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No. 3--09--0729

Order filed May 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

WINSTON VILLAGE ASSOCIATION,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit
Plaintiff-Appellee,)	Will County, Illinois
)	
v.)	No. 08--LM--395
)	
SECRETARY OF THE DEPARTMENT)	
OF VETERANS AFFAIRS, formerly)	
known as The Administration)	
of Veterans Affairs Veterans)	
Administration, THURMAN D.)	
DEMILLS, MYRA DEMILLS,)	
)	Honorable Richard J. Siegel,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

Held: Defendants failed to file a timely notice of appeal depriving this court of jurisdiction to hear this matter. Appeal dismissed.

Plaintiff, Winston Village Association, brought this

forcible entry and detainer action seeking to recover past due association dues from defendants, Thurman DeMills, Myra DeMills, and the Secretary of the United States Department of Veterans Affairs, formerly known as The Administrator of Veterans Affairs (the Department). The circuit court of Will County entered judgment in favor of plaintiff, and against the DeMiles, for \$2,981.52 plus costs with the issue of attorney fees reserved. Following numerous and significant postjudgment motions, the trial court affirmed the judgment, denied defendants' motion for sanctions and found defendants failed to adequately raise a question of the court's jurisdiction. Defendants appeal claiming, *inter alia*, the trial court erred in finding it had jurisdiction to adjudicate the matter.

FACTS

Winston Village Association (the Association) is a common interest community that exists for the sole purpose of maintaining common elements that comprise the Association property. The Association's common elements are maintained through the Board of Directors for the Association with assessments collected from each owner. Defendants lived at 554 Norman, Bolingbrook, Illinois, which is a unit within the Association.

The Association sent a demand to the DeMills for payment of unpaid assessments and late charges on October 31, 2007. On February 4, 2008, after the demand expired and the amount demanded remained unpaid, the Association brought this forcible entry and detainer action against the DeMills. The Association amended the complaint to also name the Department as a defendant.

On May 21, 2008, Thurman DeMills filed a general appearance in this matter indicating he was counsel for and appearing for the "DeMills" and identifying himself as an attorney, "ARDC #:619 8246." Furthermore, special process server David Eldridge filed an affidavit indicating he served process on "Administrator of Veterans Affairs, Shirley Harris" at 2122 West Taylor Street, Chicago, Illinois, on April 11, 2008. Ultimately, the case proceeded to trial on September 17, 2008, after which the trial court entered judgment in favor of the plaintiff for "\$2981.52, plus costs of \$546.63, with the issue of attorney fees reserved."

During the litigation of the attorney fees issue, numerous motions were filed and collateral issues raised. During the postjudgment litigation, defendants filed a "motion for an award of sanctions pursuant to Supreme Court Rule 137." Ultimately, on May 28, 2009, the trial court confirmed the original judgment, but vacated the part of the order awarding plaintiff costs and

denied plaintiff's petition for attorney fees. The trial court indicated that it was vacating the previous award of costs and disallowing plaintiff's petition for attorney fees as a sanction pursuant to Rule 137.

No further activity took place in this matter until July 28, 2009, when defendants filed an "emergency motion to quash, vacate and award sanctions." The trial court denied defendants' motion by order dated August 5, 2009. Defendants filed their notice of appeal on September 4, 2009, indicating they intended to appeal from "evidentiary rulings, orders, and judgments in action of forcible entry and detainer entered on 9/17/09, an order regarding Supreme Court Rule 137 sanctions on 5/28/09, order regarding jurisdiction and other issues on 8/5/09."

As this appeal pended, numerous motions were filed by the parties, and it became necessary for this court to issue multiple rules to show cause to secure defendants' compliance with various Supreme Court Rules regarding the filing of an initial brief. Before defendants filed their initial brief, plaintiff filed a motion to dismiss the appeal raising an issue of this court's jurisdiction. In a second motion to dismiss this appeal, the Association noted that the judgment had been paid rendering the appeal moot. Defendants objected to each of the Association's

motions to dismiss.

By order dated December 7, 2009, this court denied the Association's initial motion to dismiss, but held "appellants may only raise their jurisdictional issue concerning service of the Secretary of Veterans Affairs." On March 3, 2010, we denied the Association's second motion to dismiss. Despite our December 7, 2009, order, the DeMills raised numerous issues on appeal regarding the original judgment entered in this matter as well as other matters ancillary to the judgment.

ANALYSIS

We begin our analysis by noting defendants claim numerous orders below are void *ab initio* as plaintiff failed to serve the Secretary of the United States Department of Veteran Affairs (the Secretary). Even if we assume the Secretary was not properly served, defendants have cited no authority to support the contention that failure to properly serve a codefendant renders the judgment against them void *ab initio*. "This court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented ([210 Ill. 2d R. 341(h)(7)]), and is not a repository into which an appellant may foist the burden of argument and research. [Citation.] Accordingly, we have the authority to hold that defendant has

forfeited his argument by failing to develop it or cite any authority to support it." (Internal quotation marks omitted.) *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010) (quoting *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1007, 1098 (2007) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993))); Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); see also *People v. Wendt*, 183 Ill. App. 3d 389 (1989).

