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2011 IL App (3d) 100878-U

Order filed October 4, 2011

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WILLIAM H. SNELLENBARGER, by and	)	Appeal from the Circuit Court
through Bernice Snellenbarger, his agent,	)	of the 21st Judicial Circuit,
	)	Iroquois County, Illinois,
Plaintiff-Appellant,	)	
	)	
v.	)	Appeal No. 3-10-0878
	)	Circuit No. 2007-MR-42
	)	
STATE OF ILLINOIS, acting through THE	)	
ILLINOIS DEPARTMENT OF HUMAN	)	
SERVICES and CAROL ADAMS, its Director,	)	
and THE ILLINOIS DEPARTMENT OF PUBLIC	)	
AID and BARRY S. MARAM, its Director.	)	Honorable
	)	Susan Tungate,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justice Lytton concurred in the judgment.  
Justice Schmidt specially concurred.

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#### ORDER

- ¶ 1 *Held:* On June 18, 2010, the court verbally informed the parties that the motion to reconsider was denied *instanter*. The clerk entered a computer docket entry of the court's ruling and dated the entry, June 21, 2010. Plaintiff filed the notice of appeal more than 30 days after June 21, 2010. The notice of appeal filed on November 17, 2010, was not timely. Appeal dismissed.
- ¶ 2 On November 17, 2010, plaintiff-appellant William Snellenbarger (plaintiff) filed a notice of appeal challenging the circuit court's June 18, 2010, decision denying plaintiff's motion to reconsider a previous ruling affirming the Illinois Department of Human Services' (DHS)

decision regarding backdating of plaintiff's medical assistance application and benefits. Since the notice of appeal was filed more than 30 days after the final judgment date, this court does not have jurisdiction to address the merits of plaintiff's appeal.

¶ 3

### BACKGROUND

¶ 4 The relevant facts in the record demonstrate that, on November 14, 2007, plaintiff filed a Complaint for Administrative Review asking the Iroquois County Circuit Court to review a final decision of DHS regarding medical assistance benefits. The Attorney General's office entered its appearance on behalf of the defendants-appellees in this case (collectively referred as the State). The trial judge, Judge Tungate, issued a "Memorandum of Decision," entered on July 23, 2009, which affirmed the decision of DHS. On August 21, 2009, plaintiff filed a timely "Motion to Reconsider," claiming the trial court made several errors. Sometime between the date the court entered the original judgment and heard arguments on the motion to reconsider, Judge Tungate was reassigned to hear cases in Kankakee County and no longer presided in Iroquois County.

¶ 5 Rather than having a new judge hear the motion to reconsider, the record contains a letter from Attorney Young, plaintiff's attorney, to Judge Tungate asking her to conduct a telephone conference to set a hearing date on plaintiff's motion to reconsider, either in the county where she now presided or by telephone conference. Accordingly, Judge Tungate held the hearing in Kankakee County for argument on plaintiff's motion to reconsider, although the venue of the case remained in Iroquois County.

¶ 6 The entry documented in the Iroquois County court file is dated June 21, 2010, and states:

"Case called. Atty Young for plaintiff. AAG Lingle appears. Arguments heard.

[M]otion to reconsider is denied. Docket to stand. (JUDGE TUNGATE) \*\*\*

[C]opy of entry mailed to Attorney Young and AAG Lingle.”

¶ 7 The next entry in the file, dated October 12, 2010, reflects, “Correspondence received from Attorney Duane D. Young and is ordered filed.” This correspondence, which is in the record and consists of a letter sent to Judge Tungate from Attorney Young, reads as follows:

“On June 18 I appeared before you in Kankakee and argued the pending post trial motion in the above Iroquois County case. You indicated that a decision would be entered the following week. Since late June we have called the Iroquois County Clerk’s office on a weekly basis. The clerk reports that nothing has been received yet.

