

NOTICE  
Decision filed 09/10/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180312-U

NO. 5-18-0312

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

---

LARRY PRICE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 17-MR-77
	)	
THE CITY OF BELLEVILLE,	)	Honorable
	)	Stephen P. McGlynn,
Defendant-Appellee.	)	Judges, presiding.

---

JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Moore and Barberis concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court did not have jurisdiction 30 days after entry of its final judgment, we vacate its subsequent orders granting Larry Price’s motion to extend the time to file a posttrial motion and denying his motion to vacate the court’s final judgment, and we dismiss the underlying motions.

¶ 2 This case involves a Freedom of Information Act (FOIA) request made by Larry Price (Price) and directed to the City of Belleville (City) seeking to review documents relative to a Hofbräuhaus restaurant development. After the City did not respond to Price’s requests, he filed a declaratory judgment action and a request for injunctive relief. The City filed a motion to dismiss Price’s request. The trial court granted the City’s motion and dismissed Price’s complaint with prejudice. More than 30 days after the case was dismissed, Price’s attorney learned about the dismissal and filed a motion to extend the time to file a postjudgment motion and a motion to

vacate or reconsider the order of dismissal. The trial court granted Price's motion to extend the time to file a postjudgment motion but denied his motion for postjudgment relief. Price appeals. We vacate both orders entered by the trial court and dismiss the two motions Price filed more than 30 days after the judgment was entered because the trial court did not have jurisdiction to consider Price's untimely motions. Consequently, we do not have jurisdiction to consider the merits of Price's appeal.

¶ 3

### BACKGROUND

¶ 4 Price filed multiple FOIA requests with the City between December 21, 2016, and February 9, 2017, seeking copies of the plans and specifications for the Hofbräuhaus restaurant development. Price asserted that the City had spent close to \$3 million in taxpayer dollars to provide City sewer access and/or that there was a Tax Increment Financing district created to benefit the project.

¶ 5 Price's first request sought plans and specifications approved by the City after the City issued the building permit. The City allowed Price to inspect those documents at the City Building Department Office. However, Price complained that no specifications, civil engineering drawings, soil borings, or building permits were provided for his inspection. The person in charge at the City Building Department Office did not know where the additional requested documents were located. Thereafter, the City declined to respond to Price's FOIA requests, which served to effectively deny his requests. In mid-February 2017, the City Attorney invoked section 7(1)(k) of the FOIA as the foundation for the City's previous denials. 5 ILCS 140/7(1)(k) (West 2016). Section 7(1)(k) exempts the following documents from inspection and copying:

“Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other

transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.” *Id.*

The City argued that because the Hofbräuhaus restaurant development was not a public project, the City was exempt from having to provide the requested documents to Price for inspection and copying.

¶ 6 Price then filed a complaint seeking injunctive and declaratory relief against the City. He alleged that the City illegally denied his FOIA requests. In support, he argued that the section cited by the City Attorney in support of his denial was not applicable. The City responded with a motion to dismiss Price’s complaint. Oral arguments on the City’s motion were heard in July 2017, after which the parties were advised that they needed to submit proposed orders before July 27. On August 2, 2017, the trial court entered its order granting the City’s motion to dismiss, finding that the claimed exemption was valid in that the Hofbräuhaus restaurant development was a private building plan, as opposed to a public building. The trial court concluded that the developer’s privacy rights were invoked because the development was not a public development.

¶ 7 Price’s attorney claims that he did not receive a copy of the trial court’s August 2, 2017, order. He filed an affidavit attesting to this claim. Similarly, Price filed an affidavit in which he claimed that he was unaware that the trial court dismissed his complaint.

¶ 8 On November 15, 2017, 105 days after the trial court dismissed Price’s complaint, Price filed a motion to extend the time to file his postjudgment motion and a motion to vacate and/or to reconsider the order of dismissal. In his motion to extend the time, Price stated that his request was being made “as a matter of fundamental fairness and due process of law” and asked the trial court to extend the standard 30-day deadline for postjudgment motions. He also asked the trial court to consider his motion to vacate or reconsider as timely because he was not at fault for the court’s

failure to send his attorney the August 2, 2017, order. Months later on February 20, 2018, Price filed his brief in support of both motions. In his brief, Price argued that the St. Clair County Circuit Clerk's Office assumed a duty to mail all parties and their attorneys a file-stamped copy of court orders. Price's attorney offered no proof that the circuit clerk's office did not mail him a copy of the order but surmised that it could have been lost in the mail. He claimed that Price should not lose his right to challenge or appeal the order of August 2, 2017, both because the lack of notification was the government's fault, and because St. Clair County had a duty to send copies of its orders due to its practice of doing so for decades. In support, Price cited section 2-1203(a) of the Code of Civil Procedure (Code), which provides as follows:

“In all cases tried without a jury, any party may, 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, file a motion for 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 2016).

¶ 9 In response, the City claimed that Price's section 2-1203(a) argument was meritless because his postjudgment motions were filed outside of the 30-day requirement and were therefore untimely. The City argued that because more than 30 days had elapsed since the trial court entered judgment dismissing Price's complaint, he lacked jurisdiction in the trial court to file additional pleadings.

¶ 10 On February 26, 2018, the trial court found that Price should be allowed to file his motion for an extension of time to file a postjudgment petition because he and his attorney did not receive notification of the dismissal. The trial court's ruling contained no authority for its decision.

¶ 11 On May 22, 2018, the trial court denied Price's postjudgment motion and affirmed the trial court's August 2, 2017, order dismissing Price's complaint. Price appeals from this order.

