

No. 1-16-2912

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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WELLS FARGO BANK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CH 00752
	)	
WARDELL MOSELY,	)	Honorable
	)	Anna M. Loftus,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* Where defendant-appellant did not file a timely notice of appeal or a timely motion for late notice of appeal, this court lacks jurisdiction to address the merits of the appeal.

¶ 2 Defendant, Wardell Mosely, appeals *pro se*, from orders entered by the circuit court related to a foreclosure judgment entered against him and in favor of plaintiff, Wells Fargo Bank.

Upon review of the record and for the reasons that follow, we dismiss this appeal for lack of jurisdiction.

¶ 3 On January 16, 2015, plaintiff filed a complaint to foreclose mortgage against defendant, alleging that he was in default for monthly mortgage payments on the property located at 5619 South Rockwell Street in Chicago. A judgment of foreclosure was entered on April 30, 2015. Defendant appeared through counsel, and sought and received two stays of sale. Defendant's third request for a stay of sale was denied, and the property was sold at auction on January 4, 2016. Thereafter, the court entered an order approving the sale on February 29, 2016, and granting defendant's counsel's request for a 60-day stay of possession.

¶ 4 On April 6, 2016, defendant filed a *pro se* "Motion to Reply" which sought to respond to the court's order approving sale. The court struck the motion as untimely and moot on May 10, 2016.

¶ 5 On June 22, 2016, defendant filed a second postjudgment motion, entitled "Motion Requesting Permission to File *Pro Se* Complaint." The court stated that the Order Approving Sale:

"was the final order in this case. This Court lost jurisdiction thirty days thereafter, on March 30, 2016. Defendant's motion is filestamped June 22, 2016.

This case is over, and has been for some time. If Defendant wants to take further legal action, he cannot do so here. Defendant's Motion is stricken for lack of jurisdiction."

¶ 6 On July 13, 2016, defendant filed a *pro se* motion "Requesting [Acceptance] of *Pro Se* Reply to Motion to Strike." Defendant's motion was stricken for lack of jurisdiction on July 22, 2016. The court's order indicated that defendant's latest filing appeared to "seek reconsideration (by way of "exception") of the Court's prior Orders." The court stated, however, that defendant's

motion “appears to be based on a misunderstanding of law” because he relied on the 60-day stay of possession to extend the court’s jurisdiction. The court stated that defendant was:

“incorrect. The Court’s retention of jurisdiction and the statutory stay on an eviction order are both 30 days, but the extension of one does not entail an extension of the other. The Order Approving Sale provides that the Plaintiff ‘shall have possession of the premises as of a date 60 days after entry of this Order,’ and further that ‘the Sheriff cannot evict until 60 days after the entry of this order.’ The order’s language extends the stay of possession only, and did not retain extended jurisdiction over this matter.”

¶ 7 The court further stated that defendant has:

“renewed his request to permit filing of a Complaint as against Plaintiff and its predecessors in interest. Defendant’s request for such was stricken for lack of jurisdiction on July 6, 2016. To reiterate the language of that Order: this case is over, and if Defendant wants to take further legal action, he cannot do so here.”

¶ 8 Finally, the court advised defendant that “unless and until his counsel of record withdraws and Defendant files an appearance, the Court will disregard all further *pro se* filings in this matter by Defendant, as they would be improper.”

¶ 9 Following that order, on August 9, 2016, defendant *pro se* filed a “Reply of Order” and, on September 23, 2016, defendant *pro se* filed a document requesting information from the circuit court clerk regarding his “Motion Filed Aug 09, 2016.”

¶ 10 On November 7, 2016 defendant filed a *pro se* motion for leave to file a late notice of appeal. In that motion, defendant indicated that the trial court had entered an order disposing of his case on September 26, 2016. On November 20, 2016, defendant filed an “Affidavit

Regarding Late Appeal” stating that on September 28, 2016, he had received an “ ‘electronic docket’ dated 09-26-2016” that indicated that his case status was “Disposed.” He attached that document, stated that he had “filed timely motions with the court,” and requested that the appellate court “accept his late notice of appeal.”