We certainly have no objection to the court’s taking all the time it needs to consider the issues, but in view of the courts [*sic*] announced intention at the hearing and the passage of time we are concerned that something may have been lost in the mail, or otherwise. Hence the inquiry. Thank you for your considerations.”

¶ 8 An entry, dated October 15, 2010, reflects, “Correspondence [*sic*] from Judge Tungate to Duane D. Young[;] copy to Assistant Attorney General Lingle[;] copy of correspondence is ordered filed.” The letter from Judge Tungate to Attorney Young is contained in the record, and reads:

“I was very surprised to receive your letter dated October 8, 2010, concerning the above case. On June 21, 2010, the case was called and the motion to reconsider was denied with the Docket to stand as the order. The docket indicates that you and Ms. Lingle were present. For some reason, the file was not

returned to Iroquois County.

If you have any questions, there should be a recording of the proceedings here in Kankakee, from which you may order a transcript through Adrienne Haley at (815) 937-2915. I have no explanation why the file was not sent back to Iroquois.

Please contact me if you have any further questions. I apologize for any difficulty this may have caused you.”

¶ 9 The record next contains a copy of a letter sent from Attorney Young to the Iroquois County circuit clerk, dated November 3, 2010, claiming the date and content of the June 21, 2010, docket entry was incorrect. In this letter, Young claimed that the parties appeared before the court on June 18, 2010, rather than June 21, 2010, and insisted that the judge placed the case on the advisement docket. In his letter, Young said he assumed, based upon the clerk’s docket entries, that somehow the case was taken off the advisement docket and then decided by the judge on June 21, 2010.

¶ 10 Finally, the record contains an entry on November 10, 2010, that reads as follows:

“Case is called on court’s motion to correct previous minutes mistakenly dated June 21, 2010.

Said mistake having been brought to court’s attention by Attorney Young.

Court has obtained a copy of the audio recording for both June 18<sup>th</sup>, 2010[,] and June 21, 2010.

The entry of minutes entered into the record as June 21, 2010[,] bears the wrong date.

Said minutes entered into the record as June 21, 2010[,] are amended to reflect the proper date of June 18<sup>th</sup>, 2010.

A copy of these minutes reflecting the correction of the date are ordered to be sent by fax and mail to Atty Young and Atty Lingle and a copy of said minutes are to be faxed to the Iroquois County Circuit Clerk this date.”

¶ 11 Plaintiff filed his notice of appeal on November 17, 2010. The appellate record does not contain a transcript of the June 18, 2010, hearing when the court ruled on plaintiff’s motion to reconsider, filed on August 21, 2009.

¶ 12 ANALYSIS

¶ 13 Prior to addressing any other issue, this court has the duty to determine whether it has jurisdiction to decide the case and dismiss the appeal if jurisdiction is lacking. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). Supreme Court Rule 303(a)(1) provides:

“The notice of appeal must be filed 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, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions.” Ill. Sup. Ct. R. 303(a)(1), corr. eff. June 4, 2008.

Subsection (e) of Rule 303 provides for an extension of this time period for an additional 30 days only on motion supported by a showing of reasonable excuse for failure to file a notice of appeal

on time. Ill. Sup. Ct. R. 303(e), eff. June 4, 2008.

¶ 14 In the instant case, plaintiff asserts that the court took the matter under advisement and then corrected the date of the June minute entry on November 10, 2010. Consequently, plaintiff submits the November date represents the date of the final judgment for purposes of filing a notice of appeal. The State contends that the final judgment occurred on June 18, 2010, when the court ruled from the bench and did not order either party to submit a subsequent written order. Therefore, the State argues plaintiff's notice of appeal had to be filed within 30 days of June 18, 2010.

¶ 15 Supreme Court Rule 272 controls when a judgment becomes final and states:

“If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect and the judgment becomes final only when the signed judgment is filed. If no such signed written judgment is to be filed, the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and the judgment is entered at the time it is entered of record.” Ill. Sup. Ct. R. 272, eff. Nov. 1, 1990.

