

No. 1-12-2065

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

JOSEPH ARELLANO,)	Appeal from the Circuit Court
)	of Cook County
Plaintiff-,)	
)	
v.)	No. 11 M 301103
)	
ALLEN D. ALSTON,)	Honorable James Synder,
)	Judge Presiding.
Defendant-.)	

Justice Reyes delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal was dismissed for lack of jurisdiction.

¶ 2 Plaintiff Joseph Arellano appeals an order of the circuit court of Cook County denying his motion to strike the mandatory arbitration award and entering judgment in favor of defendant Allen D. Alston. On appeal, plaintiff contends the circuit court abused its discretion in denying

1-12-2065

his motion to strike the mandatory arbitration award because he was not provided with a copy of the award. For the reasons stated below, we dismiss the matter for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 On April 28, 2011, plaintiff filed a cause of action against defendant requesting an amount not in excess of \$30,000 in personal injuries, property damages, and costs. Plaintiff alleged that defendant's vehicle struck plaintiff's bicycle from behind. Defendant claimed contributory negligence as a defense.

¶ 5 On February 10, 2012, a mandatory arbitration hearing was conducted. Both parties along with their counsel were present. An award was entered in favor of the defendant, awarding plaintiff no damages.

¶ 6 On April 13, 2012, plaintiff filed a motion to strike the arbitration award in which he argued the arbitration center never mailed the arbitration award to him. In addition, plaintiff asserted he contacted defendant's counsel on April 6, 2012, and defendant's counsel confirmed that plaintiff did not receive a copy of the award. On April 10, 2012, plaintiff received a "distorted" copy of the award from defendant's counsel. Plaintiff further asserted that the award was never placed in the court file nor was it available on the circuit court of Cook County website.

¶ 7 After briefing and hearing on the matter, the circuit court denied plaintiff's motion to strike on June 14, 2012.¹ On that same date, the circuit court entered judgment on the award in

¹ No record of proceedings was included in the record on appeal.

1-12-2065

favor of defendant.

¶ 8 On July 10, 2012, plaintiff filed a motion to reconsider the denial of his motion to strike and for a bystanders report. The circuit court entered a briefing schedule and the matter was continued to August 27, 2012. On August 1, 2012, defendant filed a response to plaintiff's motion. No reply was filed by plaintiff. The record does not include a ruling on either the motion to reconsider or for the bystanders report.²

¶ 9 On July 13, 2012, plaintiff filed this notice of appeal.

¶ 10 ANALYSIS

¶ 11 We have an independent obligation to consider our jurisdiction and to dismiss when jurisdiction is lacking. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 765 (2009). Jurisdiction is conferred upon the appellate court only through the timely filing of a notice of appeal. *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000). "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Company v. Illinois Farmers Insurance Company*, 232 Ill. 2d 209, 213 (2009). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *People v. Smith*, 228 Ill. 2d 95, 104 (2008).

¶ 12 Rule 303(a) provides, in relevant part:

" (1) The notice of appeal must be filed with the clerk of the circuit court within

² Defendant filed a motion to strike appellant's brief and bystanders report with this court. We took the motion with the case. Considering our conclusion, we decline to entertain the motion as it is moot.

1-12-2065

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. ***

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered."

Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

Thus, while it is not essential that a plaintiff file a posttrial motion to preserve an appeal, the supreme court rules provide that if one is filed, we do not have jurisdiction until the matter is resolved. See *Chand v. Schlimme*, 138 Ill. 2d 469, 477 (1990) (discussing a prior version of Rule 303).

¶ 13 In *Chand*, the plaintiff simultaneously filed a posttrial motion and a notice of appeal. Our supreme court held that pursuant to Rule 303, a timely filed posttrial motion is not deemed "abandoned" by the filing of a notice of appeal. Rather, the notice of appeal is of no effect. *Id.* at 478. The circuit court retains jurisdiction and must rule on the posttrial motion, and if the plaintiff wishes to appeal that ruling, he must file a new notice of appeal within 30 days of the circuit court's ruling on the posttrial motion. *Id.* at 477. See also *In re Application of the County Treasurer*, 214 Ill. 2d 253, 261 (2005) (a notice of appeal is of no effect and must be withdrawn

1-12-2065

if a timely postjudgment motion was filed before or after the date on which the notice of appeal was filed).

¶ 14 In the present case, on July 10, 2012, plaintiff filed a timely posttrial motion, that being the motion to reconsider. While the motion was pending, the notice of appeal was filed on July 13, 2012. The notice of appeal was premature in light of the timely filed motion for reconsideration. The record does not contain evidence that the circuit court disposed of the motion to reconsider. We, therefore, lack appellate jurisdiction. In addition, although we acknowledge the current version of Rule 303 does not require the appellant to withdraw a notice of appeal when a timely posttrial motion is simultaneously pending, we nonetheless find that the reasoning in *Chand* is applicable here as well and produces the same result. Under the present formulation of Rule 303, plaintiff's notice of appeal was likewise premature and of no effect during the pendency of his timely filed posttrial motion. Ill. S. Ct. R. 303(a)(1), (2) (eff. June 4, 2008). Moreover, we may not ascribe waiver of the motion to reconsider to defendant's apparent failure to obtain a ruling on his posttrial motion, given the clear language of Rule 303. *Chand*, 138 Ill. 2d at 477-78. Accordingly, we dismiss this appeal for lack of jurisdiction. *Id.* at 476.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.

¶ 17 Dismissed.

1-12-2065