¶ 11 Based upon defendant’s representation that he was appealing an order filed September 26, 2016, that disposed of his case, this court granted defendant’s motion for leave to file a late notice of appeal on November 23, 2016, pursuant to Supreme Court Rule 303(d). Ill. Sup. Ct. R. 303(d) (eff. Jan. 1, 2015). Thereafter, on March 1, 2017, defendant filed the record on appeal, and on March 9, 2017, defendant filed his opening brief.

¶ 12 No response brief was filed and the appeal was taken for consideration on the record and appellant’s brief only on October 4, 2017. We will consider this appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976) (“if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee’s brief, the court of review should decide the merits of the appeal. In other cases if the appellant’s brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed.”)

¶ 13 Before turning to the merits of defendant’s appeal, this court has an independent duty to consider our jurisdiction. *In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 349 (2009); *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). “This duty includes the obligation to reconsider the basis of our jurisdiction if our earlier ruling finding jurisdiction appears to be erroneous.” *Dus v. Provena Saint Mary’s Hospital*, 2012 IL App (3d) 091064, ¶ 9, citing *Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 128 Ill. App. 3d 763, 773 (1984).

Similarly, that duty is present, even where a party has not contested the court's jurisdiction to review the matter. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009); *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 23. When jurisdiction is found lacking, the reviewing court must dismiss the appeal. *Id.*; *Board of Education of the City of Chicago v. Chicago Teachers Union, Local 1*, 26 Ill. App. 3d 806, 813 (the question of jurisdiction "is always open and we may of our own motion dismiss an action where want of jurisdiction appears") (citation and internal quotation marks omitted).

¶ 14 Except as specifically provided by the Illinois Supreme Court rules, an appellate court has jurisdiction only to review final judgments, orders, or decrees. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb.1, 1994). Upon further review following the filing of the record in this case, it has become evident to this court that the final and appealable order in this foreclosure action was not entered on September 26, 2016, as defendant has maintained. Instead, the final order in this case was entered on February 29, 2016, when the circuit court entered an order approving the sale. See *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11 ("it is the order confirming the sale \*\*\* that operates as the final and appealable order in a foreclosure case.").

¶ 15 The record shows that there were no further court orders entered after the July 22, 2016 order, and we have found no order in the record dated September 26, 2016. Although defendant claims to be appealing from an order entered on that date, the circuit court clerk's record of filings in the mortgage foreclosure action, of which this court may take judicial notice (see *People v. Davis*, 65 Ill. 2d 157, 161 (1976) ("matters susceptible of judicial notice include facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy." [Internal quotations and citation omitted])), also confirms that the last order entered by the circuit court was on July 22, 2016.

¶ 16 Upon reviewing the record and defendant’s “Affidavit regarding late appeal,” it appears that defendant misconstrued a notification from the clerk’s office regarding the status of the case as a court order disposing of the matter. In defendant’s affidavit, he referred to, and attached, an “ ‘electronic docket’ dated 09-26-2016” that indicated that his case status was “disposed.” It appears that the document was sent to him by the clerk in response to his request for information on his previous filing. That document is not an order of the court, but merely a record of the various filings and orders entered in the case.

¶ 17 Under Illinois Supreme Court Rule 303(a), the appellant must file a notice of appeal with the clerk of the circuit court within 30 days after entry of the final judgment appealed from, or, if a timely postjudgment motion against the judgment has been filed, the appellant must file a notice of appeal within 30 days from the entry of the order disposing of the last postjudgment motion. Ill. Sup. Ct. R. 303(a) (eff. Jan. 1, 2015). The trial court retains jurisdiction for 30 days after a final judgment is entered, unless a motion challenging the judgment is timely filed. *Twardowski v. Holiday Hosp. Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 18 Although defendant filed various *pro se* filings in the trial court after the February 29, 2016 order, he did not file a timely post judgment motion that would toll the time for filing a notice of appeal. Defendant filed a *pro se* “Motion to Reply” to the court’s order approving sale, however, it was not filed until April 6, 2016, seven days beyond the time for filing a postjudgment motion. As a result, defendant’s notice of appeal was due March 30, 2016. In these circumstances, the trial court correctly, and repeatedly, determined that it lacked jurisdiction to consider defendant’s various untimely postjudgment motions. This court likewise has no jurisdiction to consider those matters on the merits. *Keener v. City of Herrin*, 235 Ill. 2d 338, 350 (2009).