We find Thurman and Myra DeMills have cited no authority to support their contention that the judgment against them is void *ab initio* for plaintiff's failure to allegedly properly serve the Secretary. As such, we find the issue forfeited.

Moreover, as noted above, plaintiff raised the issue of this court's jurisdiction, claiming we have no jurisdiction to hear this appeal. Even had plaintiff not raised the issue, it is incumbent on us to review the matter *sua sponte* as our supreme court has emphasized a reviewing court's duty to ascertain its jurisdiction before considering the merits of an appeal. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217 (2010); *People v. Lewis*, 234 Ill. 2d 32 (2009); *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209 (2009).

Specifically, plaintiff contends the trial court's order

dated May 28, 2009, settled all substantive matters in controversy making it a final and appealable order. As no pleading attacking that order was filed within 30 days, and no notice of appeal was taken from that final order within 30 days, plaintiff avers this court is simply without jurisdiction to hear this appeal. We agree.

In its forcible entry and detainer action, plaintiff sought possession of the described premises, judgment in the amount of unpaid maintenance assessments, judgment for the amount of additional assessments accruing each month thereafter, costs of the suit plus attorney fees associated with bringing the action. By order dated September 17, 2008, the trial court awarded plaintiff possession of the premises ("stayed 90 days"), entered a monetary judgment for unpaid maintenance assessments, awarded plaintiff costs and reserved the matter of attorney fees. Defendants attacked the September 17, 2008, order in many ways, including bringing a motion for sanctions that claimed certain documents filed by the plaintiff with the court contained false signatures. Ultimately, the trial court entered an order on May 28, 2009, disposing of every substantive issue raised in the case.

"A final judgment absolutely and finally fixes the rights of the parties to the lawsuit." *In re Adoption of S.G. v. S.G.*, 401

Ill. App. 3d 775, 783 (2010). A judgment is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *S.G.*, 401 Ill. App. 3d at 783; *Kim v. Alvey, Inc.*, 322 Ill. App. 3d 657 (2001).

Following the entry of the May 28, 2009, order, the only tasks remaining in this matter were for the plaintiff to collect the \$2,981.52 judgment and acquire possession of the premises: both of which were awarded by order dated September 17, 2008, subsequently attacked in timely postjudgment motions, and then confirmed by the trial court's order entered on May 28, 2009. There were simply no substantive issues remaining to be decided following the court's May 28, 2009, final order.

Supreme Court Rule 303 mandates that a party seeking appeal from a final order file a notice of appeal 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, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order ***." Supreme Court Rule 303(a) (eff. June 4, 2008). Failure to file a timely notice of appeal deprives the appellate court of jurisdiction over the appeal. *In re Estate of K.E.J.*, 382 Ill. App. 3d 401 (2008);

Lowenthal v. McDonald, 367 Ill. App. 3d 919 (2006). Defendants failed to file a timely postjudgment motion directed against the May 28, 2009, order or a notice of appeal within 30 days of the order. As such, we are without jurisdiction to entertain this appeal.

While a court retains the inherent authority to enforce its own orders, a final order may not be modified after 30 days. *Director of Insurance v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 723 (2008). Courts have consistently held that a "trial court loses jurisdiction over a matter when (1) 30 days have passed following the entry of a final and appealable order concerning that matter and (2) during that time, neither party has taken any legally proper action to extend the 30-day period." *Leavell v. Department of Natural Resources*, 397 Ill. App. 3d 937, 950 (2010); *Bowers v. Village of Palatine*, 204 Ill. App. 3d 135, 137 (1990); see also 735 ILCS 5/2-1203 (West 2008). Our supreme court recently noted, "Generally, a circuit court loses jurisdiction to vacate or modify its judgment 30 days after entry of judgment." *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011) (citing *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991)); *Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917, 922 (2002). Once a trial court loses jurisdiction, any subsequent orders entered are not viable. *Trentman v. Kappel*, 333 Ill. App.

3d 440, 444 (2002); accord *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 559 (2003).

It is clear that any actions taken by the trial court after the May 28, 2009, order, other than those associated with enforcement of the order, are not viable and a nullity as: (1) neither party filed a postjudgment motion against the trial court's May 28, 2009, final order; and, (2) the trial court did not enter an order within 30 days of the May 28, 2009, final order extending the time frame for a party to file a postjudgment motion.

CONCLUSION

For the foregoing reason, we dismiss defendant's appeal.

Dismissed.