

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).

2014 IL App (4th) 130966-U

NO. 4-13-0966

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 7, 2014
Carla Bender
4th District Appellate
Court, IL

CACH, LLC,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
LYDIA MAHR,)	No. 13SC1016
Defendant-Appellant.)	
)	Honorable
)	John Madonia,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Pope concurred in the judgment.

ORDER

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

¶ 2 Plaintiff, Cach, LLC, filed a breach-of-contract complaint against defendant, Lydia Mahr. Following a bench trial, the trial court entered judgment in plaintiff's favor. Defendant appeals, *pro se*, arguing the court erred by admitting plaintiff's exhibits into evidence at trial. We dismiss this appeal for lack of appellate jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On February 26, 2013, plaintiff filed a complaint against defendant, alleging breach of contract based upon allegations that defendant defaulted on her obligation to make payments on a credit card account and seeking damages in the amount of \$8,028.13. On September 30, 2013, a bench trial was conducted in the matter. The record contains neither a

report of proceedings nor a bystander's report setting forth what occurred at trial; however, a docket entry reflects witnesses were sworn in, evidence was heard, and the court admitted plaintiff's exhibit Nos. 1 through 17 into evidence. The record also shows the court entered judgment in plaintiff's favor for \$8,028.13, plus costs.

¶ 5 On October 30, 2013, defendant filed both a notice of appeal and a motion to reconsider. The record does not reflect that defendant's motion to reconsider was ever addressed or ruled upon by the trial court.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Initially, we note "[a] reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). Although no jurisdictional issue has been raised or addressed by the parties in this case, the record reflects one exists which prevents us from reaching the merits of defendant's appeal.

¶ 9 "The filing of a notice of appeal 'is the jurisdictional step which initiates appellate review.' " *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058 (quoting *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7, 694 N.E.2d 562, 563 (1998)). "Unless there is a properly filed notice of appeal, a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it." *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058. Illinois Supreme Court Rule 303(a) (eff. May 30, 2008), concerning the filing of appeals in civil cases, provides as follows:

"(1) 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, 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*. A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion." (Emphases added.)

¶ 10

In *Chand v. Schlimme*, 138 Ill. 2d 469, 477, 563 N.E.2d 441, 445 (1990), the

supreme court concluded that a notice of appeal filed simultaneously with a posttrial motion had no effect, stating "a notice of appeal that a party files before the circuit court has disposed of a timely post-trial motion has no effect." That case addressed a prior version of Rule 303(a), which provided that " 'a notice of appeal filed before the entry of the order disposing of the last pending post-trial motion shall have no effect and shall be withdrawn,' " and it required a new notice of appeal to be filed once an order disposing of the postjudgment motion had been entered. *Chand*, 138 Ill. 2d at 476, 563 N.E.2d at 444 (Emphasis omitted.) (quoting 107 Ill. 2d R. 303(a)). Nevertheless, despite the applicability of a previous version of Rule 303(a), the holding in *Chand* remains applicable as the current version of Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) provides that "a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion *** *becomes effective* when the order disposing of said motion or claim is entered." (Emphasis added.)

¶ 11 Here, the record shows defendant filed both her notice of appeal and motion to reconsider on October 30, 2013, within 30 days after the trial court entered judgment in plaintiff's favor on September 30, 2013. Defendant's motion to reconsider was timely filed but the record fails to reflect that it was ever disposed of by the trial court. Thus, because defendant's notice of appeal was "filed before the entry of the order disposing of the last pending postjudgment motion," it had not yet become effective and could not confer jurisdiction on this court. Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008). We lack jurisdiction to address the merits of defendant's appeal.

¶ 12 III. CONCLUSION

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

¶ 14

Appeal dismissed.