

Nos. 1-09-1908 and 1-09-3192, Consolidated

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).

FIFTH DIVISION
June 24, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DOROTHY MURPHY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	Nos. 04 M1 40534
)	05 M1 131120
)	
MELISSA & PATRICK ROBINSON,)	
JAMMIE SLACK, SR.,)	Honorable
)	Patrick J. Sherlock,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein
concur in the judgment.

O R D E R

Held: Because plaintiff failed to timely file notices of appeal from the trial court's final orders and because plaintiff failed to include the final orders in the record on appeal, we lack jurisdiction to consider her claims. Plaintiff's appeals are dismissed.

Plaintiff Dorothy Murphy appeals *pro se* following a landlord-tenant dispute. In this consolidated appeal (1-09-1908

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& 1-09-3192), plaintiff seeks the return of her security deposit, plus damages, interest, and attorney fees, against her former landlord, Jamie L. Slack, Sr., and the current property owners, Melissa (also Melicia) and Patrick Robinson. Because we lack jurisdiction to consider either appeal, we dismiss both.

The present appeal arises from two different lower court cases (04 M1-40534 & 05 M1-131120), which are documented in 1-09-1908. The limited common law record in 04 M1-40534 shows that from May 2003 to April 2004, plaintiff rented a Chicago apartment from Slack. Plaintiff claimed Slack failed to return her \$1,500 security deposit when she vacated the apartment in April 2004.

Plaintiff thereafter filed a *pro se* complaint seeking return of the security deposit. In August 2004, the court entered a default *ex parte* judgment against Slack in favor of plaintiff in the amount of \$1,500. Plaintiff thereafter instituted garnishment proceedings against SBC Ameritech, Slack's purported employer. The court ordered that Slack's wages be deducted from his paycheck to satisfy plaintiff's judgment.

In 2008, the court vacated the "conditional judgment" against SBC and dismissed "any other garnishment proceedings pending against SBC" after finding that Slack in fact was not employed by the company. Plaintiff then filed a motion to reinstate garnishment proceedings.

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In January 2009, the court ordered the claim and judgment against Slack "discharged in his bankruptcy." The court dismissed "all supplemental proceedings" and ordered plaintiff to cease all collection efforts against Slack. In February 2009, another order from a different trial judge barred plaintiff from collecting the debt, "it having been discharged in bankruptcy."

Plaintiff filed a notice of appeal from the February judgment on July 22, 2009.

The limited common law record in 05 M1-131120 shows that in May 2005 plaintiff also sued the Robinsons, the current owners of the property, seeking the return of her security deposit. She claimed that the Robinsons purchased the property while she was still a tenant there, and they thus had privity of contract with plaintiff.

In February 2009, the Robinsons filed a motion to dismiss plaintiff's complaint. They denied owning the subject property when plaintiff was a tenant; as evidence, they pointed to the judgment against Slack. The docket sheet shows that the Robinsons' "motion to strike or withdraw motion or petition" was allowed. Although there is no order in the record, the case appears to have been dismissed for want of prosecution on June 15, 2009. That dismissal was vacated on July 2, 2009, and the court ordered a hearing on July 23.

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On July 22, however, plaintiff filed a notice of appeal citing the June 15 judgment.

The docket sheet shows that the July 23 hearing nevertheless was held. Counsel for the Robinsons and plaintiff, acting *pro se*, appeared in court. The cases (05 M1-131120 & 04 M1-40534) were consolidated. The docket sheet lists the case history, and states the "cases [are] properly in this court[,]" but does not reveal how the cases were ultimately disposed of. There also is no order or judgment in the record from the July 23 hearing.

In 1-09-3192, the common law record consists primarily of a notice of appeal, filed November 19, 2009, seeking review of the August 2004 judgment which was in favor of plaintiff.

Plaintiff, who is now before this court, once again seeks the return of her security deposit. Although defendants have not filed a brief in response, we proceed in our review under the principles stated *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We, however, are unable to grant the relief plaintiff seeks.

We first address appeal 1-09-1908 and the trial court case, 04 M1-40534, against defendant Slack. To vest this court with jurisdiction over her appeal, a litigant is required to file her notice of appeal within 30 days of the trial court's final judgment. Ill S. Ct. R. 303(a)(1) (eff. June 4, 2008); *Manning v. City of Chicago*, 407 Ill. App. 3d 849, 878-79 (2011).

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Here, the trial court entered its final judgment in January 2009, declaring that plaintiff's claim and the prior judgment against Slack for the security deposit was "discharged in his bankruptcy," and the court ordered all collection efforts against Slack to cease. Although this was a final and appealable order, plaintiff did not file a notice of appeal until nearly six months later in July 2009. See Ill S. Ct. R. 304(b)(4) (eff. Feb. 26, 2010); *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 642 (2008) (judgment final when the court orders a citation petitioner foreclosed from collecting against the judgment debtor or a third party). Because plaintiff did not timely appeal the judgment, we now lack jurisdiction to consider her claims in case 04 M1-40534. See *Manning*, 407 Ill. App. 3d at 878-79.

We next address case 05 M1-131120 against the Robinsons. Plaintiff appears to be appealing a June 15, 2009, order wherein the trial court dismissed the case for want of prosecution. We lack jurisdiction over this appeal for two reasons. First, there is no June 15 order in the record, nor any final disposition in the case against the Robinsons relating to the July 23 hearing. *Heavey v. Ehret*, 166 Ill. App. 3d 347, 349 (1988) (a "court has no jurisdiction to consider an appeal from a nonexistent judgment."). It appears that plaintiff filed the notice of appeal prematurely, as the June 15 order dismissing her case for want of prosecution was not a final order from which to appeal.

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See *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). Second, even if there were a June 15 final, appealable order in the record, plaintiff did not timely file her notice of appeal. See *Manning*, 407 Ill. App. 3d at 878-79. We therefore lack jurisdiction to consider her claims in case 05 M1-131120.

For the above-stated reasons, we lack jurisdiction to consider plaintiff's claims in 1-09-1908, and it therefore must be dismissed.

Finally, we address appeal 1-09-3192. The record in 1-09-3192 consists primarily of a notice of appeal, filed November 19, 2009, seeking review of the August 2004 judgment which was in favor of plaintiff. As stated, a timely notice of appeal must be filed within 30 days of the final judgment. *Manning*, 407 Ill. App. 3d at 878-79. Here, plaintiff filed the notice of appeal five years later. Because it is untimely, we lack jurisdiction to consider appeal 1-09-3192, and it also must be dismissed.

1-09-1908, appeal dismissed.

1-09-3192, appeal dismissed.