2017 IL App (4th) 160158-U

NO. 4-16-0158

FILED
January 3, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| MARSHA EBERHART, KRISTA AMMONS, and RYAN CLOTHIER, | ) | Appeal from |
| Plaintiffs-Appellees, | ) | Circuit Court of |
| v. | ) | Macoupin County |
| JAMES D. EBERHART; ROBERTA J. EBERHART; GOLDEN PINE PROPERTIES, INC.; and ASSOCIATED BANK, N.A., | ) | No. 12MR26 |
| Defendants, | ) | Honorable |
| (James D. Eberhart; Roberta J. Eberhart; and Golden Pine Properties, Inc., Defendants-Appellants). | ) | Kenneth R. Deihl, Judge Presiding. |

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held*: In the absence of a timely postjudgment motion directed against the summary judgment, the 30-day period for filing an appeal was not tolled, and consequently the notice of appeal in this case is untimely.

¶ 2 In count I of their third amended complaint, plaintiffs, Marsha Eberhart, Krista Eberhart, and Ryan Clothier, residuary beneficiaries of a trust, sought to set aside a quitclaim deed by which the trustee, Emory D. Eberhart, now deceased, purported to give some trust property, *i.e.*, his and his late wife's marital residence, to James D. Eberhart and Roberta J. Eberhart. They in turn conveyed the property to Golden Pine Properties, Inc. (Golden Pine), which later conveyed it back to them. (Sometimes, in the record, Golden Pine is called "Golden

Pines Properties, Inc.," but according to the corporate registry of the Illinois Secretary of State, the correct name is "Golden Pine Properties, Inc.") The trial court granted plaintiffs' motion for summary judgment on count I. James D. Eberhart, Roberta J. Eberhart, and Golden Pine appeal. We dismiss this appeal for lack of jurisdiction because their notice of appeal was untimely.

¶ 3 I. BACKGROUND

¶ 4 A. The Revocable Living Trust, Which Became Irrevocable

¶ 5 1. *Putting the Marital Residence in Trust*

¶ 6 On August 27, 1996, Emory D. Eberhart and his wife, Roberta M. Eberhart (not to be confused with Roberta J. Eberhart) signed an instrument creating a revocable living trust, of which they were both the trustees and beneficiaries for life. One of the assets of the trust was their marital residence, 5648 Schmidt Road, Brighton, Illinois.

¶ 7 2. *The Contingent Beneficiaries of the Trust*

¶ 8 Plaintiffs were the contingent beneficiaries of the trust. They were to receive the trust estate upon the death of both Emory D. Eberhart and Roberta M. Eberhart.

¶ 9 3. *The Death of Roberta M. Eberhart, Which Made the Trust Irrevocable*

¶ 10 Roberta M. Eberhart died on August 12, 1999, leaving Emory D. Eberhart as the sole trustee. Under sections 1.03 and 1.06 of the trust, her death made the trust irrevocable.

¶ 11 B. Emory D. Eberhart Signs a New Will,

in Which He Expressly Omits Plaintiffs as Beneficiaries

¶ 12 On June 12, 2002, Emory D. Eberhart signed a will, in which he "intentionally and with full knowledge omitted to provide for [his] heirs," "expressly disinherited" Marsha K. Flowers (otherwise known as Marsha Eberhart), and stated he did not want her "or her descendants," *i.e.*, Krista Ammons and Ryan Clothier, "to take any part of [his] estate whatsoever." Thus, he expressly excluded plaintiffs from being his testamentary beneficiaries.

¶ 13 C. Emory D. Eberhart, as the Sole Surviving Trustee, Quitclaims the Marital Residence to James D. Eberhart and Roberta J. Eberhart

¶ 14 On May 31, 2008, Emory D. Eberhart, the sole surviving trustee, quitclaimed the marital residence to two of the defendants, James D. Eberhart and Roberta J. Eberhart.

¶ 15 D. Subsequent Deeds or Transfers

¶ 16 On September 10, 2008, James D. Eberhart and Roberta J. Eberhart in turn quitclaimed the marital residence to the third defendant, Golden Pine, a wholly owned subchapter S corporation.

¶ 17 On August 18, 2010, Golden Pine transferred the marital residence back to James D. Eberhart and Roberta J. Eberhart.

¶ 18 Also on August 18, 2010, James D. Eberhart and Roberta J. Eberhart mortgaged the marital residence to Associated Bank, N.A. (Associated Bank).

¶ 19 E. The Death of Emory D. Eberhart

¶ 20 Emory D. Eberhart died on November 19, 2011.

