

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).

2017 IL App (4th) 150787-U
NOS. 4-15-0787, 4-15-0788, 4-15-0789 cons.

FILED
January 24, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

VINCENT BOGGAN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v. (No. 4-15-0787))	Sangamon County
JOHN BALDWIN, Director of the Illinois Department)	No. 13MR611
of Corrections,)	
Defendant-Appellee.)	
-----)	
AARON MAY,)	
Plaintiff-Appellant,)	
v. (No. 4-15-0788))	
JOHN BALDWIN, Director of the Illinois Department)	
of Corrections,)	
Defendant-Appellee.)	
-----)	
JAMES R. EDENS,)	
Plaintiff-Appellant,)	
v. (No. 4-15-0789))	
JOHN BALDWIN, Director of the Illinois Department)	Honorable
of Corrections,)	Chris Perrin,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed the appeals, concluding it was without jurisdiction.

¶ 2 In July 2013, plaintiff, James R. Edens, along with two coplaintiffs, Vincent Boggan and Aaron May, filed a *mandamus* complaint against the former director of the Illinois Department of Corrections (DOC). Defendant, John Baldwin, is the current acting director of DOC. In April 2014, following the dismissal of the *mandamus* complaint, Edens filed a motion

to reconsider. In July 2014, while the motion to reconsider was pending, Edens filed a notice of appeal. In November 2014, the trial court entered an order denying the motion to reconsider. In July 2015, this court dismissed Edens' appeal for lack of jurisdiction because the record before the court did not contain the November 2014 order. On remand, the trial court again heard and denied the motion to reconsider. In September 2015, all three plaintiffs appealed. For the reasons that follow, we dismiss for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 This case comes to us with a complicated procedural background.

¶ 5 In July 2013, Edens, along with two coplaintiffs, filed a *mandamus* complaint against defendant. The complaint sought an order requiring defendant to comply with prior versions of section 3-6-3 of the Unified Code of Corrections (730 ILCS 5/3-6-3 (West 2012)) and Illinois Department of Corrections Rule 107.210 (Ill. Adm. Code 107.210 (2013)) in awarding good-conduct credits.

¶ 6 In September 2013, defendant filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). In March 2014, the trial court conducted a hearing on defendant's motion. On March 7, 2014, the court entered a written order granting defendant's motion to dismiss.

¶ 7 The following month, Edens filed a motion for reconsideration. Boggan and May did not sign the motion for reconsideration.

¶ 8 In May 2014, Boggan filed a request for a hearing on Edens' motion for reconsideration.

¶ 9 On July 21, 2014, Edens filed a notice of appeal from his "Mandamus Civil Complaint." Boggan and May were not listed on, and did not sign, the notice of appeal. This court docketed the appeal as No. 4-14-0650.

¶ 10 Also on July 21, 2014, May filed a request for a hearing, which stated, "Second request for hearing on the granting of summary judgment for defendant. If a hearing cannot be timely afforded[,] Plaintiff's [*sic*] respectfully request withdrawal of Motion to Reconsider and allow Plaintiff's [*sic*] their right to appeal, pursuant to due process."

¶ 11 On July 25, 2014, the trial court entered the following docket entry: "The matter is currently on appeal to the Fourth District Appellate Court. The Court has no jurisdiction. The request for hearing is denied. The matter is in front of the Fourth District Appellate Court."

¶ 12 On November 25, 2014, the trial court again took up Edens' motion for reconsideration. On the civil docketing form, the court crossed out the word "heard" after the word "arguments," and handwrote "read" in substitution. That same date, the court entered a written order denying the motion for reconsideration on the merits. The record shows the order was sent to Edens, Boggan, May, and defendant's counsel.

¶ 13 Following the trial court's November 25, 2014, order, Edens made no attempt to supplement the record on appeal in case No. 4-14-0650, nor did he file an amended notice of appeal. Apparently, appellate counsel for defendant was unaware of the November 25, 2014, order, as the parties fully briefed the appeal.