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. *Archer Daniels*, 103 Ill. 2d at 538.

¶ 16 Attorney Young claims the court took the matter under advisement and did not announce her decision in open court on June 18, 2010. The record submitted to this court on appeal does not support this claim. The language of the June 21, 2010, (later corrected to reflect the date of

June 18, 2010) entry reads: “Arguments heard. [M]otion to reconsider is denied. Docket to stand. (JUDGE TUNGATE).”

¶ 17 Attorney Young’s letter, dated November 3, 2010, claimed, first, the hearing on his motion to reconsider occurred on June 18, 2010, and, second, that the matter was taken under advisement on that date. After receiving this letter, Judge Tungate reviewed the audio recordings of the court proceedings conducted on both June 18 and June 21, 2010. Following this review, Judge Tungate concluded the court actually held the hearing and denied the motion to reconsider on June 18, 2010, rather than June 21, 2010. The judge’s minute entry, dated November 10, 2010, corrected only the arguable scrivener’s error regarding the date of the ruling and did not modify the original language of the June minute entry which still reads: “Arguments heard. [M]otion to reconsider is denied. Docket to stand. (JUDGE TUNGATE).”

¶ 18 Rule 272 states that, when no written order is required, the “clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and *the judgment is entered at the time it is entered of record.* (Emphasis added).” Ill. Sup. Ct. R. 272, eff. Nov. 1, 1990. Unless the circuit court requires submission of a written judgment, the effective date of the judgment for purposes of appeal is the date it is entered of record. See *Archer Daniels*, 103 Ill. 2d 536, 539 *Swisher v. Duffy*, 117 Ill. 2d 376, 377-81 (1987).

¶ 19 To avoid the strict construction of Rule 272, Attorney Young claims that he did not actually receive a copy of the minute entry entered by the clerk with the date of June 21, 2010. We conclude that issue is irrelevant. The record before this court clearly shows that Attorney Young was present on June 18, 2010, when the court announced the ruling from the bench and it is undisputed that the clerk recorded that ruling no later than June 21, 2010. Judge Tungate’s

order became final when the notation was entered by the clerk on June 21, 2010, long before Attorney Young contested either the date or content of the June minute entry.

¶ 20 Plaintiff next argues that the ruling on his motion to reconsider was not effective until the judge entered the corrected the date of the June minute entry, on November 10, 2010, in Iroquois County. Counsel correctly points out that to become effective, a judgment must be “expressed publicly, in words, and at the situs of the proceeding.” *Granite City Lodge No. 272, Loyal Order of the Moose v. City of Granite City*, 141 Ill. 2d 122, 126 (1990) (quoting *People ex rel. Schwartz v. Fagerholm* (1959), 17 Ill.2d 131, 135 (1959)). In this case, the record shows the judge announced her ruling on June 18, 2010, with all parties present at a situs agreed upon by the parties. Thus, we conclude the judgment became effective in June of 2010.

¶ 21 In this case, the judge verbally ordered the docket to stand in place of a written order and this ruling was recorded by the clerk within three days of that decision. Therefore, the judgment was both final and effective in June of 2010. Since a notice of appeal was not filed until November of 2010, the appeal is not timely and must be dismissed.

¶ 22 CONCLUSION

¶ 23 Plaintiff did not file a notice of appeal within 30 days of the entry of the court's final judgment. Therefore, we do not have jurisdiction to address the merits of this appeal.

¶ 24 Appeal dismissed.

Justice Schmidt, specially concurring:

I concur but think it is also important to note that the record shows that the proceedings of June 18, 2010, were recorded. Judge Tungate advised plaintiff's counsel that he could order a transcript. Plaintiff maintains that the court took the matter under advisement on June 18 and yet

failed to provide this court with the transcript of the hearing which was the one piece of evidence with the potential to contradict the written record.