midwest's additional arguments that the motion Noble filed on September 17, 2014, was not specific enough to be a post-judgment motion within the meaning of section 2-1203 (735 ILCS 5/2-1203 (West 2014)) and that any notices of appeal Noble filed *pro se* while represented by counsel may be disregarded as nullities because "tag team" or hybrid forms of representation are not authorized.

¶ 19 We also conclude, based on Midwest's arguments that Noble's appeal is frivolous. Noble's opening brief is insufficient and does not comply with the rule of appellate practice mandating the form and content of appellate briefs. The brief was due on February 24, 2016 (35 days after the record was filed in the appellate court on January 20, 2016); and although Noble received four extensions to prepare and file the brief, he failed to meet any of the deadlines he requested (March 30, 2016, May 4, 2016, June 8, 2016, and July 11, 2016). On our own motion, we dismissed the appeal on November 3, 2016, for want of prosecution. However, on December 14, 2016, we granted Noble's motion for reconsideration, vacated the dismissal order, and

granted leave to file the opening brief *instanter*. We also granted Noble's subsequent motion to withdraw the brief and file a corrected version on March 24, 2017. In all, Noble took 485 days to prepare the brief. (The notice of appeal was filed on November 25, 2015, the opening brief was filed on December 14, 2016, and the corrected brief was filed on March 24, 2017.)

¶ 20 On September 30, 2016, which was 75 days before Noble filed his first brief *instanter* and 175 days before he filed his corrected brief, we issued an order in Noble's separate appeal concerning his eviction from the property, *Perkins v. Noble*, 2015 IL App (1st) 153291-U. In our September 2016 order, we criticized the form and content of the five-page appellate brief that Noble filed in the eviction appeal (*Perkins*, 2015 IL App (1st) 153291-U, ¶ 11) and noted our authority to strike the brief as noncompliant with the rules of appellate practice (*Perkins*, 2015 IL App (1st) 153291-U, ¶14). We quoted portions of his five-page brief and commented on his failure to present sufficient analysis, coherent argument, and citation to relevant authority. *Perkins*, 2015 IL App (1st) 153291-U, ¶ 12. We concluded, however, that in our discretion, we would not strike the brief and we did our best to discern the incoherent arguments and address them to the extent we could understand them. *Perkins*, 2015 IL App (1st) 153291-U, ¶¶ 15-19. We could find no merit in the appeal and we affirmed the judgment of the circuit court. *Perkins*, 2015 IL App (1st) 153291-U, ¶ 20.

¶ 21 Despite our cautionary remarks in the eviction appeal and the fact that Noble took 485 days to prepare the brief in this foreclosure appeal, his new brief suffers from the same defects. The entire document is six pages long, the summary of facts section describing the 11 years of litigation is barely two pages long, and the argument section consists of two pages. An additional one-and-one-half pages are given to discussing an "additional problem" which Noble "discovered" while writing the brief, yet he fails to offer any legal conclusion, other than to state

that he "not quite sure what this [additional problem] would mean" to the validity of the judicial deed that was issued to a third party buyer and he "asks" the appellate court to sort out "the status of the property." Consistent with his approach in the earlier appeal, Noble cites scant authority in his brief and he fails to explain its relevance to his argument. Furthermore, although the brief is very short, it contains incorrect dates and errors, such as describing a response memorandum which bears Lundahl's name and signature as a *pro se* document.

¶ 22 The lender argues that Noble's approach to litigation is inappropriate. Midwest remarks upon the opening brief's brevity and lack of analysis and legal support, even though Noble's attorney sought successive extensions and had more than a year to write the argument. In addition, this appeal is the culmination of more than a decade of "endless *ad nauseam* litigation," during which "Noble enjoyed rent- and expense-free residency in his property." Furthermore, "Noble not only filed pleadings in bad faith and with a calculated intent of impeding the progress of the foreclosure," but he now continues that impropriety in the appellate court and asks this court "to sort out the convoluted chaos that he created to aid him in his quest to create yet more chaos." Midwest concludes that sanctions are warranted and should be awarded against both attorney and client.

¶ 23 Noble replies that the lender is simply engaging in [i]mproper rhetoric" and is "[i]ncivil" but "[s]ince [the lender] thinks the presentation in the brief is insufficient, Noble [chooses to] now think[] the matter through *for the court's benefit*." Emphasis added.

¶ 24 Once again, Noble misapprehends the nature of our role and his obligations as an appellant. As we stated in the eviction appeal, Rule 341(h)(7) requires an appellant's opening brief to include "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R.