¶ 14 On July 9, 2015, this court dismissed the appeal, concluding it was without jurisdiction because the record before the appellate court contained no indication the trial court ever ruled on the merits of Edens' motion to reconsider. *Edens v. Godinez*, 2015 IL App (4th) 140650-U, ¶ 2. The appellate court held the July 25, 2014, docket entry (in which the trial court

denied coplaintiffs' requests for hearing on Edens' motion to reconsider) was not a ruling on Edens' motion and, therefore, the appeal was premature. Accordingly, the appellate court remanded for further proceedings on Edens' motion. Edens did not file a petition for rehearing or a motion to supplement the record with the trial court's November 25, 2014, order.

¶ 15 On September 16, 2015, the trial court, on remand, held another hearing on Edens' motion to reconsider. On September 30, 2015, Edens, Boggan, and May filed a notice of appeal, which all three signed.

¶ 16 This appeal followed. We docketed Boggan's appeal as No. 4-14-0787, May's appeal as No. 4-14-0788, and Edens' appeal as No. 4-14-0789. We have consolidated plaintiffs' cases for review.

¶ 17 **II. ANALYSIS**

¶ 18 On appeal, plaintiffs argue the trial court erred in dismissing the July 2013 *mandamus* complaint against defendant. This court has a duty to consider its jurisdiction prior to addressing the merits of an appeal and, if jurisdiction is lacking, a duty to dismiss the appeal. *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765, 826 N.E.2d 1057, 1062 (2005); see also *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453, 845 N.E.2d 792, 800 (2006). Having reviewed the record, we conclude we are without jurisdiction to resolve these appeals.

¶ 19 **A. Edens**

¶ 20 Edens filed his initial notice of appeal on July 21, 2014. While his appeal was pending, the trial court entered an order denying Edens' motion to reconsider. We must consider what effect the court's November order had on Edens' appeal in case No. 4-14-0650.

¶ 21 Prior to the 2007 amendment of Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008), a notice of appeal filed before the entry of an order disposing of the last pending postjudgment motion had no effect and the party who filed the notice of appeal had to withdraw it. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 460, 563 N.E.2d 459, 461 (1990). This was the case whether the postjudgment motion was filed before or after the notice of appeal. *Id.* Regardless, a new notice of appeal had to be filed within 30 days of the entry of an order disposing of the last pending postjudgment motion. *Id.*

¶ 22 Amended Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) provides, in pertinent part, as follows:

"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, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered. A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion."

This amendment acts to "save" prematurely filed appeals "by making the notice of appeal effective when the order denying a postjudgment motion or resolving a still-pending separate

claim is entered." *In re Marriage of Valkiunas*, 389 Ill. App. 3d 965, 967, 909 N.E.2d 195, 197 (2008). A notice of appeal filed before an order resolving a postjudgment motion "becomes" effective upon the entry of the order disposing of the postjudgment motion. *Id.* "A premature appeal is deemed saved in the sense that the appellant is not required to file a new notice of appeal." *Id.* at 967-68, 909 N.E.2d at 197.

¶ 23 Thus, under as-amended Rule 303(a)(2), Edens' prematurely filed notice of appeal in case No. 4-14-0650 became effective on November 25, 2014. Following entry of the trial court's November order, Edens had multiple avenues available to him to preserve his right to appellate review of his claims. Before this court dismissed his appeal in case No. 4-14-0650, Edens could have filed a new or amended notice of appeal within 30 days of the November order. Following the dismissal of a prematurely filed appeal, a party may timely file a new notice of appeal upon resolution of a pending postjudgment motion or other pending claim. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050, 879 N.E.2d 1053, 1059 (2007). He also could have filed a motion to supplement the record on appeal. The record shows a copy of the November 25, 2014, order was sent to Edens that same day. However, Edens did not file a new notice of appeal following the denial of his motion to reconsider, nor did he seek to amend his notice of appeal, file a motion to supplement the record on appeal, or otherwise attempt to alert this court to the entry of the order denying his motion to reconsider.