¶ 12

## ANALYSIS

¶ 13 On appeal, Price raises issues regarding the trial court’s application of section 7(1)(k) of the FOIA’s “private building” exemption in its determination that the City did not have to produce the requested documents. 5 ILCS 140/7(1)(k) (West 2016).

¶ 14 Before we can address the merits of Price’s appeal, we must determine if the trial court had jurisdiction to consider Price’s postjudgment motions. Jurisdiction is reviewed on a *de novo* basis. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 26, 959 N.E.2d 1133. If the trial court’s orders were entered at a time when it did not have jurisdiction, the reviewing court can only consider the issue of the trial court’s jurisdiction. *People v. Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474. If the trial court did not have jurisdiction to consider the postjudgment motions, the trial court’s orders must be vacated, and the reviewing court cannot consider the merits of the appellant’s appeal. *People v. Orahim*, 2019 IL App (2d) 170257, ¶¶ 2-3, \_\_\_ N.E.3d \_\_\_.

¶ 15 Section 2-1203(a) of the Code establishes the time period that must be followed in nonjury cases. The statute provides a party with 30 days from the date the judgment was entered to file a motion for a rehearing, retrial, modification, to vacate, or for other relief. 735 ILCS 5/2-1203(a) (West 2016). If a postjudgment motion is not filed within 30 days of its entry, the trial court loses its jurisdiction to modify or vacate its orders. *Wilk v. Wilmorite, Inc.*, 349 Ill. App. 3d 880, 883, 812 N.E.2d 765, 768 (2004) (citing to Illinois Supreme Court Rule 303(a)(1) that requires a notice of appeal to be filed within “30 days after the entry of the final judgment from which the appeal is taken or, if a timely posttrial motion directed at the judgment is filed, within 30 days after entry of the order disposing of the last pending posttrial motion”). Although the statute purports to allow a party to file a postjudgment motion after the 30-day time limit in that it states that “the court may

allow [a request] within the 30 days or any extensions thereof,” this only applies if the initial pleading was filed within that initial 30-day period.

¶ 16 Furthermore, the motion to extend the 30-time period must be granted within that 30 days. *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 554, 794 N.E.2d 1059, 1063 (2003) (citing *Trentman v. Kappel*, 333 Ill. App. 3d 440, 443, 775 N.E.2d 1041, 1043 (2002)). In *Estate of Kunsch*, the plaintiff asked the court to declare his mother’s will and trust void. *Id.* at 553. The jury’s verdict in favor of the defendants was entered on March 19, 2002. Within the 30-day posttrial time period, the plaintiff filed a motion requesting an extension of time to file his posttrial motion. However, the trial court did not grant that extension until May 1, 2002, after the expiration of the 30 days. *Id.* On appeal, the court dismissed the appeal, concluding that the language of section 2-1202 of the Code precluded extensions of time after the 30 days. *Id.* at 554. Although the Code section in *Estate of Kunsch* involved posttrial motions in a jury-tried case, the relevant language in section 2-1202 construed in *Estate of Kunsch* and the language in section 2-1203(a) at issue in this case is identical, and we therefore find the holdings in *Estate of Kunsch* to be analogous.

¶ 17 Here, the trial court’s final order was entered on August 2, 2017. Price did not file his motion to extend the time to file a postjudgment motion until November 15, 2017. By that date, the trial court no longer had jurisdiction to consider Price’s motion.

¶ 18 We also note that Illinois Supreme Court Rule 183, which allows trial courts to extend the time for filing a pleading after the time period expires, is not applicable to the facts of this case.

Ill. S. Ct. R. 183 (eff. Feb. 16, 2011). Rule 183 provides:

“The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time.”  
*Id.*

By its express language, Rule 183 “applies only to the time limits for pleadings and to time limits that have been set by the supreme court rules.” *In re Marriage of Singel*, 373 Ill. App. 3d 554, 556-57, 868 N.E.2d 1079, 1081 (citing *Robinson v. Johnson*, 346 Ill. App. 3d 895, 905, 809 N.E.2d 123, 132 (2003)). Therefore, as section 2-1203(a) of the Code is statutory, Rule 183 could not have provided the trial court’s foundation for granting Price additional time to file a postjudgment motion pursuant to section 2-1203(a). *Id.* at 557. Furthermore, even if Rule 183 somehow authorized the trial court to allow an extension past the deadline set in section 2-1203(a), here the trial court did not grant the extension within the initial 30-day statutory time limit.

¶ 19 We conclude that the trial court did not have jurisdiction to hear the two motions Price filed more than 30 days after the court’s August 2, 2017, order dismissing his complaint. Accordingly, we vacate the February 26, 2018, and May 22, 2018, orders entered by the trial court.

¶ 20 Because we find that the trial court did not have jurisdiction to consider Price’s two untimely motions, we find that we do not have jurisdiction to reach the merits of his appeal. *Orahim*, 2019 IL App (2d) 170257, ¶ 3; *Bailey*, 2014 IL 115459, ¶ 29 (citing *People v. Flowers*, 208 Ill. 2d 291, 307, 802 N.E.2d 1174, 1183-84 (2003); *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431-32, 834 N.E.2d 441, 448 (2005)).

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we vacate the trial court’s February 26, 2018, order granting Price’s request to extend the time past the 30-day limit to file his postjudgment motion. We also vacate the trial court’s May 22, 2018, order denying Price’s postjudgment motion and affirming the trial court’s August 2, 2017, order dismissing Price’s complaint. Finally, we dismiss Price’s underlying motions that were the subject of the trial court’s two orders.

¶ 23 Orders vacated; motions dismissed.