341(h)(7) (eff. Feb. 6, 2013). The rule further specifies, "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Accordingly, we expect to receive opening briefs that contain clearly defined issues, cohesive arguments, and citation to pertinent authority (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), rather than briefs which attempt to shift the appellant's burden of research and argument onto the court. We do not expect an appellant to outline an issue that "would appear to need resolution," offer no argument or authority that leads to a resolution, and when his error is pointed out, state in his reply brief that he has finally decided to "think[] the matter through for the court's benefit." We also stated in the eviction appeal:

> "Supreme court rules pertaining to the content of briefs are mandatory, and failure to abide by them can result in dismissal of an appeal. *Northbrook Bank & Trust Co. v. 300 Level, Inc.*, 2015 IL App (1st) 142288, ¶ 13. Specifically, the failure to elaborate on an argument, cite persuasive authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). The rules of procedure for appellate briefs are not mere suggestions or annoyances to be neglected at will. *In re Estate of DeMarzo*, 2015 IL App (1st) 141766, ¶ 16; *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7." *Perkins*, 2015 IL App (1st) 153291-U, ¶ 13.

¶ 25 Accordingly, if we had not already dismissed the appeal for lack of jurisdiction, we would strike Noble's brief and dismiss his appeal due to his disregard of the rule governing the

content of his appellate briefs. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 20, 30 N.E.3d 468. We rarely dismiss an appeal for this reason (*McCann*, 2015 IL App (1st) 141291, ¶ 20, 30 N.E.3d), and do so only when the failure to comply with the rules is so egregious that we have no other choice.

¶ 26 Furthermore, given the procedural history of this appeal and Noble's failure to heed our cautionary statements in his eviction appeal, we agree with Midwest's contention that sanctions should be imposed pursuant to supreme court Rule 375(b) upon Noble and/or his attorney, Lundahl, for an appeal intended to harass, vex, and cause unnecessary expense to the lender and abuse judicial resources. Ill. S. Ct. R. 375(b) (eff. Feb 1, 1994). See also *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87, 2 N.E.3d 1052. Supreme Court Rule 375(b) provides for the imposition of an appropriate sanction if an appeal is frivolous, not taken in good faith, or taken for an improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs. Ill. S. Ct. R. 375(b) (eff. Feb 1, 1994). The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys. *Gabuka v. Kurtz*, 2015 IL App (2d) 140252, ¶ 26, 39 N.E.3d 589. Imposition of sanctions under Rule 375(b) is in our discretion. *Gabuka*, 2015 IL App (2d) 140252, ¶ 26, 39 N.E.3d 589.

¶ 27 In another mortgage foreclosure case, *Bank of America, N.A. v. Basile*, 2014 IL App (3rd) 130204, 20 N.E.3d 438, the court initiated sanction proceedings due to the defendants' attempts to forestall foreclosure, sale, and relinquishment of their possession of the property. Explaining its rationale for sanctions, the court pointed out that the borrower's tactics not only burdened the lender with costs and fees which were inevitably shifted back onto the consuming public, but that judicial resources, paid for by taxpayers, had also been needlessly expended. *Basile*, 2014 IL App (3rd) 130204, ¶ 40, 20 N.E.3d 438. See also *Korzen*, 2013 IL App (1st) 130380, ¶ 87, 2

N.E.3d 1052 (noting that frivolous appeals "drain valuable resources"). "While we are sensitive to the fact that [borrowers] are occasionally exposed to circumstances that may make them unable to satisfy their obligation, we will not approve or reward the harassing behavior/stalling tactics present in the instant case." *Basile*, 2014 IL App (3d) 130204, ¶ 40, 20 N.E.3d 438.

¶ 28 Noble's appeal was objectively frivolous in that his opening brief was filed only after considerable time and numerous extensions, his arguments lacked substance and any chance of success, and he showed no regard for the standards of appellate practice. Furthermore, the appeal's apparent purposes were to increase costs and cause inconvenience to the lender and to misuse judicial resources. *Korzen*, 2013 IL App (1st) 130380, ¶ 87, 2 N.E.3d 1052 (indicating a reviewing court applies an objective standard to determine whether an appeal is frivolous). This conclusion is particularly evident in light of the order we issued in September 2016 in the separate eviction appeal in which we pointed out the specific defects in Noble's briefing style, the lack of clarity in his presentation, and the mandatory nature of the appellate practice rules, and the fact that the subsequently-filed brief in this case duplicated the poor presentation. We find that no reasonable, prudent litigant or attorney would have maintained this appeal or engaged in such conduct on appeal.

¶ 29 We direct Midwest to file within 14 days a memorandum suggesting an appropriate amount and apportionment of a sanction between Noble and his attorney and an affidavit of the attorney fees and expenses Midwest incurred as a result of this appeal. Noble and his attorney shall have 14 days thereafter to file a joint response memorandum. If Midwest finds it necessary to reply, it may have 3 days to file a reply memorandum. The parties are reminded that Rule 375(b) sanctions are intended to involve matters in the appellate court only (Ill. S. Ct. R. 375(b)

(eff. Feb 1, 1994)), and that their memos must contain reasoning and citation to the record and legal authority.

¶ 30 Appeal dismissed; motion for sanctions continued, and briefing schedule entered.

SUPPLEMENTAL ORDER UPON GRANTING OF SANCTION

¶ 31 This cause comes before the court as to the status of the appellee's request pursuant to Supreme Court Rule 375(b) to sanction the appellant and his attorney. Ill. S. Ct. R. 375 (b) (eff. Feb 1, 1994).

