

2019 IL App (1st) 180290-U

No. 1-18-0290

Order filed May 30, 2019

Fourth 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

SONAL PATEL, N/K/A SONAL TRIVEDI,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee)	Cook County
)	
v.)	No. 10 D 904
)	
VIPUL B. PATEL,)	Honorable
)	Edward A. Arce,
Respondent-Appellant.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss the appeal for lack of jurisdiction.

¶ 2 Appellee Sonal Patel, n/k/a Sonal Trivedi, filed an action for indirect civil contempt against appellant Vipul Patel based on appellant's failure to comply with the parties' Judgment for Dissolution. The circuit court found appellant in indirect civil contempt and subsequently ordered him to pay appellee's attorney fees in connection with the indirect civil contempt

proceedings. Appellant now appeals both the finding of indirect civil contempt and the court's award of attorney fees. We dismiss the appeal for lack of appellate jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 Appellant and appellee were married in November 1999, and the circuit court issued a judgment for dissolution of the parties' marriage on November 18, 2013. A full recitation of the facts regarding the parties' underlying dissolution proceedings can be found in this court's opinion in *In re Marriage of Patel*, 2013 IL App (1st) 122882. As relevant here, on August 18, 2015, appellee filed a petition for indirect civil contempt against appellant on the basis that he had failed to comply with the parties' dissolution judgment with regard to, *inter alia*, their children's healthcare and educational expenses. On August 31, 2015, appellant filed a counter-petition for indirect civil contempt against appellee.

¶ 5 On January 19, 2017, the circuit court found appellant in indirect civil contempt for his failure to pay the parties' two minor children's medical expenses. On February 17, 2017, appellee filed a motion seeking an order requiring appellant to pay her attorney fees and costs in pursuing the indirect civil contempt action. On January 2, 2018, the circuit court entered a judgment granting appellee's motion and ordering appellant to pay the attorney fees appellee incurred in the indirect civil contempt action. The court subsequently denied appellant's counter-petition for indirect civil contempt.

¶ 6 On February 1, 2018, appellant filed a timely postjudgment motion for reconsideration of the circuit court's January 2, 2018, order awarding appellee attorney fees. That same day, appellant filed a notice of appeal from the court's January 2, 2018 order. The record does not reflect that appellant's motion to reconsider was ever addressed or ruled upon by the circuit court. This appeal followed.

¶ 7

II. ANALYSIS

¶ 8 At the outset, we note that appellee did not file a brief in this case. However, since the record is simple and the case can be decided without the aid of an appellee's brief, we have elected to review this case on appellant's brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We observe that "[a] reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Jurisdiction is conferred upon the appellate court only by the timely filing of a notice of appeal. *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *Smith*, 228 Ill. 2d at 104. Illinois Supreme Court Rule 303(a) (eff. July 1, 2017) governs appeals in civil cases. In relevant part, that rule provides that:

“(1) 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, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a).

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, 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. No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.”

¶ 9 Our supreme court examined the effect of a prior version of Rule 303(a) in *Chand v. Schlimme*, 138 Ill. 2d 469, 477 (1990). In *Chand*, as here, the appellant simultaneously filed a timely posttrial motion and a notice of appeal. *Id.* at 474. In analyzing the reviewing court’s jurisdiction under Rule 303, the supreme court found that although a party is not required to file a posttrial motion, “[a] party wishing to bring an appeal must [] wait until the trial court rules on any pending post-trial motions before bringing an appeal. As the rules clearly state, a notice of appeal that a party files before the circuit court has disposed of a timely post-trial motion has no effect.” *Id.* at 477. The supreme court recognized that although in certain circumstances a party can abandon a posttrial motion, until the party does so or the circuit court disposes of the posttrial motion, the circuit court retains jurisdiction. *Id.*

¶ 10 We recognize that the prior version of Rule 303(a) analyzed by the supreme court in *Chand* provided that “ ‘a notice of appeal filed before the entry of the order disposing of the last pending post-trial motion shall have no effect and shall be withdrawn,’ ” and required a new notice of appeal to be filed once an order disposing of the postjudgment motion had been

entered. *Id.* at 476. Nonetheless, we find the reasoning in *Chand* also applies to the current version of Rule 303(a) which provides that “[w]hen 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, ***, becomes effective when the order disposing of said motion or claim is entered.” (Emphasis added.) Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

¶ 11 Here, the record shows that appellant filed both his timely motion for reconsideration of the circuit court’s judgment and his notice of appeal on the same day.¹ There is no indication in the record that the circuit court ever ruled on that motion and appellant acknowledges in his brief before this court that “the circuit court made no ruling on [the motion for reconsideration], and the record is devoid of any decision relating thereto.” Therefore, because appellant’s notice of appeal was “filed before the entry of the order disposing of the last pending postjudgment motion,” (Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017) it had not become effective and could not confer jurisdiction on this court. (*Berg*, 193 Ill. 2d at 189) Accordingly, we find that we lack jurisdiction to consider the merits of appellant’s appeal.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 14 Appeal dismissed.

¹ We observe that appellant actually filed the same notice of appeal twice. One was filed on the same day as his motion for reconsideration on February 1, 2018, and one was filed one week later on February 8, 2018. This fact does not change our analysis, however, because neither notice of appeal was filed before the circuit court disposed of appellant’s postjudgment motion for reconsideration.