¶ 19 Supreme Court Rule 303(d) provides for an extension of time to file the notice of appeal in certain circumstances. Specifically, an appellate court may grant leave to appeal:

“[o]n motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal \*\*\*.” Ill. S. Ct. R. 303(d) (eff. Jan. 1, 2015).

¶ 20 In other words, Rule 303(d) gives an appellant an additional 30 days in which to file a notice of appeal, where he has shown a reasonable excuse for his failure to file a timely notice. *Id.* In this case, this court granted defendant leave to file a late notice of appeal in accordance with this Rule. However, because we have previously determined that defendant’s Notice of Appeal was due on March 30, 2016, a motion for leave to file a late notice of appeal was due 30 days thereafter, on or before April 29, 2016. Defendant, however, did not file a motion for leave to file a late notice of appeal until more than six months later, on November 7, 2016.

¶ 21 Compliance with Rules 303(a) and 303(d) is mandatory and jurisdictional. *Gaynor v. Walsh*, 219 Ill. App 3d 996, 1004 (1991) (finding that the appellate court lacked the power to grant a motion for leave to file a late notice of appeal after the time for filing such a motion had expired). Our Supreme Court requires strict compliance with its rules governing the time limits for filing a notice of appeal and neither a circuit court, nor an appellate court has the authority to excuse compliance with the filing requirements mandated by Supreme Court Rules. *Dus*, 2012 IL App (3d) 091064, ¶ 10. When an appeal is not timely filed under Supreme Court Rules, the appellate court has no discretion to take any action other than dismissing that appeal. *People v. Lyles*, 217 Ill. 2d 210, 217 (2005).

¶ 22 As stated, a motion for leave to file a late notice of appeal from the February 29, 2016, order was due on or before April 29, 2016. Although this court granted defendant's motion to file a late notice of appeal based on defendant's representation of the date of the final order, we have now determined that we lacked jurisdiction to do so. See, e.g., *In Interest of C.S., Jr.*, 294 Ill. App. 3d 780, 787 (1998) (finding that the respondent's delay in filing a notice of appeal went beyond the 30-day requirement in Rule 303 and the period set for filing a late notice of appeal under Rule 303(d); therefore, the appellate court court lacked jurisdiction over the appeal of the adjudicatory and dispositional orders); *Dus*, 2012 IL App (3d) 091064, ¶ 10. Accordingly, we conclude that we lack jurisdiction over defendant's untimely appeal.

¶ 23 Finally, we note that on November 20, 2017, eight months after defendant filed his appellant's brief in this appeal, defendant filed a motion requesting a "extension of time for the appointment of counsel or the hir[ing] of counsel." In his motion, defendant stated that he was currently incarcerated, and was scheduled to be released within 60 days. Accordingly, defendant requested that this court grant him a 90 day continuance to obtain counsel. Defendant's motion was taken with the case, and we now deny that motion. Defendant is not entitled to the appointment of counsel on a civil case (see *Doherty v. Caisley*, 104 Ill. 2d 72, 76 (1984) ("indigent prisoners do not have a constitutional right to the appointment of counsel in [civil] cases"); *Tedder v. Fairman*, 92 Ill. 2d 216, 225 (1982) ("We cannot find sufficient support in any of the United States Supreme Court holdings to say that an indigent prisoner has a constitutional right to appointed counsel in a civil suit either at trial or on appeal"). Moreover, we find no cause to allow defendant a 90 day continuance to hire private counsel. This court has determined that we clearly lack jurisdiction to hear the merits of his appeal, and counsel could not cure the jurisdictional defect. See *Martin v. Cajda*, 238 Ill. App. 3d 721, 728 (1992) ("Compliance with



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the deadlines for appeals in Supreme Court Rule 303 is mandatory and jurisdictional [citations], and appellate jurisdiction may not be conferred by laches, consent, waiver or estoppel.”).

¶ 24 Because defendant did not file a timely notice of appeal or a timely motion for a late notice of appeal, and for the additional reasons described above, this court lack jurisdiction to hear this appeal. Accordingly, the appeal is dismissed.

¶ 25 Appeal dismissed.