¶ 32 In our order dated June 15, 2017, we dismissed for want of jurisdiction the appellant's untimely appeal from an order striking for want of jurisdiction a successive motion for reconsideration of a final judgment order based on section 2-1203 (735 ILCS 5/2-1203 (West 2014)). We gave the parties an opportunity to file supplemental memorandum addressing Midwest's request for sanctions.

¶ 33 An appeal is deemed frivolous if a reasonable, prudent attorney acting good faith would not have brought it. *Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1039, 924 N.E.2d 978, 989 (2008). We reiterate our conclusion that Noble's appeal was objectively frivolous in that his arguments lacked substance and any chance of success. Even before Lundahl filed a notice of appeal, Midwest pointed out that it was too late for any court to change the final order entered on August 18, 2014, approving the report of sale and distribution of proceeds, confirming the sale, and ordering Noble's eviction from the subject property 30 days later. After the order was entered, Noble, acting *pro se*, had timely filed on September 17, 2014, a section 2-1203 post-judgment motion, and after briefing and hearing, the trial court denied the motion on February 23, 2015. This February 2015 order should have concluded all activity in the trial court. It is well

settled that the trial court has no authority to hear successive post-judgment motions, that a losing litigant is not permitted to return to the trial court indefinitely, and that Noble's only recourse at the time was to then file an appeal by March 24, 2015. Again acting *pro se*, Noble instead filed a successive section 2-1203 post-judgment motion on March 24, 2015. This filing was a nullity. Midwest accurately discussed this fact in a motion to strike Noble's successive section 2-1203 motion, stating in part:

> "6. Well-established case authority holds that an unsuccessful litigant is entitled to but one post-trial motion attacking a final and appealable order. *Drafz v. Park, Davis & Co.*, 80 Ill. App. 3d 540, 400 N.E.2d 515 (1st Dist. 1980); *aff'd* 85 Ill. 2d 253, 422 N.E.2d 610; *City of DeKalb v. Anderson*, 22 Ill. App. 3d 40, 316 N.E.2d 653 (1974). Noble had his one chance***. ***
>
> 7. Subject-matter jurisdiction was lost to consider any further relief for Noble on September 17, 2014. [Midwest mistakenly referred to the September filing date rather than the subsequent February ruling date.] *Noble's appeal time also has expired*. [Emphasis added.] This Court has nothing before it upon which it can rule.
>
> 8. Additionally, the property has been sold pursuant to the judicial deed issued in this cause and a new purchaser is in title."

¶ 34 The circuit court agreed with Midwest and ruled on November 13, 2015:

> "This cause having come on to be heard on [Midwest's] motion to strike [Noble's motion] and Noble's motion for reconsideration, the court having reviewed the pleadings and the law, IT IS ORDERED, ADJUDGED & DECREED: 1. The court finds that it has no subject matter jurisdiction and that Noble may not file[] successive motions for reconsideration. 2. All motions are stricken due to lack of jurisdiction."

¶ 35 Given the arguments that were presented in the circuit court and the circuit court's grounds for granting the motion to strike, a reasonable, prudent attorney would have thoroughly researched and confirmed, before filing an appeal, the issue of subject matter jurisdiction. If it was true that the trial court lacked subject matter jurisdiction at that point in time, then the appellate court would also lack subject matter jurisdiction at that point in time. It would have been reasonable and prudent before filing an appeal to be determine with certainty whether "Noble's appeal time also has expired." Five days later, however, attorney Lundahl, filed a notice of appeal on November 18, 2015. Midwest argues this appeal was not taken in good faith, utterly without arguable merit, improperly presented, and in dereliction of the purpose of appealing.

¶ 36 In her response in opposition to Midwest's motion for sanctions, Lundahl takes no responsibility for this improper appeal which had no chance of success. Lundahl contends she is not accountable because she suffered a stroke on July 6, 2016, during the appellate briefing stage, which resulted in "errors of judgment." She contends Noble himself is not accountable, because she "is certain that his only purpose was to keep his house," and "any errors in the appeal were not attributable to Noble who still has not been in touch with Lundahl and to the best of her knowledge has no known address." Lundahl lays the blame for this improper appeal on Midwest, "since it could have raised the issue of this court's jurisdiction at any point." We cannot accept this conclusion.

¶ 37 Midwest's request for sanctions was also based in part on the duration of this seemingly simple appeal and the poorly researched and written brief that Lundahl filed despite taking "endless continuances." It is difficult to attribute these problems to Lundahl's health because Lundahl engaged in the same conduct in the earlier eviction appeal. Lundahl requested numerous extensions and tendered a poorly researched and written brief on May 6, 2016 in the eviction

appeal, two months before her stroke on July 6, 2016. Furthermore, in the eviction appeal, we remarked on the numerous defects in Lundahl's brief, yet she repeated those defects in this appeal.

¶ 38 Accordingly, we grant Midwest's request for Rule 375 sanctions, and we remand this cause to the trial court for an evidentiary hearing to determine the amount and apportionment of a sanction between Noble and Lundahl and to enter an order for Rule 375 sanctions in favor of Midwest consistent with this order.

¶ 39 Cause remanded with directions.