

FIFTH DIVISION
September 30, 2011

No. 1-09-3275

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

In re the Detention of TIMOTHY BELL (THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 06 CR 80007
)	
TIMOTHY BELL,)	Honorable
)	Thomas V. Gainer,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's order denying respondent's untimely motion for a new trial is vacated and cause dismissed for lack of jurisdiction.

¶ 2 Following a jury trial, respondent Timothy Bell was found to be a sexually violent person under the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/1 *et. seq.* (West 2008)), then committed to the custody of the Illinois Department of Human Services (IDHS) until such time as he is no longer a sexually violent person. On appeal, he contends that the trial court abused its discretion in allowing him to proceed *pro se* at trial without an examination of his fitness to represent himself, in finding that he knowingly and intelligently waived his right to

counsel, and in denying his request for standby trial counsel.

¶ 3 The record shows, in relevant part, that on March 1, 2006, the State filed a petition alleging respondent to be a sexually violent person, citing his prior convictions for unlawful restraint, attempted criminal sexual assault, and criminal sexual assault. The State also alleged that respondent had been diagnosed with: (1) paraphilia, not otherwise specified, sexually attracted to non-consenting females, non-exclusive type; (2) alcohol abuse, in a controlled environment; and (3) antisocial personality disorder. With respect to those conditions, the State alleged that the disorders "affect[] the Respondent's emotional or volitional capacity which predisposes the Respondent to commit acts of sexual violence." The trial court appointed counsel to represent respondent, and, after a hearing, found probable cause to believe that respondent was a sexually violent person.

¶ 4 Thereafter, respondent began filing multiple *pro se* motions, including one on May 19, 2006, entitled "Motion for Re-Appointment of Defence [*sic*] Counsel." Respondent alleged therein that court-appointed counsel was ineffective for failing to adequately prepare for the probable cause hearing. On October 6, 2006, the court granted counsel's motion for leave to withdraw for "professional reasons."

¶ 5 Respondent proceeded *pro se* until February 22, 2007, when he requested, and the court appointed him, new counsel. At a hearing on June 19, 2007, however, the court stated that it had been informed that respondent dismissed his attorney and desired to proceed *pro se*. Respondent acknowledged that to be the case, and the court admonished him in accordance with Illinois Supreme Court Rule 401 (eff. Jul. 1, 1984). The court then inquired into his age, schooling, ability to read and write, as well as whether he was being treated for a psychiatric condition or taking psychotropic medications. The court found that respondent had the "requisite intelligence and understanding of the responsibilities and duties and activities of a lawyer," and that he

knowingly and intelligently waived his right to counsel.

¶ 6 Respondent subsequently asked the court if he could have a lawyer to assist him at trial, and the court responded, "I'll look into that whether you can have a stand-by attorney, okay?"

The following colloquy was eventually had:

"THE COURT: I understand that you have been demanding a trial as quick as you can.

THE DEFENDANT: Exactly.

THE COURT: And if you need more time to prepare when you get here Tuesday, you need to tell me that. I don't know if you're going to be able to read all of that information between now and next Tuesday, okay.

In addition, should I grant your request for stand-by counsel to assist you, I can guarantee you that no lawyer is going to jump into this with both feet and assist you without having read all of the discovery, okay?

THE DEFENDANT: I understand.

THE COURT: So I just want you to know there may be a reason to continue this case beyond Tuesday, okay?

* * *

THE DEFENDANT: That's fine. I don't even want stand-by counsel. I'll do this myself.

THE COURT: I will take your request under advisement, and we'll deal with it on Tuesday."

On the next court date, the court returned to the issue of stand-by counsel and reiterated, "I

would not compel a lawyer to jump in with both feet and act as stand-by counsel without having an opportunity to read the entire 1,400 pages of discovery." The court then stated, "I once again suggest to you that you have the right to have an attorney and because you're incarcerated, the State will pay the cost of the attorney." Respondent nonetheless confirmed that he wanted to proceed *pro se*.

¶ 7 Respondent continued representing himself throughout the ensuing jury trial, and on June 28, 2007, the jury returned a verdict finding him to be a sexually violent person. At the next status hearing, the court advised respondent of his right to an attorney during the commitment phase of proceedings, and, as respondent was voicing his belief that commitment proceedings were "procedurally barred," the court interrupted and stated:

"You see, this is the position you put yourself in last time, without being articulate —articulate is not the word, because you are articulate.