¶ 21 F. Count I of the Third Amended Complaint

¶ 22 Count I of plaintiffs' third amended complaint concerned the marital residence, 5648 Schmidt Road, in Brighton. In the introductory section of their third amended complaint, a section with the heading "Facts Common to All Counts," plaintiffs provided the legal description of the marital residence:

> "The Northeast Quarter of the Southeast Quarter of the Southwest Quarter, The Northwest Quarter of the Southwest Quarter of the Southeast Quarter, and also twenty (20) feet off the West side of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter all in Section 24, Township 7 North, Range 9 West of the Third Principal Meridian. Situated in the State of Illinois, County of Macoupin; AND A tract of land described as followings [*sic*]: Beginning at the Southwest corner of the Northeast Quarter of the Southwest Quarter of the Southeast Quarter of Section Twenty-four (24), Township Seven (7) North, Range Nine (9) West of the Third Principal Meridian, Macoupin County, Illinois, thence running North One Hundred Twenty (120) feet; thence East twenty (2) feet, thence South One Hundred Twenty (120) feet, thence West Twenty (20) feet to the place of beginning. Situated in the State of Illinois, County of Macoupin."

¶ 23 The theory of count I is that Emory D. Eberhart, as trustee, lacked authority to quitclaim the marital residence to James D. Eberhart and Roberta J. Eberhart, and that consequently his quitclaim deed to them was void, as were all the conveyances that followed. In count I, plaintiffs sought to "set aside" the deeds "purportedly executed by Emory Eberhart on

May 31, 2008[;] by James D. Eberhart and Roberta J. Eberhart on September 10, 2008[;] and by Golden Pines [*sic*] *** on August 18, 2010[,] with respect to" the marital residence. In addition they sought the following additional remedies:

> "that Defendant James D. Eberhart, Defendant Roberta J. Eberhart, [and] Defendant Golden Pines [*sic*] *** b[e] required to account for any and all proceeds they may have received from the subject real estate, repay the mortgage with Associated Bank in full, or in the alternative, declare the mortgage an unsecured debt of Defendant James D. Eberhart and Roberta J. Eberhart and set aside the mortgage as to the property, and for such other and further relief as the Court deems appropriate."

¶ 24 G. The Cross-Motions for Summary Judgment on Count I

¶ 25 On August 21, 2014, James D. Eberhart and Roberta J. Eberhart moved for a summary judgment in their favor on count I of the third amended complaint. They cited section 5.02(a) of the trust instrument, which gave the trustees "the power to convey" trust property, and section 5.09, which provided that " 'either Trustee [should] have the power to execute individually any and all documents necessary to carry out the powers, functions[,] and duties of the position of Trustee.' " The concluding paragraph of their motion reads: "Wherefore Defendants James D. Eberhart and Roberta J. Eberhart pray that the Court determine as a matter of law that Emory D. Eberhart as Trustee of The Emory D. Eberhart and Roberta M. Eberhart Family Trust had the authority to transfer the real estate described above to said Defendants."

¶ 26 On October 3, 2014, plaintiffs filed two motions for summary judgment on count

I: one motion against Associated Bank and the other motion against James D. Eberhart, Roberta J. Eberhart, and Golden Pine. In their motions for summary judgment, plaintiffs relied on section 1.06 of the trust instrument, the section providing that upon the death of either trustee, the trust would be "irrevocable and not subject to amendment or modification." They also relied on section 5.08, which authorized the surviving trustee to "retain," in trust, "for the personal use of the Surviving Trustor any property occupied by the Trustors as their principal residence at the time of death of the first Trustor to die as long as the Surviving Trustor [might] desire to occupy such residence property" and which provided that, "[i]n written request of the Surviving Trustor, the Trustee may sell such property and replace it with other property, to be retained in the trust in the same manner and the replaced residence property, suitable in the Trustee's judgment as a residence for the Surviving Trustor."

¶ 27 On January 16, 2015, Associated Bank moved for a summary judgment in its favor on count I. Associated Bank argued that section 5.02 empowered Emory D. Eberhart to "convey" any trust property, and that just because, under section 5.08, the surviving trustee "*may* sell" the marital residence "and replace it with other property," it did not follow that a conveyance of the marital residence *had* to be a sale or a replacement. (Emphasis added.) Associated Bank further claimed that, in any event, it was a *bona fide* lender for value and that the mortgage therefore should be honored.

