

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).

NO. 4-10-0436

IN THE APPELLATE COURT
OF ILLINOIS

Filed 2/8/11

FOURTH DISTRICT

BOBBI JO COMPAGNI, Administratrix of)	Appeal from
the Estate of DALE JETT II, Deceased,)	Circuit Court of
Plaintiff-Appellant,)	Macoupin County
v.)	No. 08L20
LOCUST STREET RESOURCE CENTER, a/k/a)	
MACOUPIN COUNTY MENTAL HEALTH CENTER,)	Honorable
Defendant-Appellee.)	Patrick J. Londrigan,
)	n,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concur.

ORDER

Held: No appellate jurisdiction exists where the trial court lacked jurisdiction to grant plaintiff's motion to reopen the case that was filed after more than 30 days had expired from the date of the court's final order.

Plaintiff, Bobbi Jo Compagni, Administratrix of the Estate of Dale Jett II, deceased, filed a complaint against defendant, Locust Street Resource Center, a/k/a Macoupin County Mental Health Center (Locust Street), alleging it was negligent in providing monitoring, residential, and supervisory services to decedent, resulting in his death. On Locust Street's motion, the trial court dismissed plaintiff's third amended complaint with prejudice. Plaintiff appeals. We dismiss this appeal for lack of jurisdiction.

Locust Street is a private corporation that offers

various services to mentally-ill individuals. Decedent had a long history of mental illness and had been diagnosed with schizophrenia. He received services from Locust Street as an independent-living client. On October 18, 2006, decedent was found dead in his apartment by Locust Street caseworkers. His death was determined to be the result of exposure and dehydration.

On July 9, 2008, plaintiff, decedent's sister, filed her initial complaint against Locust Street, alleging its negligent acts or omissions resulted in decedent's death. That complaint and two subsequent amended complaints were each dismissed by the trial court on Locust Street's motion. Each time plaintiff was given leave to replead.

On November 25, 2009, plaintiff filed her two-count third amended complaint, raising claims under the Survival Act (755 ILCS 5/27-6 (West 2008)) and the Wrongful Death Act (740 ILCS 180/0.01 through 2.2 (West 2008)). On December 21, 2009, Locust Street filed a motion to dismiss plaintiff's third amended complaint for failing to state a cause of action. On March 2, 2010, the trial court made a docket entry, stating a hearing was conducted on the motion, the motion was granted and the case was dismissed. The record does not contain a transcript of the hearing.

On May 14, 2010, over two months after the trial

court's docket entry, plaintiff filed a petition to reopen the case pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)) and the equitable doctrine of revestment. She asked the court to enter a new order of dismissal. To support her petition, plaintiff alleged a hearing on the motion to dismiss actually occurred on March 1, 2010, following which the court took the matter under advisement and stated it would issue a written ruling. She maintained neither party was present when the court made the decision to grant the motion to dismiss and neither party received notice of the court's March 2, 2010, docket entry. Plaintiff alleged Locust Street's attorney eventually inquired into the matter and learned the case had been dismissed. On May 10, 2010, Locust Street informed plaintiff's attorney that the motion to dismiss the third amended complaint had been granted.

Locust Street did not object to the plaintiff's petition to reopen. On May 14, 2010, the petition to reopen was filed, the trial court entered an order, finding plaintiff's allegations were true and correct. It reinstated and reopened the case. The court, by order of May 14, 2010, then dismissed plaintiff's third amended complaint with prejudice.

This appeal followed.

The facts of this case present a question of appellate jurisdiction. For the reasons that follow, we find jurisdiction

is lacking and dismiss the appeal.

An appealing party must file the notice of appeal "within 30 days after the entry of the final judgment appealed from[.]" Ill. S. Ct. R. 303(a) (eff. June 4, 2008). "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 *** the judgment becomes final only when the signed judgment is filed." Ill. S. Ct. R. 272 (eff. November 1, 1990). Otherwise, a court's order is final when it is publicly expressed in words at the situs of the proceeding, not when the parties receive actual notice of the court's decision. *Granite City Lodge No. 272, Loyal Order of Moose v. City of Granite City*, 141 Ill. 2d 122, 123, 565 N.E.2d 929, 929 (1990).

