

**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) 140386-U

NO. 4-14-0386

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 20, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

GLEND A R. WITHERS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
HERMAN OLIVER,	)	No. 13SC1189
Defendant-Appellee.	)	
	)	Honorable
	)	Mark Goodwin,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* This court lacks jurisdiction to consider plaintiff's appeal where she failed to file a timely notice of appeal pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008).

¶ 2 In November 2013, plaintiff, Glenda R. Withers, filed a *pro se* small claims complaint seeking damages from defendant, Herman Oliver, for faulty workmanship. In April 2014, the trial court entered judgment in favor of defendant. Proceeding *pro se*, plaintiff appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2013, plaintiff filed a *pro se* small claims complaint against defendant seeking damages in the amount of \$10,000. She alleged "faulty workmanship." At a December 2013 hearing, defendant appeared *pro se* and denied the claim. He requested a bench

trial.

¶ 5 On April 1, 2014, a bench trial was held. No transcript or bystander's report appears in the record. The only record of what occurred appears in a docket entry. According to the docket sheet:

"Case called. Plaintiff present prose [*sic*]. Defendant present prose [*sic*]. Motion to exclude witnesses allowed. Sworn testimony heard. Plaintiffs exhibits 1-9 admitted. Closing arguments heard. Court finds the [p]laintiff has not met her burden of proof. Judgment is entered in favor of the [d]efendant and against the [p]laintiff. Both parties to pay own court costs. Exhibits may be submitted for copies after 30 days if no motions have been filed. Docket to stand as order of the [c]ourt."

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, plaintiff, proceeding *pro se*, argues the trial court erred when it ruled in defendant's favor solely because the parties lacked a written agreement. Defendant did not file an appellee brief.

¶ 9 Although this court has the discretion to decide an appeal where an appellee's brief has not been filed (see *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)), we cannot here because this court lacks jurisdiction as plaintiff failed to file a timely notice of appeal.

¶ 10 Illinois Supreme Court Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008))

provides a notice of appeal must be filed within 30 days after the entry of a final judgment. In this case, the trial court dismissed plaintiff's complaint on April 1, 2014. Therefore, plaintiff had 30 days from April 1, 2014, to file her notice of appeal. She failed to do so, filing her notice of appeal on May 6, 2014.

¶ 11 This court has stated:

"The timely filing of a notice of appeal is both jurisdictional and mandatory. [Citation.] Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. [Citation.] The time for filing a notice of appeal is governed by supreme court rules. [Citation.] Our supreme court has emphasized its rules are not aspirational or mere suggestions. [Citation.] Supreme court rules have the force of law, and the presumption must be that they will be obeyed and enforced *as written*. (Emphasis added.) [Citations.] Additionally, our supreme court has emphasized the appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals. [Citation.] Accordingly, we apply the supreme court rules as they are written." (Internal quotation marks omitted.) *People v. Tapp*, 2012 IL App (4th) 100664, ¶ 3, 976 N.E.2d 23.

Therefore, we do not have jurisdiction over this case, as it is lacking a timely notice of appeal.

¶ 12

### III. CONCLUSION

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

¶ 14 Appeal dismissed.