¶ 28

¶ 29 H. The Trial Court's Order of April 3, 2015

¶ 30 On April 3, 2015, the trial court entered an order entitled "Order Granting Plaintiffs' Motion for Summary Judgment." The opening paragraph of the order says: "This

matter came to be heard on Plaintiffs' Motion for Summary Judgment against Defendant Associated Bank, N.A. ('Associated'), and on Associated's Cross-Motion for Summary Judgment against Plaintiffs. Both motions relate only to Count I of Plaintiff's Third Amended Complaint ***."

¶ 31 The order addressed two issues, the first of which was whether Emory D. Eberhart had "authority," as the surviving trustee, "to convey certain trust property," namely, the marital residence, "that [was] now encumbered by Associated [Bank]." The parties were in agreement that this conveyance had been for "nominal consideration" and that it was "in the nature of a gift." As to the legal validity of this gratuitous conveyance, the trial court reached the following conclusion:

> "7. In light of the terms of the whole trust instrument, the prudent-investor rule, and the general presumption against gratuitous transfers of trust property to non-beneficiaries, the term 'convey' in § 5.02(a) did not permit the trustee to make a gift of the residential property. Thus, Emory [D. Eberhart] lacked the authority to transfer the residential property to James [D. Eberhart] and [Roberta J. Eberhart] by the May 2008 quit claim deed. The September 2008 and August 2010 deed, which involved identical parties and were for nominal consideration, are similarly void."

¶ 32 The next issue was "whether, notwithstanding [Emory D. Eberhart's] lack of authority, Associated [Bank was] protected as a *bona fide* mortgagee." To be a *bona fide* mortgagee, Associated Bank would have had to acquire its interest in the marital residence (1) in return for valuable consideration and (2) without actual or constructive notice of plaintiffs'

adverse interest in the marital residence. There was no dispute that Associated Bank had acquired its mortgage interest for valuable consideration, but the trial court concluded that Associated Bank had received constructive notice of plaintiffs' adverse interest and hence was not a *bona fide* mortgagee:

> "10. *** In this case, Associated [Bank] had constructive, record notice of: (1) the May 2008, September 2008, and August 2010 quit claim deeds; (2) the fact that each deed was for only nominal consideration; and (3) the fact that the August 2010 conveyance was made the same day as the execution of the note and mortgage. Moreover, the May 2008 deed explicitly referenced [Emory D. Eberhart's] role as trustee. Thus, Associated [Bank] knew both that the residential property was held in the Trust and that it was conveyed for $1. A prudent mortgagee with knowledge that the proposed collateral was previously held in trust, and had been gratuitously conveyed, would inquire into the terms of the trust instrument and the status of the donees with regard to the trust property.
>
> 11. Had Associated [Bank] conducted a diligent inquiry into the residential property, it would have discovered that Emory [D. Eberhart] lacked the authority to make a gift of the residential property to non-beneficiaries—or, at the very least, that there was serious doubt as to whether [he] could make such a gift. Because Associated [Bank] was on inquiry notice of this cloud on title, it is not entitled to the protections afforded a *bona fide* mortgagee.
>
> 12. Therefore, Plaintiffs' Motion for Summary Judgment is GRANTED, and [Associated Bank's] Cross-Motion for Summary Judgment is DENIED."

¶ 33 I. Plaintiffs' Motion for Clarification

¶ 34 On April 17, 2015, plaintiffs filed a "Motion to Clarify." In this motion, plaintiffs noted that, although the trial court's order of April 3, 2015, "appear[ed] to rule on all issues," it "[did] not specifically grant or deny summary judgment as between Plaintiffs and the Eberhart defendants." Plaintiffs requested a "clarification, or in the alternative, an order as to the summary judgment on Count I between [them] and the Eberhart Defendants."

¶ 35 J. The Trial Court's Amended Order of April 28, 2015

¶ 36 On April 28, 2015, the trial court entered an "Amended Order Granting Plaintiffs' Motion for Summary Judgment." In this amended order, the court noted that its order of April 3, 2015, "inadvertently omitted its ruling on the summary judgment motion against Defendants James Eberhart, Roberta J. Eberhart, and Golden Pines." After incorporating into the amended order the background and analysis sections from the order of April 3, 2015, the court ruled as follows:

> "3. Accordingly, Defendants James Eberhart, Roberta J. Eberhart, and Golden Pines' Motion for Summary Judgment as to Count I is DENIED; Plaintiffs' Motion for Summary Judgment as to Count I against Defendant Associated Bank, N.A., is GRANTED; Plaintiffs' Motion for Summary Judgment as to Count I against Defendants James Eberhart, Roberta J. Eberhart, and Golden Pines is GRANTED; and Associated Bank, N.A.'s Cross-Motion for Summary Judgment as to Count I is DENIED."