The facts of this case are similar to those presented in *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 145, 632 N.E.2d 1010, 1010 (1994), where an employer sought administrative review in the circuit court of an Industrial Commission decision that awarded the claimant workers' compensation benefits. Following a hearing, the court took the matter under advisement and, later, issued an order that set aside the Commission's decision. *Mitchell*, 158 Ill. 2d at 146-47, 632 N.E.2d at 1010. The parties were not notified of the court's disposition within the 30-day time frame for filing an appeal. *Mitchell*, 158 Ill. 2d at 147, 632 N.E.2d at 1010-11. At the court's direction, the claimant

filed a section 2-1401 petition, seeking withdrawal or vacation of the court's order. *Mitchell*, 158 Ill. 2d at 146-47, 632 N.E.2d at 1011. Over the employer's objection, the court granted the petition, withdrew its previous order, and reentered the same order so that a timely appeal could be made. *Mitchell*, 158 Ill. 2d at 147, 632 N.E.2d at 1011.

The claimant appealed and the employer cross-appealed, arguing a lack of appellate court jurisdiction. *Mitchell*, 158 Ill. 2d at 147, 632 N.E.2d at 1011. The appellate court upheld jurisdiction and reversed the circuit court's decision. *Mitchell*, 158 Ill. 2d at 147, 632 N.E.2d at 1011. On review, the supreme court vacated the appellate court's judgment and dismissed the claimant's appeal, stating it was unable to conclude that appellate jurisdiction existed. *Mitchell*, 158 Ill. 2d at 145, 632 N.E.2d at 1010.

The supreme court noted that section 2-1401 may not be employed to extend the 30-day time limit for filing an appeal. *Mitchell*, 158 Ill. 2d at 149-50, 632 N.E.2d at 1012. "[R]elief under section 2-1401 is inappropriate where the party seeking relief is simply requesting that the same order be reentered in order to restart the time to file a notice of appeal." *Keener v. City of Herrin*, 235 Ill. 2d 338, 344-45, 919 N.E.2d 913, 917 (2009), citing *Mitchell*, 158 Ill. 2d at 149, 632 N.E.2d at 1012.

In *Mitchell*, 158 Ill. 2d at 150, 632 N.E.2d at 1012-13,

the supreme court also concluded that appellate jurisdiction could not be upheld on grounds of equity, finding neither the trial court nor the appellate court had "'authority to excuse compliance with the filing requirements of the supreme court rules governing appeals.' [Citations.]" The court stated that the lack of notice of a court's order to a party or his counsel, "even if caused by clerical oversight, does not excuse counsel's failure to monitor his case closely enough to become aware that the circuit court had ruled." *Mitchell*, 158 Ill. 2d at 151, 632 N.E.2d at 1013.

Here, on March 2, 2010, the trial court entered a final order that was publicly expressed, in words, and at the situs of the proceeding. Despite having a duty to monitor the case, plaintiff made no inquiry into the matter and only learned of the court's order after inquiry had been made by Locust Street. Plaintiff's knowledge of the court's order came May 10, 2010, well after the expiration of 30 days and no timely notice of appeal was on file. Pursuant to *Mitchell* a section 2-1401 petition may not be used to simply have the same order reentered for the purpose of restarting the time period for filing a notice of appeal. In this instance, that was precisely the relief sought by plaintiff in her petition to reopen and the action taken by the trial court in granting that petition.

Plaintiff notes her petition also sought relief pursu-

ant to the equitable doctrine of revestment, which she argues provides a basis for jurisdiction. Under the revestment doctrine, "litigants may re-vest a trial court with personal and subject matter jurisdiction, after the 30-day period following final judgment, if they actively participate in proceedings that are inconsistent with the merits of the prior judgment." *People v. Bannister*, 236 Ill. 2d 1, 10, 923 N.E.2d 244, 249 (2009). Plaintiff points out that Locust Street did not oppose her petition to reopen the case or contest jurisdiction on appeal. However, Locust Street's acquiescence to plaintiff's course of action does not constitute "active participation" sufficient to warrant application of the revestment doctrine.

Plaintiff further contends the trial court's March 2, 2010, docket entry did not constitute a final order because the court represented to the parties that it would issue a written opinion in the case. Supreme Court Rule 272 (eff. November 1, 1990) provides that the court's judgment is not final 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 ***." Here, following the hearing on Locust Street's motion to dismiss, the court took the matter under advisement. It did not "announce" its final judgment until the following day in its docket entry. At that time, the court made no request that a written judgment be submitted by either party. Rule 272 does not

apply to the facts presented.

In this case, plaintiff failed to appeal the trial court's dismissal of her third amended complaint within the time constraints set forth in the Supreme Court Rules. Therefore, the court lost jurisdiction after 30 days had expired from the entry of its March 2, 2010, order. It had no jurisdiction to grant plaintiff's petition to reopen the case and reenter its previous order. Plaintiff's appeal was untimely and this court lacks appellate jurisdiction.

For the reasons stated, we dismiss plaintiff's appeal.

Appeal dismissed.