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2016 IL App (1st) 151116-U
No. 1-15-1116
February 9, 2016

SECOND 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

BUVAN NATHAN,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 14 L 007475
)	
GORDON & KARR, LLP, STUART D.)	The Honorable
GORDON and CARRIE HERSCHMAN,)	John H. Ehrlich,
)	Judge-Presiding.
Defendants-Appellees.)	

JUSTICE NEVILLE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

SUMMARY ORDER

¶ 1 Revisiting the Appellate Court's Jurisdiction

¶ 2 We note that another panel of the appellate court denied an earlier motion to dismiss. We find, however, that the panel that hears the appeal has an independent duty to determine whether it has jurisdiction and must dismiss the appeal if it does not. *In re Estate of Gagliardo*, 391 Ill. App. 3d 343, 349 (2009) (citing *In re Marriage of Waddick*, 372 Ill App

3d 703, 705 (2007)). Therefore, since the motion panel's denial of the earlier motion to dismiss has no bearing on the assigned panel's review, we revisit the jurisdiction issue. See *Gagliardo*, 391 Ill. App. 3d at 349

¶ 3 Appellate Court's Jurisdiction Over this Appeal

¶ 4 On July 16, 2014, the plaintiff, Buvan Nathan, filed a two-count complaint against the defendants, Gordon & Karr, LLP, Stuart D. Gordon, and Carrie Herschman, for negligence and breach of contract in their legal representation of the plaintiff. On October 28, 2014, Herschman filed a section 2-619 motion to dismiss the complaint. On October 29, 2014, Gordon & Karr, LPP and Gordon joined Herschman's motion to dismiss. On January 16, 2015, the circuit court granted the defendants' joint motion to dismiss and dismissed the plaintiff's complaint with prejudice. On March 5, 2015, the plaintiff filed a motion to reconsider the January 16, 2015 order that granted the defendants' joint motion to dismiss. On April 20, 2015, the circuit court entered an order denying the plaintiff's motion to reconsider for lack of jurisdiction. The plaintiff subsequently filed his notice of appeal on April 20, 2015, seeking review of both the April 20, 2015 order that denied plaintiff's motion to reconsider and the January 16, 2015 order that granted the defendants' joint motion to dismiss.

¶ 5 Section 2-1203 of the Code of Civil Procedure provides that a party has within 30 days after the entry of a judgment to file a motion to reconsider (735 ILCS 5/2-1203(a) (West 2014)), and Illinois Supreme Court Rule 303 (a) provides that a notice of appeal must be

filed within 30 days after the entry of the final judgment appealed from. See Ill. Sup. Ct. R. 303(a) (eff. Jan. 1, 2015).

¶ 6 The plaintiff filed his motion to reconsider the circuit court's January 16, 2015 order on March 5, 2015, forty-eight days after the challenged judgment was entered. Our supreme court has held that "a motion to reconsider a judgment falls within the category of post-judgment motions which *must be* filed within 30 days after the challenged judgment is entered." (Emphasis added.) *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984). Because the plaintiff's motion to reconsider the court's order was not filed within 30 days after the January 16, 2015 order that granted the defendants' joint motion to dismiss, the motion reconsider was untimely (*Barth*, 103 Ill. 2d at 539), and our supreme court has held that "an untimely post-judgment motion does not extend the time for filing a notice of appeal." *Barth*, 103 Ill. 2d at 539.

¶ 7 In his response to the defendants' motion to dismiss this appeal, the plaintiff argued that he timely filed his motion to reconsider in the circuit court on February 17, 2015. He attached a number of documents to his response to the defendants' motion to dismiss, including, a certified mail receipt addressed to the Clerk of the Circuit Court and a stamped envelope addressed to the Clerk of the Circuit Court, both dated February 17, 2015. However, neither of these documents appears in the record certified by the Clerk of the Circuit Court of Cook County and filed in the appellate court. Facts that dehor the record will not be considered on appeal. *Gille v. Winnebago County Housing Authority*, 44 Ill.2d 419, 427 (1970). Even if these documents were included in the appellate record the plaintiff did not include in the

record a certificate or an affidavit averring that the motion to reconsider was placed in an envelope and mailed to the Clerk of the Circuit Court of Cook County on February 17, 2015. See *Secure Ins. Co. v. Illinois Farmers Ins. Co.*, 232 Ill. 2d 209, 215-18; Ill. Sup. Ct. R. 12(b)(3)(eff. Sept. 19, 2014).

¶ 8 In this case, because plaintiff's motion to reconsider was untimely filed, the notice of appeal had to be filed on February 17, 2015 (because the last day to file the motion was a holiday (5 ILCS 50/1.11 (West 2014))), or within 30 days after the circuit court entered the January 16, 2015 order that granted the defendants' joint motion to dismiss. Consequently, the notice of appeal, filed on April 20, 2015, more than 30 days after the circuit court's January 16, 2015 order was entered, did not vest the appellate court with jurisdiction. *Barth*, 103 Ill. 2d at 539.

¶ 9 Accordingly, we find that the plaintiff failed to file a notice of appeal within 30 days after the circuit court entered its January 16, 2015 final judgment, therefore the appellate court does not have jurisdiction to hear this appeal.

¶ 10 This order is entered in accordance with Supreme Court Rule 23(c)(2) (eff. July 1, 2011).

¶ 11 Appeal dismissed.