¶ 37 Then the trial court added a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010):

> "4. The Court finds that there is no just reason for delaying either enforcement or appeal of this Order (S. Ct. R. 304(a))."

¶ 38 K. "Motion To Clarify or Reconsider"

¶ 39 On May 20, 2015, James D. Eberhart, Roberta J. Eberhart, and Golden Pine filed a "Motion To Clarify or Reconsider." The motion reads in its entirety as follows:

> "Now comes [*sic*] James D. Eberhart and Roberta J. Eberhart and Golden Pines Properties, Inc., by their attorney, Richard N. Gillingham, who moves that the Court Clarify or Reconsider its Amended Order dated April 28, 2015, for the following reasons:
>
> 1. That in Defendants' James D. Eberhart and Roberta J. Eberhart and Golden Pines Properties, Inc., Response to Plaintiffs' Motion for Summary Judgment, and in arguments before the Court on the parties' Motions for Summary Judgments, said Defendants requested that in the event the Court allowed Plaintiffs' Motion for Summary Judgment, that the Court allow further hearing on the issue of whether said Defendants should be compensated for costs of repairs, improvements, real estate taxes and insurance paid by them pertaining to the real estate from May 31, 2008 to present.
>
> 2. That said Amended Order does not address said prayer for a hearing as contained in said Defendants Response to Motion for Summary Judgment.

3. That by granting Plaintiffs Motion for Summary Judgment and setting aside the deeds referred to therein, the effect is to place ownership of said real estate in Plaintiffs after said Defendants have expended substantial amounts of money and their own labor in repairing, maintaining and improving said real estate.

4. That said Defendants should be allowed a hearing for the Court to determine whether said Defendants should be compensated for money and labor expended by them in repairing, maintaining and improving said real estate.

Wherefore, Defendants pray that this Court either clarify or reconsider the Amended Order entered herein on April 28, 2015, and allow said Defendants to proceed with a hearing on the issue of compensation to them."

¶ 40 L. Plaintiffs' "Motion To Reduce Order to Judgment"

¶ 41 On June 1, 2015, plaintiffs filed a "Motion To Reduce Order to Judgment." In that motion, plaintiffs "[sought] to reduce [the] orders [of April 3 and 28, 2015,] to judgments so as to clear the title to the property commonly known as 5648 Schmidt Road, Brighton, Illinois 62012."

¶ 42 M. The "Judgment" of February 8, 2016

¶ 43 On February 8, 2016, the trial court signed a document entitled "Judgment." Paragraph 2 says: "Judgment is entered in favor of Plaintiffs and against Defendants, James D. Eberhart, Roberta J. Eberhart and Golden Pines Properties, Inc. as to Count I of Plaintiffs' Third

Amended Complaint."

¶ 44 Paragraph 3 states that the trial court "sets aside and extinguishes the deeds listed below with respect to" the marital residence, giving the legal description of the marital residence. Then paragraph 3 lists the extinguished deeds, along with their dates of execution, their recording dates, and the document numbers assigned to them by the Macoupin County Recorder's Office: (1) the quitclaim deed from Emory D. Eberhart to James D. Eberhart and Roberta J. Eberhart, dated May 31, 2008; (2) the quitclaim deed from James D. Eberhart and Roberta J. Eberhart to Golden Pine, dated September 10, 2008; and (3) the corporation warranty deed from Golden Pine to James D. Eberhart and Roberta J. Eberhart, dated August 27, 2010.

¶ 45 N. The Notice of Appeal

¶ 46 On March 4, 2016, James D. Eberhart, Roberta J. Eberhart, and Golden Pine filed a notice of appeal. The notice says that they "appeal *** from the Trial Court's Judgment entered February 8, 2016."

¶ 47 II. ANALYSIS

¶ 48 Plaintiffs challenge our jurisdiction over this appeal. They argue that, regardless of whether this appeal is under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) or, alternatively, under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010), defendants failed to file their notice of appeal within 30 days after the final judgment, which plaintiffs identify as the amended order of April 28, 2015. See Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). Plaintiffs acknowledge that within 30 days after the order of April 28, 2015, defendants filed their "Motion

To Clarify or Reconsider," but plaintiffs argue that this motion "was not related to matters set forth in this appeal."

