

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).

2013 IL App (4th) 120338-U

NO. 4-12-0338

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 11, 2013
Carla Bender
4th District Appellate
Court, IL

PRINCE A. STEVENSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Morgan County
THE COUNTY OF MORGAN, STATE OF ILLINOIS,)	No. 11MR62
Defendant-Appellee.)	
)	Honorable
)	Richard T. Mitchell,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court lacked jurisdiction to consider plaintiff's appeal where posttrial motions remained pending in the trial court.
- ¶ 2 In October 2008, plaintiff, Prince A. Stevenson, was hit by a truck and taken to the hospital. While at the hospital, an officer took possession of \$1,093.78 belonging to him. In March 2009, this money was declared forfeited pursuant to the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 to 14 (West 2008)). In December 2011, Prince *pro se* filed two motions seeking the return of his money, which he alleged the State unlawfully seized. On January 10, 2012, the State filed a motion to dismiss, contending Prince's claim was barred by *res judicata*. On January 20, 2012, Prince *pro se* filed a motion in opposition of the motion to dismiss. On February 23, 2012, the State filed a response to Prince's motion in opposition. On March 1, 2012, the trial court

granted the State's motion to dismiss. On March 5, 2012, Prince *pro se* filed a second motion in opposition of the State's motion to dismiss. On March 9, 2012, a judge's docket order was filed stating the case was closed on March 1, 2012.

¶ 3 On March 14, 2012, Prince *pro se* filed a "motion for the court to issue an order for best copies of the alleged U.S. certified mail & return receipts submitted as evidence." On March 15, 2012, Prince *pro se* filed a "motion to reopen case No[.] 11-MR-62." On March 29, 2012, Prince *pro se* filed a "motion for attorney and reopen case [No.] 11-MR-62." According to the record, none of these three motions have been ruled upon by the trial court. On April 10, 2012, Prince *pro se* filed a notice of appeal. Because of the posttrial motions still pending in the trial court, this court lacks jurisdiction to hear this appeal and we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 On December 1, 2011, Prince *pro se* filed a complaint in the Morgan County circuit court. The complaint stated he was hit by a truck on October 31, 2008, and taken to the hospital by friends. At the hospital, Officer Doug Thompson took possession of his money. After he was released from the hospital, Prince attempted to retrieve his money but was unable to do so.

¶ 6 On December 12, 2011, Prince *pro se* filed a motion entitled "motion return of funds and unlawful seizure of property" in which he stated \$1,093.78 was taken from him by Officer Thompson while he was at the hospital. He stated he had sent three motions to the Morgan County courthouse and one to Don Cook, Jacksonville chief of police. Prince had not been arrested or charged with an offense but was at the hospital

because he had been hit by a truck. He further alleged State's Attorney Chris Reif refused to return his money and told him the money had been forfeited despite the State having no probable cause to seize the money.

¶ 7 Also on December 12, 2011, Prince *pro se* filed a second "motion for return of funds unlawful seizure" in which he stated he was suing Morgan County for the unlawful seizure of his money. He stated he had previously sent copies of the hit-and-run report and was not charged with any crime on October 31, 2008.

¶ 8 On January 10, 2012, the State filed a motion to dismiss in which it noted Prince was claiming error with a 2008 nonjudicial forfeiture. According to the State, pursuant to the Drug Asset Forfeiture Procedure Act (725 ILCS 150/1 to 14 (West 2008)), Prince was notified on December 15, 2008, of the pending forfeiture. This notice informed Prince he had 45 days to contest the pending forfeiture, which he did not do. The property was declared forfeited on March 5, 2009, and Prince did not try to overturn or appeal the forfeiture decision. Further, the State maintained the matter had already been litigated and was barred by *res judicata*.

¶ 9 On January 20, 2012, Prince *pro se* filed a motion opposing the State's motion to dismiss in which he alleged the State was confused about his claim. He attached appendix A, a report showing Officer Thompson seized more than \$1,000 from him, to his motion. Prince further alleged the State failed to provide proof he was properly served with a forfeiture notice in 2008, and because he did not receive proper notice, he contended it was impossible for him to move to overturn or appeal the forfeiture. He also attached appendix B, a copy of a letter from the Morgan County circuit

clerk indicating its records did not contain any case regarding seized funds in Prince's name. Prince also maintained *res judicata* did not apply since he was neither given notice nor did he sign for a notice of pending forfeiture.