¶ 24 If, however, after an appeal is dismissed as premature, the pending postjudgment motion or other "claims have been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows [the party] to establish the effectiveness of the [dismissed] notice of appeal." *Id.* Rule 303(a)(2) was amended to prevent the unfairness of dismissing appeals as premature long after the time in which the parties could file a new, timely appeal. *In re*

Marriage of Duggan, 376 Ill. App. 3d 725, 731, 877 N.E.2d 1140, 1145-46 (2007). "In the latter event, [the party] may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits." *Knoerr*, 377 Ill. App. 3d at 1050, 879 N.E.2d at 1059.

¶ 25 Although this court's order dismissing Edens' appeal as premature came after the time in which he could bring a new, timely appeal, he was not without recourse. Our order dismissing the appeal in case No. 4-14-0650 cited Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) and emphasized a premature notice of appeal "*becomes effective when the order disposing of said motion or claim is entered.*" (Emphasis in original.) *Edens*, 2015 IL App (4th) 140650-U, ¶ 20. Our order further indicated "the common-law record, including the docket entries contained therein, fails to indicate whether the trial court ruled on Edens' timely filed postjudgment motion." *Id.* This language alerted Edens to the deficiency in the record, which he failed to correct. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984) (appellant bears the burden of providing a sufficiently complete record for appellate review). The appropriate procedure following this court's dismissal of his appeal, as outlined above, was to file, within 21 days of the entry of this court's order, a petition for rehearing and to supplement the record. *Knoerr*, 377 Ill. App. 3d at 1050, 879 N.E.2d at 1059; see also *Valkiunas*, 389 Ill. App. 3d at 966, 909 N.E.2d at 196. Edens failed to do so.

¶ 26 Finally, a litigant seeking to vacate the judgment of a reviewing court after the rehearing period has expired and the mandate has issued must file a motion to recall the mandate in the reviewing court which rendered the contested judgment. *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶¶ 42-43, 43 N.E.3d 53. Despite defendant's assertion this court lacks jurisdiction of

the instant appeal and defendant's citation to *Price*, Edens has failed to file with this court a motion to recall the mandate in case No. 4-14-0650.

¶ 27 We conclude this court lacks jurisdiction to review Edens' claims based on his failure to file (1) a new or amended notice of appeal within 30 days of the trial court's order disposing of the pending postjudgment motion (see Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008)); (2) a motion to supplement the record on appeal in case No. 4-14-0650 (see Ill. S. Ct. R. 361 (eff. Jan. 1, 2015)); (3) a petition for rehearing and to supplement the record on appeal in case No. 4-14-0650 (see Ill. S. Ct. R. 367 (eff. Aug. 15, 2016); see also *Knoerr*, 377 Ill. App. 3d at 1050, 879 N.E.2d at 1059); or (4) a motion to recall the mandate in case No. 4-14-0650 (see *Price*, 2015 IL 117687, ¶ 43, 43 N.E.3d 53). Accordingly, we dismiss the appeal in case No. 4-15-0789.

¶ 28 B. Boggan and May

¶ 29 Initially, we note our decision in case No. 4-14-0650 and our order on remand pertained only to Edens, as Boggan and May were not parties to the appeal. The record shows neither Boggan nor May filed a timely notice of appeal or a timely postjudgment motion following the trial court's dismissal of the case. Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008) provides, in pertinent part, that a "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 is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Because neither Boggan nor May ever filed timely postjudgment motions or timely notices of appeal within 30 days of the trial court's March 2014 order dismissing the case, we conclude they have forfeited their right to appellate review and, accordingly, we dismiss the appeals in case Nos. 4-14-0787 and 4-14-

0788. See *Baca v. Trejo*, 388 Ill. App. 3d 193, 198-99, 902 N.E.2d 1108, 1113 (2009)

(dismissing appeal where appellant "filed no timely postjudgment motion and filed his notice of appeal more than 30 days after the entry of the final judgment").

¶ 30

III. CONCLUSION

¶ 31

For the foregoing reasons, we dismiss this appeal.

¶ 32

Appeal dismissed.