¶ 49 Defendants respond that by filing the "Motion To Reduce Order to Judgment," plaintiffs themselves tolled the 30-day period for filing a notice of appeal. "This Motion," defendants say, "had the effect of requesting a modification of the Order of April 28 and was a post-trial motion thus having the effect of tolling the time for appeal until the Motion was decided." They reason that, regardless of whether their appeal is regarded as taken under Rule 304(a) or, alternatively, under Rule 304(b)(1), the time for filing a notice of appeal was to be as provided in Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010) ("The time for filing a notice of appeal shall be as provided in Rule 303."); Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010) ("The time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303."). Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) provides: "A party intending to challenge an order disposing of any postjudgment motion *** 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 ***."

¶ 50 Of course, we will evaluate these opposing arguments that the parties make, but we have an independent duty to assess our subject-matter jurisdiction, even if it means going beyond their arguments. See *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 33. To that end, we will consider the following questions. Which order was the final judgment in this case? Was the "Motion To Clarify or Reconsider" a postjudgment motion that tolled the 30-day period for filing an appeal? If not, was the "Motion To Reduce Order to Judgment" such a postjudgment

motion, as defendants contend?

¶ 51 A. Which Order Was the Final Judgment?

¶ 52 Rule 304(b)(1) provides:

> "(b) **Judgments and Orders Appealable Without Special Finding**. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> (1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010).

We are unclear how this rule is relevant. This is not a probate case or a guardianship case. None of the parties appears in the capacity of an executor, administrator, or guardian.

¶ 53 Given the Rule 304(a) finding in the amended order of April 28, 2015, the relevance of that rule is clearer. Rule 304(a) provides:

> "(a) **Judgments As To Fewer Than All Parties or Claims—Necessity for Special Finding**. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *** The time for filing a notice of appeal shall be as provided in Rule 303." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 54 Thus, a Rule 304(a) finding is not enough; there must be a "final judgment." *Id.*;

*Kellerman v. Crowe*, 119 Ill. 2d 111, 115 (1987). "[A] final order under Rule 304(a) must be final in the sense that it disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." (Internal quotation marks omitted.) *In re Estate of French*, 166 Ill. 2d 95, 101 (1995).

¶ 55 The amended order of April 28, 2015, was a final judgment in that it "dispose[d] of the rights of the parties *** upon some definite and separate part [of the controversy]," namely, the part of the controversy framed by count I of the third amended complaint. *Id.* To accomplish this disposition, it was unnecessary for this amended order to describe the three deeds and the property they purported to convey. "A judgment affecting property is void where the judgment contains an uncertain or impossible description of the property, *except where the description may be rendered definite and certain by reference to the pleadings and other parts of the record*." (Emphasis added.) *In re Marriage of Los*, 136 Ill. App. 3d 26, 34 (1985). Both count I of the third amended complaint and plaintiffs' motions for summary judgment on count I set forth the common address and the legal description of the property at issue. The three deeds were attached as exhibits to plaintiffs' motion for summary judgment, and the legal description was in the deeds. Therefore, the "description" of both the deeds and the property "may be rendered definite and certain by reference to the pleadings and the other parts of the record." *Id.*

¶ 56 Because it would have been cumbersome to record the motions for summary judgment along with the amended order of April 28, 2015, plaintiffs moved for the entry of a further order that more compactly, within its four corners, provided the legal description of the property at issue and the dates and document numbers of the deeds at issue. The further order that did so, the "Judgment" of February 8, 2016, was not the final judgment but was merely a

*nunc pro tunc* order subsequent to the final judgment: "an entry now for something previously done" as already shown by the record. *Kooyenga v. Hertz Equipment Rentals, Inc.*, 79 Ill. App. 3d 1051, 1055 (1979). The changes by the order of February 8, 2016, were purely "matter[s] of form." *Anderson v. Alberto-Culver USA, Inc.*, 337 Ill. App. 3d 643, 662 (2003). The intent was merely to spell out conveniently, in one document, the particulars of the final judgment, even though these particulars already were definite and unmistakable from count I of the third amended complaint, plaintiffs' motions for summary judgment on count I, and the amended order of April 28, 2015, taken together. See *Pagano v. Rand Materials Handling Equipment Co.*, 249 Ill. App. 3d 995, 998-99 (1993) ("A *nunc pro tunc* amendment to an order may only incorporate that which was actually done by the court, but which was omitted due to a clerical error. [Citation.] Additionally, the amendment must be based upon some note, memorandum, or memorial remaining in the files or records of the court. [Citation.]").