¶ 10 On February 23, 2012, the State filed a response to Prince's opposition of its motion to dismiss noting a notice of pending forfeiture was sent to Prince by certified mail on December 16, 2008, and was signed for by Prince on December 17, 2008. The State attached a copy of the certified receipt with Prince's signature dated December 17 and a postage receipt dated December 16. The State further noted the notice of pending forfeiture included a summary of Prince's procedural rights regarding the seized property and the reason for the seizure. During the 45-day period following the notice, Prince did not contest the forfeiture by filing an answer, entry of appearance, motion, or other pleading. On March 6, 2009, a declaration of forfeiture was sent to Prince by certified mail which was signed for. The State attached a copy of the undated certified receipt and a postage receipt dated March 6. The State reiterated its position the issue had been fully litigated in 2008 and 2009 and, thus, the issue was barred by *res judicata*.

¶ 11 On March 1, 2012, a judge's docket order was filed which stated, "[a]fter review of the file the [c]ourt grants [the State's] motion to dismiss based upon *res judicata*."

¶ 12 On March 5, 2012, Prince *pro se* filed a second motion opposing the State's motion to dismiss, realleging the claims made in his earlier motion and requesting the court deny the State's motion and grant him the return of his money.

¶ 13 On March 9, 2012, a second judge's docket order was filed which stated,

"[t]he petition to dismiss was granted on March 1, 2012. Case closed."

¶ 14 On March 14, 2012, Prince *pro se* filed a "motion for the court to issue an order for best copies of the alleged U.S. certified mail & return receipts submitted as evidence." In this motion, Prince stated he had contacted the United States postal service regarding the alleged receipt numbers listed on the State's evidence and the post office had launched an investigation because the certified mail and return receipt numbers were not listed in their tracking system as being used by the postal service. Prince further stated a request for best copies was being made because those supplied by the State were "dark" and "unlegible [*sic*] in an attempt to conceal what appears to be a fraud." He attached copies of the referenced receipts, which were illegible.

¶ 15 On March 15, 2012, Prince *pro se* filed a "motion to reopen case No[.] 11-MR-62" in which he again stated the post office had launched an investigation into the alleged certified mail and return receipt services. He reiterated his claim regarding the copies of the receipts being dark and illegible in an attempt to cover up a fraud. Additionally, Prince alleged on February 10, 2012, the State was given 30 days to respond to his motion in opposition and the court granted the State's motion to dismiss on March 1, 2012, without giving him an opportunity to respond to the State's response.

¶ 16 On March 29, 2012, Prince *pro se* filed a "motion for attorney and reopen case [No.] 11-MR-62." In this motion, he again maintained the United States postal service had launched an investigation into the certified mail and return receipt service and the State was attempting to conceal a fraud by providing him with the illegible copies because he had never signed for the documents. Prince also requested the court appoint

him an attorney.

¶ 17 On April 10, 2012, Prince *pro se* filed a notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Prince argues the seizure of his money violated his constitutional right to be free from unreasonable seizure. The State initially contends this court lacks jurisdiction pursuant to Illinois Supreme Court Rule 303(a)(2)(eff. June 4, 2008) because posttrial motions are pending in the trial court. We agree with the State.

¶ 20 Rule 303(a)(2) provides, in relevant part, as follows:

"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)(2) (eff. June 4, 2008).

"[W]hen there has been no disposition of a timely posttrial motion directed against the judgment, a notice of appeal does not vest the appellate court with jurisdiction." *People v. Willoughby*, 362 Ill. App. 3d 480, 482, 840 N.E.2d 803, 805 (2005).

¶ 21 In this case, defendant *pro se* filed (1) a "motion for the court to issue an order for best copies of the alleged U.S. certified mail & return receipts submitted as evidence" on March 14, 2012; (2) a "motion to reopen case No[.] 11-MR-62" on March 15, 2010; and (3) a "motion for attorney and reopen case [No.] 11-MR-62" on March 29,

2010. These motions are clearly posttrial motions directed against the judgment. Our review of the record does not reveal any rulings made by the trial court on any of these three motions. We note abandonment of a pending motion requires more than filing a notice of appeal before the disposition of a postjudgment motion; an affirmative indication of abandonment is necessary. *Willoughby*, 362 Ill. App. 3d at 482, 840 N.E.2d at 805. Here, Prince filed a brief with an argument section consisting of four short paragraphs of conclusory assertions with no citation to authority. Nothing in his brief indicates an intent to abandon the motions currently pending in the trial court. Further, in his reply brief, Prince contends this court has jurisdiction but fails to expand on the issue other than to state he filed a timely notice of appeal on April 10, 2012. While we recognize Prince filed a notice of appeal, his appeal is premature due to his pending posttrial motions in the trial court and, thus, this court lacks jurisdiction to address the merits of this case.

¶ 22

III. CONCLUSION

¶ 23

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

¶ 24

Appeal dismissed.