

2018 IL App (1st) 172278-U

No. 1-17-2278

Order filed July 27, 2018

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

5621 NORTH SPAULDING CONDOMINIUM ASSOCIATION,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 17 M1 711167
)	
ALOYS RUTAGWIBIRA, MARIE UWARA, and UNKNOWN OCCUPANTS,)	
)	Honorable
)	David A. Skryd,
Defendants-Appellants.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendants filed successive *pro se* posttrial motions challenging the judgment against them but did not file a notice of appeal within 30 days of the denial of their initial motion to vacate the judgment, this court is without jurisdiction to consider defendants' appeal.
- ¶ 2 Plaintiff 5621 North Spaulding Condominium Association (Spaulding) obtained an *ex parte* judgment of possession in the circuit court related to a condominium unit occupied by

defendants Aloys Rutagwibira and Marie Uwara, and the circuit court denied defendants' motion to vacate that judgment. Defendants now appeal the circuit court's order, contending they were not properly served with notice of the proceedings. However, for the reasons set out below, we lack jurisdiction to consider this appeal.¹

¶ 3 Spaulding filed a complaint on July 11, 2017, for forcible entry and detainer seeking possession of Unit #3S at 5621 North Spaulding Avenue in Chicago from defendants and other unknown occupants. The complaint alleged that defendants failed to pay common expenses, including assessments and other charges, as required by the condominium declaration, in the amount of \$11,139.20, as of the date the action was filed. The court issued an eviction summons for defendants to appear in court on July 31, 2017.

¶ 4 The record contains two affidavits of special process server Spencer Davis indicating that process was served on both named defendants on July 13, 2017. Individual service was performed on Rutagwibira at 308 Christine Lane in Hainesville, Illinois. Substitute service was effected on Uwara by leaving copies of the summons and complaint with Rutagwibira and mailing copies of the process in a sealed envelope addressed to Uwara at her usual place of abode on July 15, 2017. Process server Davis noted in the affidavits that Rutagwibira "identified himself and after taking the service documents he proceeded to rip up the documents and throw them on the ground."

¶ 5 The record also includes an affidavit of service from the Office of the Cook County Sheriff indicating that on July 19, 2017, a deputy sheriff completed substitute service on defendants by leaving a copy of the summons and complaint at the subject property with Bert

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

Rutagwibira, who was described in the affidavit as the 23-year-old son of the defendants. The affidavit also indicated copies of the summons and complaint were mailed to the subject address.

¶ 6 On July 31, 2017, the circuit court entered an *ex parte* order for possession in favor of Spaulding. The court entered a judgment against defendants for \$9589.36 in unpaid assessments, \$1311 in attorney fees and \$629.69 in costs, for a total judgment of \$11,530.05. Defendants were mailed notice of the judgment.

¶ 7 On the same day the judgment was entered, defendants filed the first of three *pro se* motions to vacate the judgment, objecting to the circuit court's jurisdiction based on ineffective service of process. In defendants' first motion, they asserted they had not been properly served and that the process server "assaulted the defendant at his home on 7/3/2017."²

¶ 8 On August 10, 2017, the circuit court denied defendant's first motion to vacate. On that same day, defendants filed a second *pro se* motion to vacate the judgment, contending that Rutagwibira was "not served on July 13th 2017 by the Sheriff's Department" and that he should have been served with notice on July 3, 2017. On August 21, 2017, the circuit court struck defendants' motion because it was not accompanied by an affidavit.

¶ 9 On August 29, 2017, defendants filed a third *pro se* motion, repeating the claim that they were not properly served. Attached to the motion was an affidavit in which Rutagwibira stated he was not served on July 3, 2017 and the service he received was ineffective because the process server assaulted him and showed him a "fake police/Sheriff's badge." He further asserted the affidavits indicating he was served on July 13 were false and that Spaulding's counsel colluded with the special process server to tamper with service records.

² Appellants indicate in their brief that the date of July 3, 2017 was recorded incorrectly. It should state July 13, 2017.

¶ 10 On September 8, 2017, the circuit court denied defendants' third motion to vacate the judgment with prejudice. On September 13, 2017, defendants filed a notice of appeal from the July 31, 2017, ruling.

¶ 11 Defendants contend in this *pro se* appeal that the trial court's judgment should be vacated because they were not properly served with notice of the proceedings. However, we do not reach that contention because we conclude defendants did not file a timely notice of appeal.

¶ 12 A *pro se* litigant is held to the same standards and compliance with court rules as a litigant represented by counsel. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). Even though Spaulding raises no jurisdictional challenge, this court has a duty to consider our jurisdiction *sua sponte* before proceeding to the merits of the case, regardless of whether the parties have raised it as an issue. *In re Marriage of Sheth*, 2015 IL App (1st) 132611, ¶ 20. When jurisdiction is lacking, this court must dismiss the appeal. *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 73. The filing of a notice of appeal is a jurisdictional step that initiates appellate review. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). A party must file a notice of appeal within 30 days after the entry of a final judgment, 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, pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017).

¶ 13 A party may only file one post-judgment motion directed at a particular judgment. *Sears v. Sears*, 85 Ill. 2d 253, 258-59 (1981). Circuit courts have no authority to hear successive postjudgment motions, even where each postjudgment motion was filed within 30 days of the court's final judgment, as was the case here, and even when each filing occurred within 30 days

after the denial of the previous motion, which also occurred here. See *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 34; *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 56-57 (1990). Noting the need for finality of a trial court's judgment, our supreme court stated in *Sears* that "justice is not served by permitting the losing party to string out his attack on a judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing the next month." *Sears*, 85 Ill. 2d at 259.

¶ 14 Thus, the filing of successive posttrial motions does not extend the time for filing of a notice of appeal. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017); *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶¶ 16-17. Here, defendants filed three motions to vacate the trial court's July 31, 2017, judgment. All three of defendants' motions were filed within 30 days of the judgment. Defendant's first posttrial motion was denied on August 10, 2017. Even though defendants then filed two additional motions challenging that judgment, the 30-day period for filing a notice of appeal began upon that denial of their initial posttrial motion. Thus, despite their subsequent posttrial filings, defendants' notice of appeal, filed on September 13, 2017, was untimely, and this court lacks jurisdiction in this case.

¶ 15 In conclusion, defendants' multiple posttrial motions did not toll the 30-day period following the denial of their initial postjudgment filing in which they had to appeal to this court. Therefore, this appeal is dismissed for lack of jurisdiction.

¶ 16 Appeal dismissed.