¶ 57 In short, then, we identify the amended order of April 28, 2015—not the *nunc pro tunc* order of February 8, 2016—as the "final judgment" for purposes of Rule 304(a). See *id.*at 998. ("*Nunc pro tunc* orders retroactively amend orders previously entered by the court.").

¶ 58 B. Was the "Motion To Clarify or Reconsider" a Postjudgment Motion That Tolled the 30-Day Period For Filing an Appeal?

¶ 59 As we have concluded, the final judgment for purposes of Rule 304(a) was on April 28, 2015. What was the deadline for filing a notice of appeal from that final judgment? Again, Rule 304(a) says: "The time for filing a notice of appeal shall be as provided in Rule 303." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Rule 303(a) in turn provides as follows: "The

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, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order ***." Ill. S. Ct. R. 303(a) (eff. Feb. 26, 2010). Thus, a notice of appeal had to be filed within 30 days after April 28, 2015, (that is, on or before May 28, 2015) *unless* a timely postjudgment motion directed against the judgment was filed, in which event the notice of appeal had to be filed within 30 days after the disposition of the last such postjudgment motion.

¶ 60 So, the period for filing a notice of appeal is tolled only by a postjudgment motion that is both "timely" and "directed against [the] judgment." *Id.* Let us take those two prerequisites one at a time, beginning with timeliness. A postjudgment motion in a nonjury case (such as the present case) has to be filed "within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof." 735 ILCS 5/2-1203(a) (West 2014). Because the trial court in this case granted no extension, the deadline for filing a postjudgment motion was what the deadline otherwise would have been for filing a notice of appeal: on or before May 28, 2015. See *id.* Defendants filed their "Motion To Clarify or Reconsider" on May 20, 2015, thereby fulfilling the timeliness prerequisite of a postjudgment motion.

¶ 61 The other prerequisite of a postjudgment motion is that it must be "directed against [the] judgment." Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). Reading Rule 303(a) in the light of section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2014)), we infer that a motion is "directed against [the] judgment" (Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015))

only if the motion seeks "a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief" (735 ILCS 5/2-1203(a) (West 2014)). *Moenning v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 34. The phrase " 'other relief' " means "relief similar in nature to the other forms of relief specifically set forth in [section 2-1203(a)]." *Id.* (quoting 735 ILCS 5/2-1203(a) (West 2010)). All these forms of relief have something in common: they in some way "attack or challenge" the final judgment. *Id.* ¶ 35.

¶ 62 A motion to clarify a judgment does not attack or challenge the judgment and hence is not a postjudgment motion directed against the judgment. *R&G, Inc. v. Midwest Region Foundation For Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 323 (2004). It might be argued that a motion to clarify a judgment seeks a "modification of the judgment" in the sense of seeking a change in the language of the judgment, to make it clearer. 735 ILCS 5/2-1203(a) (West 2014). Such a motion, however, is noncommittal instead of being "directed against [the] judgment." Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). Regardless of the trial court's decision on a motion for clarification, the judgment would be substantively unchanged, as we observed in *R&G* (*R&G*, 351 Ill. App. 3d at 323).

¶ 63 This case is a little more complicated than *R & G*, however, in that defendants requested not only clarification but also reconsideration. Their motion was entitled "Motion To Clarify or Reconsider." Therein, they "moved[d] that the Court Clarify or Reconsider its Amended Order dated April 28, 2015." Was this request for reconsideration enough to make their motion a true postjudgment motion "directed against [the] judgment"? Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015). To answer that question, we will compare two cases, *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24 (2002), and *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135

(2009).

¶ 64 1. *Kingbrook*

¶ 65 In *Kingbrook*, the plaintiff lost by summary judgment and filed a " 'Motion For Reconsideration' " 27 days later. *Kingbrook*, 202 Ill. 2d at 26. The body of the motion consisted of a single sentence, in which the plaintiff simply requested the trial court to " 'reconsider' " the summary judgment. *Id.* at 26-27. It was a bare, unelaborated request for reconsideration, without any explanation of why reconsideration was necessary. *Id.* The court denied the motion some 3 months after the summary judgment, and, 30 days after the denial, the plaintiff filed a notice of appeal. *Id.* at 27. The appellate court dismissed the appeal because, in the appellate court's view, the plaintiff's motion, devoid of detail, was not a valid postjudgment motion and consequently did not toll the time for filing a notice of appeal, making the notice of appeal untimely. *Id.*

¶ 66 The issue before the supreme court was as follows: "In a non-jury case, what degree of detail must be included in a motion to reconsider for such a motion to qualify as a 'post-judgment motion' within the meaning of the Code of Civil Procedure (see 735 ILCS 5/2-1203 (West 1998)) and the rules of this court (see 155 Ill. 2d R. 393(a)), such that the motion will toll the time for filing a notice of appeal until its disposition?" *Id.* at 25-26.

