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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

RUTA ZENTIKIENE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 13 L 9298
)	
AMERIKOS LIETUVIS CORPORATION, BRONIUS)	
ABRUTIS, and KAMILE NEMEIKAITE AGUIRRE,)	Honorable
)	John P. Callahan,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where the record on appeal demonstrated plaintiff's motion to reconsider was filed 32 days after the dismissal of her second amended complaint with prejudice.
- ¶ 2 Plaintiff Ruta Zentikiene (plaintiff) appeals the dismissal with prejudice of her nine-count second amended complaint alleging defamation *per se*, defamation *per quod*, and false light against defendants Amerikos Lietuvis Corporation, Bronius Abrutis, and Kamile Nemeikaite

Aguirre (collectively defendants).¹ Plaintiff asserts that the circuit court erred in holding her to a heightened pleading standard and finding she did not allege actual malice. For the reasons that follow, we dismiss this appeal for lack of jurisdiction.

¶ 3

BACKGROUND

¶ 4 Initially, we note that the record does not contain any reports of proceedings. The common law record reveals the following relevant information.

¶ 5 On August 19, 2013, plaintiff filed a two-count complaint alleging defamation *per se* and intentional infliction of emotional distress based on an article published in *Amerikos Lietuvis*, a Lithuanian-language newspaper. A certified translation of the article, which plaintiff asserted was entitled "Lured by the Offer of the Supposed Bride," was attached to the complaint. Plaintiff alleged the article described her relationship with her former husband Ricardas Becius (Becius) and falsely imputed that she provided false information to police, embezzled funds, and used Becius' credit card when unauthorized to do so. She further alleged that defendants "knowingly made fabricated and malicious statements to the public about Plaintiff with the intent to cause and/or inflict severe emotional distress."

¶ 6 Plaintiff was subsequently granted leave to amend her complaint on November 19, 2013. The first amended complaint, filed December 3, 2013, corrected a statutory citation and changed the title of the article to "The Outcome of a Fictitious Marriage-Financial Collapse and Nights in Detention."

¶ 7 On December 6, 2013, defendants filed a motion to dismiss the amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). On March 28, 2014, after the matter was fully briefed and argued, the circuit court granted defendants' motion. In so

¹ We have spelled the parties' names as they appear in the notice of appeal.

ordering, the circuit court dismissed the intentional infliction of emotional distress count with prejudice and granted plaintiff leave to file a second amended complaint for defamation. On April 30, 2014, plaintiff filed her second amended complaint alleging three counts each of defamation *per se*, defamation *per quod*, and false light against each defendant.

¶ 8 On June 13, 2014, defendants filed a motion to dismiss plaintiff's second amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) arguing that plaintiff had failed to set forth facts required to plead and prove malice or falsity. Defendants prayed that plaintiff's second amended complaint be dismissed with prejudice and that "this [c]ourt grant an award of attorneys' [*sic*] fees in [d]efendants' favor" pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 9 On September 29, 2014, the circuit court, after considering the briefs and hearing argument on the matter, granted defendants' motion. The circuit court found plaintiff failed to allege facts supporting actual malice and that plaintiff would not be able to allege sufficient facts regarding actual malice on repleading. The circuit court, therefore, dismissed the second amended complaint with prejudice. The court further denied defendant's request for Rule 137 sanctions.

¶ 10 Thirty-two days later, on October 31, 2014, plaintiff filed a motion to reconsider in which she asserted that the circuit court applied the wrong pleading standard to her second amended complaint. After hearing arguments from counsel, on November 19, 2014, the circuit court denied plaintiff's motion to reconsider. The order does not indicate the basis for the denial of the motion. On December 19, 2014, plaintiff filed her notice of appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff contends this court is vested with jurisdiction pursuant to Illinois

Supreme Court Rule 301 (eff. Feb. 1, 1994). Defendants failed to address the matter of jurisdiction. See Ill. S. Ct. R. 341(i) (eff. Feb. 6, 2013) (a jurisdictional statement "need not be included except to the extent that the presentation by the appellant is deemed unsatisfactory."). We have an independent obligation to consider our jurisdiction and to dismiss when jurisdiction is lacking. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 765 (2009). Jurisdiction is conferred upon the appellate court only through the timely filing of a notice of appeal. *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *In re Estate of York*, 2015 IL App (1st) 132830, ¶ 34.

