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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

YVETTE WALKER, Individually and as)	Appeal from the Circuit Court
Special Administrator of the Estate of)	of Winnebago County.
Mashya Walker, Deceased,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-L-198
)	
BASSUM SOUFAN, Individually and as)	
Agent of Rockford Memorial Hospital, as)	
Agent of Rockford Health System, and as)	
Agent of Bassam Soufan, M.D., Ltd.;)	
ROCKFORD MEMORIAL HOSPITAL;)	
ROCKFORD HEALTH SYSTEM; and)	
BASSAM SOUFAN, M.D., LTD.,)	Honorable
)	Edward J. Prochaska,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

- ¶ 1 *Held:* Walker did not timely obtain a ruling on one of her motions to extend the time in which to file a posttrial motion, which rendered Walker's later-filed notice of appeal untimely. We therefore dismissed the appeal for lack of jurisdiction.
- ¶ 2 After her unborn child was delivered stillborn, plaintiff, Yvette Walker (Walker), brought suit against her doctor, Bassam Soufan, individually and as an agent of various entities

(Rockford Memorial Hospital, Rockford Health System, and Bassam Soufan, M.D., Ltd.). Walker also named as defendants the entities themselves. The trial court granted the motion of Rockford Memorial Hospital and Rockford Health System (collectively Rockford Hospital) for summary judgment, and the cause proceeded to trial against Bassam Soufan and Bassam Soufan, M.D., Ltd. (collectively Soufan defendants). The jury returned a verdict in favor of the Soufan defendants.

¶ 3 On appeal, Walker argues that: (1) the trial court erred in allowing the Soufan defendants' expert witness, Dr. Fredericksen, to testify at trial; (2) the trial court's curative instruction to the jury to disregard over 30 minutes of testimony and exhibits was prejudicial; (3) the trial court erred in granting Rockford Hospital's motion for summary judgment; and (4) it was reversible error for the trial court to strike three African American venire persons for cause. We do not address the merits of these arguments because we lack jurisdiction in this case. We therefore dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 Walker initially filed suit against defendants in December 2002. The case was scheduled to proceed to trial in January 2011. That month, plaintiff sought and obtained an order voluntarily dismissing the action without prejudice.

¶ 6 Walker refiled the action in June 2011, alleging claims of wrongful death, survival, and recovery under the Family Expense Act (750 ILCS 65/15 (West 2000)). The trial court granted defendants' motion to adopt the pleadings, discovery, and court orders from the prior litigation, subject to good faith requests for additional discovery or witnesses.

¶ 7 In September 2012, Rockford Hospital filed a motion for summary judgment, arguing that Walker could not hold it vicariously liable for the alleged negligent actions of the Soufan

defendants because Walker independently and specifically selected Soufan to provide her care. The trial court granted Rockford Hospital's motion for summary judgment in January 2013.

¶ 8 Walker filed a first amended complaint on March 7, 2013. A few days later, a jury trial commenced against the Soufan defendants. The jury returned a verdict for the Soufan defendants, and the trial court entered the verdict on March 19, 2013.

¶ 9 On April 15, 2013, Walker filed a motion to extend the time to file a posttrial motion. The trial court granted the motion on April 18, 2013, extending the time to file the motion to June 11, 2013. On that day, Walker filed another motion to extend the time to file her posttrial motion. On June 13, 2013, the trial court granted the motion, extending the time until June 25, 2013. On that day, Walker filed a third motion to extend the time. She filed an amended motion to extend time on July 9, 2013. Walker requested an extension of time to the following day to permit the filing of her posttrial motion, in which she sought judgment notwithstanding the verdict or a new trial. The trial court granted the motion to extend time on July 10, 2013, and it allowed the filing of the posttrial motion *instanter*. The Soufan defendants filed a written response to the posttrial motion, and Walker filed a written reply in support of her motion.

¶ 10 The trial court denied Walker's posttrial motion on November 27, 2013. Walker filed a notice of appeal on December 26, 2013.

¶ 11 **II. ANALYSIS**

¶ 12 Although none of the parties dispute our jurisdiction in this case, a reviewing court has an independent duty to consider its jurisdiction and to dismiss an appeal where jurisdiction is lacking. *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 73; see also *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceedings in a cause of action, regardless

of whether either party has raised the issue.”). It is a jurisdictional and mandatory requirement that a notice of appeal be timely filed (*Secura Insurance Co.*, 232 Ill. 2d at 213), and neither the trial court nor an appellate court has the authority to excuse compliance with the filing requirements set forth by supreme court rules (*Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20).