Without having the requisite legal knowledge, you aren't able to articulate a viable claim here under the SVP Act that might convince me that we should not hold a commitment hearing."

The court subsequently told respondent that it would give him a week to think about whether he wanted an attorney appointed, and respondent replied, "First I'd like to file my Notice of Appeal." The court noted that there was no final judgment until after the commitment hearing, and stated, "But now I'm starting to act like your lawyer, and I can't be put in that position." When the next court date arrived, respondent again chose to represent himself.

¶ 8 Respondent, however, refused to attend his dispositional hearing on October 18, 2007, and the court found, in light of his prior statements, that he had waived his right to an attorney,

right to an expert of his own choice, and the right to be present and participate in the dispositional hearing. The court proceeded with the hearing and, ultimately, entered judgment on the jury verdict finding respondent to be a sexually violent person, and ordered him committed until he is no longer a sexually violent person. On February 5, 2008, more than three months after judgment was entered, respondent filed a motion in this court requesting leave to file a late notice of appeal. This court denied his motion, and the supreme court denied his subsequent petition for leave to appeal that ruling. *People v. Bell*, No. 106720 (Ill. Sept. 24, 2008).

¶ 9 On June 3, 2008, the State filed a motion alleging that there was no probable cause to believe that respondent was no longer a sexually violent person based on a six-month reexamination report prepared by a physician. Respondent appeared in court that day and requested that counsel be appointed to represent him, and the court ultimately granted his request. However, on December 16, 2008, respondent filed a *pro se* motion to dismiss his attorney and proceed *pro se*, and the court told him, *inter alia*, that it could now "see that you are hurting yourself and you are not getting the necessary review of your case that you need and that you are owed as a matter of right." The court then entered respondent's motion and continued it.

¶ 10 That same day, counsel filed a "Motion to Expand the Time for Filing a Motion for New Trial" asserting that because the trial court had ongoing jurisdiction under the Act, it had jurisdiction beyond the 30-day time limit of section 1202(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1202(c)) (West 2008)) to extend the time for filing a motion for new trial under Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011). The State responded, *inter alia*, that respondent was precluded from filing a motion for new trial beyond the 30-day filing deadline of section 1202(c)), and that Rule 183 does not apply to statutory time limits.

¶ 11 On March 11, 2009, the court granted respondent's motion to extend the time for filing a

motion for a new trial, and counsel filed a motion for a new trial that day. On April 16, 2009, counsel filed an "Amended Motion for New Trial" alleging, *inter alia*, that the trial court erred in allowing respondent to represent himself without a competency evaluation to help it determine if he could competently conduct his trial, in concluding that he knowingly and intelligently waived his right to counsel, and in allowing him to represent himself without the benefit of standby trial counsel. Argument was had on the motion, and the court subsequently denied it on October 28, 2009. This appeal followed,¹ where, as noted, respondent alleges three instances of abuse of discretion by the trial court warranting reversal.

¶ 12 The State initially responds that this appeal should be dismissed for lack of jurisdiction because the trial court entered its final judgment on October 18, 2007, and respondent did not file a notice of appeal, post-trial motion, or request to extend the time for filing a post-trial motion within 30 days of that judgment. Respondent replies that his case should not be dismissed on that basis because he was not adequately advised by the trial court that his notice of appeal had to be filed within 30 days of the dispositional hearing. He also claims that since the State alleged that he suffered from a mental disorder, and his fitness to represent himself was not evaluated, his failure to comply with the filing deadlines could have been the "product of his impairments."

¶ 13 Proceedings under the Act are civil in nature (725 ILCS 207/20 (West 2008)), and an appeal from a final judgment entered thereunder is governed by Illinois Supreme Court Rule 303 (eff. Jun. 4, 2008). That rule provides that a notice of appeal must be filed within 30 days after entry of the final judgment appealed from, or, if a timely post-trial motion has been filed, within 30 days after the disposition of the last pending post-judgment motion directed against that

¹ On June 23, 2011, during the pendency of this appeal, respondent filed a *pro se* motion in this court requesting that counsel be dismissed and that the Office of the State Appellate Defender be appointed to represent him. That motion was denied on July 5, 2011.

judgment. Ill. S. Ct. R. 303(a)(1). A post-trial motion is timely under the provisions of the Civil Practice Law, which apply to proceedings under the Act (725 ILCS 207/20 (West 2008)), if it is filed within 30 days after entry of judgment, or within any further time the court allows within the 30 days or any extensions thereof (735 ILCS 5/2-1202(c)) (West 2008)).