¶ 67 The answer was that, unlike a postjudgment motion in a jury case, which had to " 'contain the points relied upon, particularly specifying the grounds in support thereof,' " (*id.* at 31 (quoting 735 ILCS 5/2-1202(b) (West 1998)), a postjudgment motion in a nonjury case required no supporting details at all (*id.* at 33). Neither Rule 303(a) nor section 1203(a) said anything about giving reasons for the requested relief. *Id.* at 31. A postjudgment motion in a

nonjury case could be "nonspecific" (*id.* at 33); it merely had to "[request] the appropriate type of relief" (*id.* at 28).

¶ 68 Thus, in a nonjury case, a postjudgment motion could consist of a single sentence reading simply, "*A* requests reconsideration of the summary judgment," and it would be a valid postjudgment motion, tolling the time for appeal.

¶ 69 2. *Heiden*

¶ 70 In *Heiden*, a mother, on behalf of herself and her minor daughter, brought an action against the alleged father to determine the existence of a father-child relationship between him and the girl. *Heiden*, 396 Ill. App. 3d at 135-36. Blood tests performed 12 years earlier revealed a 99.93% chance that he was the father. *Id.* at 136. Nevertheless, the parties agreed to submit to a new round of blood tests, to be performed by the DNA Diagnostics Center, Inc. (Center). *Id.* The Center hired a laboratory to draw the blood and to mail the blood samples to the Center, in Ohio, for testing. *Id.* The laboratory failed to label the vial of blood it drew supposedly from the alleged father (apparently it was the laboratory that failed to label the vial, although the opinion does not explicitly say so). *Id.* The Center tested that blood anyway, presuming it was his. *Id.* The results excluded him as the father. *Id.*

¶ 71 The mother then sued the Center on various legal theories, including breach of agreement, for failing to label the vial. *Id.* The Center in turn filed a third-party complaint against the laboratory, seeking contribution and indemnity. *Id.* The Center also moved for summary judgment on the plaintiffs' complaint. *Id.* On April 13, 2007, the trial court granted the Center's motion for summary judgment, and, in so doing, it remarked from the bench that this ruling

effectively disposed of the Center's third-party complaint against the laboratory (obviously, if the Center itself was not subject to liability, it had no cause to seek contribution or indemnity from the laboratory). *Id.*

¶ 72 Within 30 days, the plaintiffs filed a motion entitled " 'Motion to Reconsider Court Order of April 13, 2007, and For Clarification of said Order,' " in which they requested the trial court to amend its summary judgment (the order of April 13, 2007) so as to state explicitly that the summary judgment had disposed of the Center's third-party complaint against the laboratory. *Id.* The prayer for relief in this motion " 'requested that [the trial court] enter an Order reconsidering its Order of April 13, 2007[,] and/or clarifying its said Order, reflecting [the trial court's] *written* disposition of the Third Party Complaint herein.' " (Emphasis in original.) *Id.* at 137.

¶ 73 The trial court denied the motion, and, more than two months after the entry of the summary judgment, the plaintiffs filed a notice of appeal. *Id.* The appellate court dismissed the appeal for lack of jurisdiction. *Id.* at 135.

¶ 74 The appellate court explained that, because the plaintiffs filed their notice of appeal more than two months after the summary judgment, "their appeal could be timely only if they filed it within 30 days of the resolution of a timely and proper motion directed against the final judgment." *Id.* at 138. The motion they filed did not seek rehearing, retrial, a modification or vacation of the judgment, or other similar relief, and hence it did not extend the time for filing a motion for appeal under Rule 303(a)(1). *Id.* It was true that, by requesting the addition of language to the judgment—language that would have made clear the disposition of the third-party complaint—the plaintiffs had moved for a formal modification of the judgment. The

appellate court explained, however:

> "For purposes of Rule 303(a)(1), a motion for modification of the judgment must challenge the judgment, not simply request modification of the language of the judgment. [Citations.] Plaintiffs' motion did not request a rehearing or substantive reconsideration regarding the summary judgment and did not provide any basis for reconsideration of the summary judgment. The request to modify the language of the order thus was not a request to modify the judgment, and it did not extend the time for appeal under Rule 303(a)(1)." *Id.* at 138-39.

