

No. 1-12-0370

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

CITIMORTGAGE, INC.,)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County.
)	
v.)	
)	
SHERMAINE BROWN WADE AND ALL)	
UNKNOWN OCCUPANTS,)	No. 11 M1 70778
)	
Defendants)	
)	
(Neser Em Neheh Ali,)	Honorable
)	George F. Scully, Jr.,
Appellant).)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concur in the judgment.

ORDER

¶ 1 *Held:* Appellate court lacked jurisdiction to hear appeal from orders granting a party an extension of time to enforce judgment in a forcible entry and detainer action.

¶ 2 In this appeal from a forcible entry and detainer action, Neser Em Neheh Ali

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contends that the circuit court lacked subject matter jurisdiction and, consequently, its order granting possession to CitiMortgage was void. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3

BACKGROUND

¶ 4 CitiMortgage, Inc. sued to foreclose a mortgage on property owned or occupied by Shermaine Brown Wade and Neser Em Neheh Ali that was pledged as security for a loan. On August 5, 2009, the circuit court entered judgment approving the judicial sale of the mortgaged property. *CitiMortgage, Inc. v. Wade*, No. 08 CH 12504 (Cir. Ct. Cook Cty., Dec. 15, 2008). Ali filed an appeal from that judgment, which was dismissed. *CitiMortgage, Inc. v. Wade*, No. 1-09-2397 (July 1, 2010) (unpublished order under Supreme Court Rule 23). In a subsequent proceeding in the circuit court, Ali sought to vacate the judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The court denied his motion. Ali appealed that dismissal, which we dismissed for lack of jurisdiction. *CitiMortgage, Inc. v. Wade*, No. 1-11-2611 (Oct. 9, 2012) (unpublished order under Supreme Court Rule 23).

¶ 5 Following the termination of the foreclosure proceedings, CitiMortgage brought this forcible entry and detainer action, alleging that Wade and other unknown occupants remained on the property after the sale without the bank's permission. On April 4, 2011, the circuit court entered an order granting possession of the property to CitiMortgage and stayed enforcement of the judgment until June 6, 2011. Neither Wade nor Ali appealed from the entry of that order of possession.

¶ 6 Section 9-117 of the Forcible Entry and Detainer Act (Act) provides that a judgment for

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possession must be enforced within 120 days of entry, unless the court grants an extension of the period of enforcement of the judgment. 735 ILCS 5/9-117 (West 2010). CitiMortgage filed several motions for an extension of time to enforce the judgment, which were granted by the circuit court. The last of these motions was granted by the court on February 7, 2012. Ali filed a notice of appeal of that order on February 8, 2012.

¶ 7 CitiMortgage has not filed a brief in this case. We may nevertheless decide the issues on review without the aid of an appellee's brief and choose to do so here. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 ANALYSIS

¶ 9 It is well established that jurisdiction only arises in this court when a party files a timely notice of appeal. *State Farm Fire and Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 556 (2007); Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). A notice of appeal in a civil case is timely if it is filed within 30 days of the entry of the final judgment appealed from. *Rickhoff*, 394 Ill. App. 3d at 556; Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008). A final judgment is one that “fixes absolutely and finally the rights of the parties in the lawsuit; it is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment.” (Internal quotation marks omitted.) *Indiana Insurance Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22.

¶ 10 The circuit court entered an order of possession in favor of CitiMortgage on April 4, 2011. It was a judgment entered by the court on the merits of the claim and it fixed the rights of

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the parties absolutely and finally. Following its entry, all that remained of CitiMortgage's forcible entry and detainer action was enforcement of the judgment. By definition, it was a final and appealable order. *Indiana Insurance Co.*, 2012 IL App (1st) 103667, ¶ 22. Neither Wade nor Ali appealed from that order within 30 days of its entry.

¶ 11 Rather, the notice of appeal filed by Ali states that he appeals from the February 7, 2012, order granting CitiMortgage's motion for an extension of time to enforce the order of possession pursuant to section 9-117 of the Act. That order was not a final and appealable order because it was not a determination on the merits and did not finally fix the rights of the parties. Thus, no appeal may be taken from that order. Because Ali did not file a timely notice of appeal from the order of possession and only filed a notice of appeal from an order extending the time for enforcement of the final judgment, this court lacks jurisdiction to consider the appeal.

Accordingly, the appeal is dismissed.

¶ 12 Appeal dismissed.