¶ 14 The first step in determining whether this appeal should be dismissed for lack of jurisdiction is to ascertain when final judgment was entered. We observe that a final judgment is one in which the rights of the parties have been fixed absolutely and finally, *i.e.*, where the litigation has been determined on the merits such that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *In Re M.M.*, 337 Ill. App. 3d 764, 771 (2003).

¶ 15 The record shows that the final judgment in this case was entered on October 18, 2007, when the court ordered respondent committed until such time as he is no longer a sexually violent person. As of that date, respondent had been adjudicated a sexually violent person and committed to IDHS until he was no longer sexually violent, and, thus, the only thing remaining was for that judgment to be executed. *In Re M.M.*, 337 Ill. App. 3d at 771. This outcome is consistent with section 35(g) of the Act (725 ILCS 207/35(g) (West 2008)), which states, "A judgment entered *** on the finding that the person who is the subject of a petition *** is a sexually violent person is interlocutory to a commitment order *** and is reviewable on appeal." By characterizing the finding that respondent is a sexually violent person as "interlocutory to a commitment order," the legislature clearly denoted the commitment order as the final judgment for purposes of appeal. Accordingly, we find in this case that final judgment was entered on October 18, 2007, the date on which the court ordered respondent committed. 725 ILCS 207/35(g) (West 2008).

¶ 16 The record shows, however, that no direct appeal was filed within 30 days of that judgment, nor were there any post-trial motions filed or requests for extensions made during that

30-day period. To the contrary, respondent's request to file a late notice of appeal was filed over three months later on February 5, 2008, his motion for an extension of time to file a motion for new trial was filed over one year later on December 16, 2008, and his amended motion for new trial was filed nearly a year and a half later on April 16, 2009. Since more than 30 days had elapsed since the commitment order was entered, and the trial court had not properly extended the limitation period, the court was divested of jurisdiction to entertain respondent's motion for new trial, and this court has no jurisdiction to consider the merits of respondent's appeal from that ruling. *People v. Flowers*, 208 Ill. 2d 291, 303, 309 (2003).

¶ 17 Moreover, contrary to respondent's arguments in the trial court, the court did not have authority to dispense with the 30-day time limit of section 1202(c) by characterizing its jurisdiction as "ongoing." Rather, the role of the court was to apply the plain and unambiguous statutory language of section 1202 which required that a motion for new trial be filed within 30 days after judgment, or within any extension of time granted during those 30 days. 735 ILCS 5/2-1202(c), (e) (West 2008); *Robinson v. Johnson*, 346 Ill. App. 3d 895, 905 (2003), citing *In Re M.M.*, 156 Ill. 2d 53, 69 (1993). The court similarly had no basis for extending the time for filing a motion for new trial under Rule 183 because that rule only allows for the extension of filing deadlines imposed by the Illinois Supreme Court Rules, and does not provide authority for altering the statutory time limit of section 1202. *Robinson*, 346 Ill. App. 3d at 905.

¶ 18 Respondent, nonetheless, claims that this court should not dismiss his appeal for lack of jurisdiction because he was not adequately advised that he had 30 days from the dispositional hearing to file his notice of appeal, and his failure to comply with filing deadlines could have been the "product of his impairments." However, he has not provided any authority to support either position, and this court may not construe a statute to add exceptions or limitations, or to change the law set forth therein, so as to depart from its plain language. *Robinson*, 346 Ill. App.

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3d at 905. We thus decline respondent's invitation to create an exception to the statutory filing deadlines contained in section 1202.

¶ 19 For the reasons stated, we conclude that the circuit court did not have jurisdiction to consider the merits of respondent's motion for new trial on October 28, 2009; and, as a result, we have no jurisdiction to review the propriety of the order entered. *Keener v. City of Herrin*, 235 Ill. 2d 338, 350-51 (2009). We therefore vacate the order entered by the circuit court of Cook County on October 28, 2009, and dismiss this cause.

¶ 20 Appeal dismissed.