¶ 75 The plaintiffs argued that this conclusion would contradict *Kingbrook*. The appellate court, however, found *Kingbrook* to be distinguishable in that the motion in that case was, in substance, a motion for reconsideration of the judgment; a bare request for reconsideration of the judgment, without more, could only be interpreted as a request for reconsideration of the judgment and, as such, a motion directed against the judgment. The appellate court regarded the case before it as different in that the motion did more than request reconsideration: "Although the caption and the prayer for relief of the motion in this case request reconsideration, the substance of the motion asks only for clarification of the court's earlier ruling as it related to the third-party complaint." *Id.* at 141.

¶ 76 Justice O'Malley, in his dissenting opinion, disagreed with the majority that *Kingbrook* was distinguishable. *Id.* at 141 (O'Malley, J., dissenting). He interpreted the plaintiffs' motion as requesting reconsideration of the judgment *in addition to* clarification of the judgment. He said: "[T]he 'reconsideration' sought was not clearly identical to the 'clarification' sought. Rather, the 'reconsideration' and 'clarification' were pleaded alternatively in the prayer

for relief." *Id.* at 143 (O'Malley, J., dissenting). He reasoned: "[W]here a motion requests 'reconsideration' and such request is not immediately qualified *** in such a way that it is obvious that the request is actually for relief (such as clarification) that is not against the judgment, then whatever additional substance the motion contains cannot lift it out of the scope of Rule 303(a)(1)." *Id.* at 144. (O'Malley, J., dissenting). In other words, Justice O'Malley reasoned, if, under *Kingbrook*, a bare request for reconsideration of the judgment was a valid postjudgment motion, it had to follow that such a request accompanied by merely alternative matter likewise was a valid postjudgment motion. *Id.* (O'Malley, J., dissenting).

¶ 77 Although Justice O'Malley and the majority disagreed on how the plaintiffs' motion should be interpreted, they seemed to agree on one proposition: if the so-called request for "reconsideration" and the matter *not* directed against the judgment were actually one and the same instead of being alternative to one another, the motion would not toll the time for appeal. In the "Motion To Clarify or Reconsider" in the present case, they are one and the same, not alternative to one another. Granted, the title of the motion is "Motion To Clarify *or* Reconsider," but the character of a motion is determined by its content, not its title. (Emphasis added.) *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002); *Peterson v. Randhava*, 313 Ill. App. 3d 1, 9 (2000) ("[T]he substance of the motion, not the title, should determine how the court should treat a motion."). It is clear from the content of the motion that the requested "reconsideration" would consist of allowing an evidentiary hearing on the question of whether plaintiffs should be required to compensate James D. Eberhart and Roberta J. Eberhart for repairs, improvements, real estate taxes, and insurance. The prayer for relief reads: "Wherefore, Defendants pray that this Court either clarify or reconsider the Amended Order entered herein on

April 28, 2015, *and* allow said Defendants to proceed with a hearing on the issue of compensation to them." (Emphasis added.) This request for compensation, instead of being directed against the judgment, *presupposes the correctness of the judgment*, because, obviously, there would be no occasion for James D. Eberhart and Roberta J. Eberhart to seek compensation for the repairs and improvements they had made to the property and for the real estate taxes and insurance they had paid on the property unless Emory D. Eberhart's quitclaim deed to them was, as the judgment concluded, legally ineffective. Because the "Motion To Clarify or Reconsider" was not "directed against [the] judgment" but, rather, presupposed the correctness of the judgment that the quitclaim deed from Emory D. Eberhart was ineffective to convey the property to James D. Eberhart and Roberta J. Eberhart, this motion failed to toll the 30-day period for filing an appeal. Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015).

¶ 78 C. Did the "Motion To Reduce Order to Judgment" Toll the 30-Day Period for Filing an Appeal?

¶ 79 To toll the 30-day period for filing an appeal, a timely postjudgment motion "must challenge the judgment, not simply request modification of the language of the judgment." *Heiden*, 396 Ill. App. 3d at 138. Not only was the "Motion To Reduce Order to Judgment" untimely for purposes of Rule 303(a), but it was nothing more than a motion for a *nunc pro tunc* order. It sought no substantive change to the judgment. It did not attack or challenge the judgment. It was, in essence, a motion for clarification, to make explicit what was already implicit in the judgment. Therefore, it did not toll the 30-day period for filing a notice of appeal.

¶ 80 III. CONCLUSION

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

¶ 82 Appeal dismissed.