¶ 13 "To vest the appellate court with jurisdiction a party must file a notice of appeal within 30 days after entry of the judgment appealed from, or within 30 days after entry of an order disposing of a *timely* post-[judgment] motion." (Emphasis added.) *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984); see also Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). Section 2-1203(a) of the Code requires that a postjudgment motion be filed within 30 days of the judgment. 735 ILCS 5/2-1203(a) (West 2014). If such a motion is timely filed it will toll the time for the notice of appeal. *In re Application of the County Treasurer*, 214 Ill. 2d 253, 261 (2005). If a party, however, "files a postjudgment motion more than 30 days after the entry of final judgment, the motion will not toll the time for filing a notice of appeal." *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 21 (citing *In re Application of the County Treasurer*, 214 Ill. 2d at 261).

¶ 14 In this case, plaintiff filed her motion to reconsider 32 days after her second amended complaint was dismissed with prejudice. Accordingly, plaintiff's motion to reconsider is untimely, and we lack jurisdiction to consider the matter. See *In re Application of County*

Treasurer, 208 Ill. App. 3d 561, 563-64 (1990) (appeal dismissed for lack of jurisdiction where a posttrial motion was untimely filed more than four months after the final judgment was entered); *Lampe v. Pawlarczyk*, 314 Ill. App. 3d 455, 469-70 (2000) (appeal dismissed for lack of jurisdiction where the plaintiff's postjudgment motion was untimely filed more than 30 days after the final judgment, and hence did not toll the time for filing the notice of appeal).

¶ 15 In a petition for rehearing, plaintiff asks us to retain jurisdiction because, despite her motion to reconsider having a file stamp of October 31, 2014, she contends the motion was timely electronically filed on October 29, 2014. In support of her position, plaintiff attaches two documents to her petition: (1) a print out from what appears to be the Clerk of the Circuit Court of Cook County's electronic filing system indicating an undisclosed document was filed in this matter on October 29, 2014, at "8:16:54" p.m.; and (2) an email to plaintiff's counsel dated October 29, 2014, at 8:17 p.m. which indicates a motion was submitted on October 29, 2014, at 8:16:54 p.m.²

¶ 16 In response to plaintiff's petition, defendants argue that plaintiff did not take any steps prior to filing her appeal to amend the record to reflect that she had attempted to file her motion to reconsider on October 29, 2014, but was prevented from doing so.

¶ 17 Plaintiff's documents are not appropriately before this court. First, neither document is included in the record on appeal. Second, we cannot consider documents included in an appendix to a petition for rehearing. See *Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1042 (1999)

² We note that according to Cook County Circuit Court General Administrative Order 2014-02 (eff. July 15, 2013), the electronic filer should receive *two* confirmation emails: (1) a "notice of receipt;" and (2) a "notice of acceptance." The "notice of receipt" is emailed to the filer "promptly" after the Clerk's office receives the document, and is thus the first email received by the filer. The "notice of acceptance" is emailed once the document has been accepted by the Clerk's Office. Plaintiff has attached only the "notice of receipt" email to her petition for rehearing.

("If the materials are not taken from the record, they may not generally be placed before an appellate court by way of an appendix."). Furthermore, plaintiff has not moved to supplement the record to include these documents. See *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 32 (allowing litigants to file petition for rehearing and supplement the record). Even if plaintiff had attempted to supplement the record, it is "well settled that matters not properly part of the record and not considered by the court in the proceedings below will not be considered on review even if they are included in the record." *Garvy v. Seyfarth Shaw LLP*, 2012 IL App (1st) 110115, ¶ 26; see Ill. S. Ct. R. 329 (eff. Jan. 1, 2006) ("Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth.").

¶ 18 Here, plaintiff knew there was an issue concerning the timeliness of her motion to reconsider when she attempted to electronically file it, but declined to raise the issue before the circuit court judge. The documents plaintiff improperly attaches to her petition for rehearing have not been authenticated, either by stipulation between the parties or by the circuit court. See *Radosevich v. Industrial Commission*, 367 Ill. App. 3d 769, 772 (2006) ("a party may only supplement documents that were actually before the circuit court"). In her petition for rehearing, plaintiff did not even attempt to authenticate the documents by attaching an affidavit regarding their veracity. Plaintiff had the opportunity to settle this issue before the circuit court judge and declined to do so. Thus, to the extent that this argument relies on documents that are not properly part of the record, we will disregard them. *Garvy*, 2012 IL App (1st) 110115, ¶ 26.

¶ 19 In sum, it is the appellant's burden to provide this court with a sufficiently complete record on appeal. *Benford v. Everett Commons, LLC*, 2014 IL App (1st) 131231, ¶ 32 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Where the record is incomplete, a court of

review will resolve any doubts that arise from an incomplete record against the appellant. *Id.* Pursuant to Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006), the record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by the rules. As the record before us indicates plaintiff's motion to reconsider was untimely filed and plaintiff has failed to demonstrate otherwise, we maintain we lack jurisdiction and deny the petitions for rehearing.

¶ 20

CONCLUSION

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

¶ 22 Dismissed.