

No. 1-13-0312

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

MICHAEL SAVICKAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 M1 302879
)	
AUDREY KRAUSE,)	Honorable
)	Thomas M. Donnelly,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of appellate jurisdiction, where the circuit court's dismissal of this suit for want of prosecution and its refusal to vacate that dismissal were not final and appealable orders.

¶ 2 Plaintiff-appellant, Michael Savickas, filed the instant suit against defendant-appellant, Audrey Krause, to recover for injuries allegedly sustained in an automobile accident. The circuit court ultimately dismissed plaintiff's suit, without prejudice, for want of prosecution (DWP) and subsequently denied plaintiff's motion to vacate the DWP. Plaintiff has now appealed from that decision. Because the DWP of plaintiff's suit and the denial of plaintiff's motion to vacate that

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DWP were not final and appealable orders, we dismiss this appeal for lack of appellate jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 On October 24, 2011, plaintiff initiated this suit by filing a personal injury complaint against defendant. In his complaint, plaintiff alleged that defendant had rear-ended him in an automobile accident on November 9, 2009, and that as a result of this accident plaintiff had suffered a concussion, a back strain, and a neck strain. Plaintiff sought \$9,500 in damages. The complaint was filed *pro se*, and the record reflects that plaintiff was disabled, living on government assistance, and was permitted to proceed with his suit without costs as he was an indigent person.

¶ 5 This matter was referred for mandatory arbitration, and on April 19, 2012, an arbitration panel awarded plaintiff \$3,200. Plaintiff rejected the arbitration award on May 15, 2012. The record reflects that a dismissed for want of prosecution order was entered on June 14, 2012, a scheduled status date, and that the circuit court granted plaintiff's motion to vacate that DWP on July 10, 2012.

¶ 6 Thereafter, this matter was set for a pretrial hearing and a trial date of October 15, 2012. However, on September 12, 2012, plaintiff filed motions seeking: (1) the appointment of *pro bono* counsel to represent him; and (2) a 60-day continuance of the pretrial hearing and trial dates. Both motions were premised upon plaintiff's disability, poor health, a recent hospitalization, and plaintiff's instruction from his doctor to "avoid any stress." Plaintiff's motions were denied on October 12, 2012. When plaintiff failed to appear at the October 15, 2012, trial date, defendant made an oral motion to DWP this suit. Defendant's oral motion was entered and continued to November 16, 2012, and plaintiff subsequently filed a written response.

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The circuit court granted the DWP motion on November 16, 2012, indicating in its order that all the parties had received notice of the DWP motion and concluding: "This matter is dismissed for want of prosecution without prejudice."

¶ 7 On December 12, 2013, plaintiff filed a motion to vacate the DWP of his suit.¹ That motion was denied on December 28, 2012, and plaintiff filed his notice of appeal on January 17, 2013.

¶ 8 II. ANALYSIS

¶ 9 On appeal, neither party has questioned this court's appellate jurisdiction. However, we have a duty to *sua sponte* determine whether we have jurisdiction to decide the issues presented. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 10 Except as specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) *et seq.*; *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 11 Here, plaintiff has appealed from the circuit court's denial of his motion to vacate the DWP of his suit. However, the DWP of a suit is not a final order which can be appealed because a plaintiff has an absolute right to refile that suit within one year of the dismissal. 735 ILCS 5/13-217 (West 2010); *BankFinancial, FSB v. Tandon*, 2013 IL App (1st) 113152, ¶¶ 7-8; *Wold*

¹ On November 6, 2012, plaintiff also filed motions to reconsider the denial of his prior motions for the appointment of *pro bono* counsel and for a 60-day continuance. There is no indication in the record that these motions were ever considered or ruled upon by the circuit court.

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v. Bull Valley Management Co., Inc., 96 Ill. 2d 110, 112 (1983); *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). Moreover, because a DWP order "is made nonfinal and nonappealable by the fact that there is an absolute right to refile, a trial court's order denying the vacature of the DWP must also be nonfinal and nonappealable since there is an absolute right to refile following that order." *Wilson v. Evanston Hospital*, 257 Ill. App. 3d 837, 840 (1994).

¶ 12 Furthermore, the circuit court's original DWP order specifically indicated that plaintiff's complaint was dismissed "without prejudice." It is well recognized that the dismissal of a complaint "without prejudice" is " 'on its face a non-appealable order.' " *Flores*, 91 Ill. 2d at 114 (quoting *Arnold Schaffner, Inc. v. Goodman*, 73 Ill. App. 3d 729, 731 (1979)); *Paul H. Schwendener, Inc. v. Jupiter Electric Co., Inc.*, 358 Ill. App. 3d 65, 73 (2005) ("An order dismissing an action 'without prejudice' is not deemed final for purposes of appeal."). Pursuant to the above authority, we do not have jurisdiction to consider plaintiff's appeal because the circuit court clearly and specifically dismissed plaintiff's suit "for want of prosecution without prejudice."

¶ 13 We acknowledge that where a timely motion to vacate a DWP has been filed, the one-year refiling period does not begin to run until the circuit court has ruled on the motion to vacate the DWP. *Wilson*, 257 Ill. App. 3d at 839. In addition, "after the period for refiling provided by section 13-217 expires, a DWP order operates as a termination of the litigation between the parties, and constitutes a final and appealable order." *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 508 (1998). In this case, the circuit court denied plaintiff's motion to vacate the DWP on December 28, 2012, and plaintiff therefore had until December 28, 2013, to refile his suit against defendant. The record indicates that, rather than timely refile his suit, plaintiff has instead pursued this improper appeal. He therefore appears to have missed his

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opportunity to timely refile this action pursuant to section 13-217, and also appears to have failed to file a timely notice of appeal following the December 28, 2013, date upon which the circuit court's refusal to vacate the DWP became final and appealable. *Id.*; Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008) ("The 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 ***.").

¶ 14 Nevertheless, as our supreme court has "previously observed in both *Flores* and *Wold*, plaintiffs are statutorily afforded the option of refileing under section 13-217 and the choice of litigation tactics is left to plaintiffs. However, if plaintiffs err and fail to meet the statutorily prescribed time limitations, their dilemma is a result of their own doing." *S.C. Vaughan Oil Co.*, 181 Ill. 2d 489, 508; see also *Wilson*, 257 Ill. App. 3d at 840 ("While this conclusion may seem harsh, we note that plaintiff, rather than seek the more costly means of appealing the decisions of the trial court, could have simply refiled the complaint to preserve [his] cause of action.").

¶ 15 Finally, we briefly note that in addition to seeking a reversal of the circuit court's DWP order, plaintiff also asks this court to issue an order compelling the circuit court to appoint a *pro bono* attorney to represent him upon remand. To the extent that we have rejected plaintiff's challenge to the circuit court's DWP order on the basis that we lack jurisdiction, this issue is moot. *In re Jonathan P.*, 399 Ill. App. 3d 396, 400 (2010) ("Generally, courts of review do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided."). To the extent that this request asks this court to review the circuit court's denial of plaintiff's motion for such counsel, we note again that—subject to exceptions not relevant here—this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994) *et seq.* The denial of plaintiff's request for a *pro bono* attorney is not such a final order, because it did not dispose of

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the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and if affirmed the execution of that order would not be the only task remaining for the circuit court. *Brentine*, 356 Ill. App. 3d at 765.

¶ 16

III. CONCLUSION

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

¶ 18 Appeal dismissed.