

FIFTH DIVISION
September 28, 2012

No. 1-12-0353

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 JUDICIAL DISTRICT

DORIS BROWN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 M6 2844
)	
PACE SUBURBAN BUS SERVICE,)	Honorable
)	Loretta Eadie-Daniels,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where plaintiff did not appeal from a final order.
- ¶ 2 In this personal injury action, *pro se* plaintiff Doris Brown appeals from an order of the circuit court denying her motion to vacate the order granting defendant Pace Suburban Bus Service's (Pace) motion to vacate the default order entered against it. On appeal, Brown contends that the trial court abused its discretion in vacating the default order entered against Pace because Pace committed a fraud upon the trial court. We dismiss for lack of jurisdiction.

¶ 3 This matter arose from a motor vehicle accident that took place on August 14, 2009, involving a Pace bus and Brown, who was a passenger exiting the bus. On August 13, 2011, Brown filed a *pro se* complaint alleging that when she fell forward from the bus, she landed on the curb embankment with her right hand pinned under her chest and her legs in the street. A Pace employee called an ambulance that took her to the hospital. Brown claimed that she sustained injuries as a result of the incident.

¶ 4 On September 2, 2011, Pace filed a motion to dismiss Brown's complaint, alleging that Brown failed to initiate this action within the one year time limitation imposed under section 5.03 of the Regional Transportation Authority Act (Act) (70 ILCS 3615/5.03 (West 2010)). A "Notice of Motion" addressed to Brown was included with Pace's motion to dismiss the complaint. The notice, prepared by Pace's counsel Mary M. Sevendal, indicated that she would appear before the trial court in Court Room No. 207 on September 21, 2011, and present the motion to dismiss.

¶ 5 On September 20, 2011, the trial court entered a default order against Pace for its failure to appear, and set the matter for prove-up. In doing so, the court noted that Pace had been served with a summons and a complaint.

¶ 6 On September 23, 2011, Pace filed a motion to vacate the default order entered against it. Although Pace's motion failed to invoke section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2010)), the motion was clearly brought under that section because it requested the court to set aside the default order before a final judgment was entered. See *In re Haley D.*, 2011 IL 110886, ¶57 (stating that section 2-1301(e) governs where a litigant seeks to set aside a default before final judgment has been entered). The motion alleged that the Cook County Clerk's Office set this case for a hearing on Pace's motion to dismiss on September 21 in Room 207, under the mistaken belief that this case was up for status on September 21. In reality, however, the matter was assigned to Room 208 and set for status on September 20. When

counsel for Pace appeared in Room 207 on September 21, counsel was informed that a default order was entered against Pace one day earlier. Counsel indicated that had she been aware of the correct court date, she would have appeared. Pace thus requested that the trial court vacate the default order and any other such relief that it deemed just and equitable.

¶ 7 On October 17, 2011, Brown filed a motion requesting that the court deny Pace's motion to vacate the default order. In support, Brown attached a copy of the summons served on Pace, which indicated that September 20, 2011 was the status date. Brown contended that the default order entered against Pace should not be vacated based on excusable mistake because the summons shows that Pace knew that the status date was September 20, 2011.

¶ 8 On October 18, 2011, the trial court granted Pace's motion to vacate the default order entered on September 20, gave Brown 30 days to file a response to Pace's motion to dismiss, gave Pace 14 days to file a reply, and continued the matter for a hearing on Pace's motion to dismiss Brown's complaint.

¶ 9 On November 17, 2011, Brown filed a motion to vacate the trial court's October 18 order. Brown again alleged that Pace failed to show excusable mistake for failing to appear at the status hearing, and that Pace committed a fraud upon the court when it claimed that if counsel had been aware of the correct status date, counsel would have appeared. Brown later filed an amended motion to vacate where she repeated the allegations in her November 17 motion.

¶ 10 On November 21, 2011, Brown also filed a response to Pace's motion to dismiss her complaint, alleging that Pace was aware of the incident alleged in her complaint prior to August 13, 2011, because Brown's attorney and Pace's attorney were in contact with each other and working toward the settlement of this case. Brown also appeared to maintain that although the Act immunized the Regional Transportation Authority from liability for injuries resulting from negligence, Pace is a separate legal entity and not subject to the Act.

¶ 11 On December 20, 2011, the trial court denied Brown's motion to vacate the order vacating the default order entered on October 18. The trial court also continued the hearing on Pace's motion to dismiss Brown's complaint to December 28, 2011. On that date, the court dismissed Brown's complaint without prejudice.

¶ 12 On January 19, 2012, Brown filed a notice of appeal from the court's December 20 order only. On January 27, 2012, Brown filed a motion for extension of time to amend her complaint.

¶ 13 On appeal, Brown only contests the December 20, 2011 order denying her motion to vacate the court's October 18 order granting Pace's section 2-1301(e) motion to vacate the September 20 default judgment.

¶ 14 Although the parties failed to raise the issue of our jurisdiction, a reviewing court has a duty to consider *sua sponte* whether it has jurisdiction. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024-25 (2003). "We have a duty as an appellate court to dismiss an appeal if jurisdiction is wanting." *Beale*, 341 Ill. App. 3d at 1025.

¶ 15 An appellate court's jurisdiction is limited to review of appeals from final orders, subject to certain statutory or supreme court rule exceptions. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). "A final judgment in a civil case is entered where the last order closes the case and leaves no issues to be decided." *Argonaut-Midwest Insurance v. Corrigan Construction*, 338 Ill. App. 3d 423, 426 (2003).

¶ 16 Here, the December 20, 2011, order is not a final order because it denied Brown relief from its prior order that vacated the September 20 default judgment under section 2-1301(e) and clearly left the cause to continue. A ruling on a section 2-1301(e) motion is not a final order because it has not disposed of the litigation. Furthermore, such ruling is not appealable under any exception for nonfinal orders. See Ill. S. Ct. Rs. 304, 307, 308 (eff. Feb. 26, 2010); R. 306 (eff. Feb. 16, 2011).

¶ 17 Nevertheless, where a final order is entered, all prior nonfinal orders generally become subject to appeal. *Argonaut-Midwest Insurance*, 338 Ill. App. 3d at 427; see also *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009). No final order has yet been entered in the present case. The parties and the trial court clearly recognized the cause would continue. On December 28, 2011, the trial court dismissed Brown's complaint without prejudice. See *DeLuna v. Treister*, 185 Ill. 2d 565, 569-70 (1999) (it is well settled that dismissals granted without prejudice are not final and appealable orders). Moreover, on January 27, 2012, after the notice of appeal was filed here, Brown filed a motion for extension of time to properly amend her complaint.

¶ 18 For the foregoing reasons, we have no jurisdiction to consider the instant appeal.

¶ 19 Appeal dismissed.