

No. 1-12-3652

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

CRAMER REALTY & MANAGEMENT CORP.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 M 1723910
)	
LINDELL D. MYERS,)	Honorable
)	James L. Kaplan and
)	Thomas More Donnelly,
Defendant-Appellant.)	Judges Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

- ¶ 1 **Held:** Appeal dismissed for lack of jurisdiction where defendant's second posttrial motion did not extend the time for filing the notice of appeal and defendant filed his notice of appeal more than 30 days after the trial court's denial of his postjudgment motion.
- ¶ 2 Defendant Lindell Myers appeals *pro se* from the trial court's orders denying his motions to vacate the court's order awarding possession of 2330 West Nichols Road Unit D in Arlington Heights (the property) and \$3,301.25 in damages and attorney fees to plaintiff Cramer Realty & Management Corporation. On appeal, defendant contends that the trial court erred when it

denied his motions to vacate because he was not properly served and because plaintiff failed to produce documentary evidence to support its claim. We dismiss.

¶ 3 Although the record on appeal does not include a report of proceedings, the following facts can be gleaned from the common law record.

¶ 4 In September 2012, plaintiff filed a complaint against defendant and all unknown occupants seeking possession of the property and rent or damages in the amount of \$2,320. The record contains returns of service indicating defendant was served on October 2, 2012 when a copy of the summons and complaint was left at the property with a 40-year-old African-American male. On October 10, 2012, the trial court entered an order determining that plaintiff was entitled to possession of the property and to \$3,301.25 in damages and attorney fees. Defendant was not present in court.

¶ 5 On October 17, 2012, Defendant filed a *pro se* motion to vacate or in the alternative to quash service alleging that he was never served with the complaint in the instant case. The trial court denied the motion on October 29, 2012. Defendant filed a second *pro se* motion to vacate the judgment on October 31, 2012, which the trial court also denied. On December 10, 2012, defendant filed the *pro se* notice of appeal that brings this case before this court.

¶ 6 As plaintiff has not filed an appellee's brief, we will consider this appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 7 On appeal, defendant contends that the trial court erred when it denied his motions to vacate because plaintiff was not entitled to a judgment as a matter of law. He argues that he was not provided with an opportunity to "validate" whether or not he was properly served and that plaintiff failed to produce documentary "evidence that a claim existed."

¶ 8 Before reaching the merits of defendant's contentions on appeal, this court will address the issue of jurisdiction as we have an independent duty to consider the issue and dismiss an appeal where our jurisdiction is lacking. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011).

¶ 9 Pursuant to Supreme Court Rule 303(a)(1) (eff. Jun. 4, 2008), a "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, * * * within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Because compliance with Rule 303 is jurisdictional, this court is without jurisdiction to review an appeal that was not filed in a timely manner. *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 23.

¶ 10 In the case at bar, defendant filed a timely postjudgment motion directed against the judgment on October 17, 2012, which was denied on October 29, 2012. As of that date, October 29, 2012, the 30-day time period for filing a notice of appeal began to run. See Supreme Court Rule 303(a)(2) (eff. Jun. 4, 2008) (a party intending to challenge an order disposing of any postjudgment motion must file a notice of appeal within 30 days of the entry of said order or amended judgment; no request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed). Defendant's second postjudgment motion, filed in violation of Supreme Court Rule 274, did not toll or extend the time for the filing of an appeal. See Supreme Court Rule 274 (eff. Jan. 1, 2006) ("A party may make only one postjudgment motion directed at a judgment order that is otherwise final."); *Benet Realty Corp. v. Lisle Savings & Loan Association*, 175 Ill. App. 3d 227, 231-32 (1988) (the filing of a second postjudgment motion, attacking the final judgment, filed after denial of the first postjudgment motion but within 30 days of the final judgment, which only repeats arguments raised

by the first motion, is not "timely" pursuant to Rule 303(a), and "cannot serve to extend the time for filing a notice of appeal"). Such a determination supports one of the purposes of Rule 303, which is to promote the finality of trial court judgments. See *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981) (there "is no provision in the Civil Practice Act or the supreme court rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart").

¶ 11 Here, following the entry of judgment in favor of plaintiff, defendant filed a motion to vacate the judgment on October 17, 2012, *i.e.*, his one postjudgment motion permitted under Rule 274. See Supreme Court Rule 274 (eff. Jan. 1, 2006) (a party may only file one postjudgment motion directed at a judgment). When the trial court denied that motion on October 29, 2012, the 30-day period during which defendant was required to file a notice of appeal began. Although defendant later filed a second motion to vacate, that motion was an improper successive postjudgment motion which the trial court should not have considered or ruled upon (see *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶¶ 11, 16-17), and the filing of that motion did not toll the time during which defendant was required to file his notice of appeal. Therefore, regardless of the trial court's ruling on defendant's second motion to vacate, because defendant failed to file his notice of appeal within 30 days of October 29, 2012, his notice of appeal is untimely. See *Benet Realty Corp.*, 175 Ill. App. 3d at 231-32. Thus, defendant's appeal must be dismissed

¶ 12 Even were we to reach the merits of defendant's contention on appeal, defendant's claim would still fail because the record on appeal does not include a transcript of the proceeding at which the court denied defendant's motion to vacate, or other appropriate substitute (see Supreme Court Rule 323 (eff. Dec. 13, 2005)). Any doubts raised by the insufficiency of the record must be resolved against defendant, who, as the appellant, has the burden to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error.

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Midstate Siding & Window Co. v. Rogers, 204 Ill. 2d 314, 319 (2003), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). When the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means that this court must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

¶ 13 Accordingly, we must dismiss this appeal for lack of jurisdiction.

¶ 14 Appeal dismissed.