¶ 13 Under Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008), a party must file a notice of appeal within 30 days after 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, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions.” In order to determine whether a “timely posttrial motion” has been filed, we look to section 2-1202(c) of the Code of Civil Procedure (735 ILCS 5/2-1202(c) (West 2012)), which dictates the time requirements for filing posttrial motions. It states: “Posttrial motions must be filed within 30 days after the entry of judgment *** or within any further time the court may allow within the 30 days or any extensions thereof.” 735 ILCS 5/2-1202(c) (West 2012). Under section 2-1202(c), a party seeking an extension of time from the original 30-day period must obtain an extension within that 30-day timeframe. *Manning v. City of Chicago*, 407 Ill. App. 3d 849, 852 (2011). Similarly, if the party seeks a second extension or additional extensions of time in which to file the posttrial motion, he “must *obtain and secure* this extension prior to the expiration of the previously extended deadline.” (Emphasis in original). *Id.* If the extension is not entered within the deadline, a subsequent notice of appeal which would otherwise vest jurisdiction in the appellate court is “not viable.” *Id.*

¶ 14 The application of these principles is well-illustrated in *Manning*. There, the trial court entered final judgment on the jury's verdict against the plaintiff and for the defendants on September 4, 2008. *Id.* at 854. Within 30 days, the plaintiff requested an extension of time and the trial court granted the motion, allowing the plaintiff until December 19, 2008, to file his posttrial motion. The plaintiff filed a second motion for an extension of time on December 18, 2008, within the deadline set forth by the court. *Id.* However, the trial court did not grant the motion until December 29, 2008, which was past the December 19, 2008, deadline. Although the trial court thereafter proceeded to grant additional motions for extensions, the appellate court held that after the December 19 deadline passed with no ruling granting an additional extension, the plaintiff's eventual notice of appeal was untimely. *Id.* at 855. See also *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 554-55, 559 (2003) (even though the plaintiff timely requested an extension of time in which to file a posttrial motion, the trial court did not grant the request by the deadline, rendering the plaintiff's notice of appeal untimely); *Trentman v. Kappel*, 333 Ill. App. 3d 440, 443-44 (2002) (same).

¶ 15 Here, the trial court entered the jury's verdict on March 19, 2013. Walker had until April 18, 2013, to either file her posttrial motion or request and obtain an extension of time in which to file the motion. She met this deadline, as she filed a motion for an extension of time on April 15 and the trial court granted the motion on April 18. The trial court gave Walker until June 11, 2013, to file the posttrial motion. On that day, Walker filed another motion to extend the time to file her posttrial motion. However, Walker had to obtain an order granting the extension the same day in order to comply with Rule 303(a)(1) and section 2-1202(c). The trial court did not grant the motion to extend time until June 13, 2013, at which point the time to appeal had

expired. Therefore, Walker's December 26, 2013, notice of appeal could not effectively confer jurisdiction upon this court.

¶ 16 We recognize that the Soufan defendants did not raise the issue of jurisdiction in the trial court, and none of the defendants raise the issue on appeal. However, *laches*, agreement, waiver, or estoppel, including a party's failure to alert the appellate court of a jurisdictional defect, cannot vest us with jurisdiction where it is otherwise lacking. *Manning*, 407 Ill. App. 3d at 856. As stated, we have an independent duty to consider our jurisdiction and dismiss an appeal where jurisdiction is lacking. *Uesco Industries, Inc.*, 2013 IL App (1st) 112566, ¶ 73

¶ 17 We also recognize that the Soufan defendants actively opposed Walker's posttrial motion, which leads to the question of whether the revestment doctrine applies. The revestment doctrine applies only where the parties actively participate, without objection, in proceedings that are inconsistent with the merits of the prior judgment. *Id.* To be inconsistent with the merits, the conduct must be able to be fairly construed as an indication that the parties do not view the order entered as final and binding. *Id.* A defendant's argument that a judgment should not be set aside is not conduct that is inconsistent with the merits of the prior judgment, and it therefore will not serve to revest the trial court with jurisdiction. *Id.*; see also *People v. Bailey*, 2014 IL 115459, ¶ 27 (attempting to defend the merits of the prior judgment cannot be considered inconsistent with the prior judgment, so the revestment doctrine does not apply in such situations); *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶ 12 (a defendant's active contesting of a motion to reconsider does not revest jurisdiction in the trial court). Accordingly, the Soufan defendants' actions in opposing the merits of Walker's posttrial motion did not revest jurisdiction in the trial court, as they were defending the merits of the final judgment.

¶ 18 As Walker did not timely obtain an extension of time to file her posttrial motion within the time allowed by the initial extension of time, the appeal time commenced and expired, and this court never acquired jurisdiction to consider any appeal attacking the original judgment. Walker's subsequently-filed notice of appeal was ineffective, and we do not have jurisdiction to consider the merits of the appeal.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we dismiss the appeal for lack of jurisdiction.

¶ 21 Appeal dismissed.