

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).

FILED

July 9, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 140650-U

NO. 4-14-0650

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES R. EDENS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ,)	No. 13MR611
Defendant-Appellee.)	
)	Honorable
)	Chris Perrin,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed the appeal, concluding it was without jurisdiction.

¶ 2 In July 2013, plaintiff, James R. Edens, along with two coplaintiffs, Aaron May and Vincent Boggan, filed a *mandamus* complaint against defendant, S.A. Godinez, then Director of the Illinois Department of Corrections. In September 2013, defendant filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 2-615 (West 2012)), which was granted. In July 2014, plaintiff Edens appealed. For the reasons that follow, we dismiss this appeal for lack of jurisdiction and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 In July 2013, plaintiff Edens, along with two coplaintiffs, filed a *mandamus* complaint against defendant. The complaint sought an order requiring defendant to comply with

prior versions of section 3-6-3 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3 (West 2012)) and Illinois Department of Corrections Rule 107.210 (20 Ill. Adm. Code 107.210 (2013)) in awarding good-conduct credits.

¶ 5 In September 2013, defendant filed a motion to dismiss under section 2-615 of the Unified Code (735 ILCS 5/2-615 (West 2012)). In March 2014, the trial court conducted a hearing on defendant's motion. On March 7, 2014, the court entered a written order granting defendant's motion to dismiss.

¶ 6 On April 5, 2014, plaintiff Edens placed in the institutional mail at Dixon Correctional Center a motion for reconsideration. On April 14, 2014, the circuit clerk file-stamped plaintiff Edens' motion.

¶ 7 In May 2014, coplaintiff Boggan filed a request for a hearing on plaintiff Edens' motion.

¶ 8 On July 21, 2014, plaintiff Edens filed a notice of appeal from his "Mandamus Civil Complaint." That same date, coplaintiff May filed a "[s]econd request for a hearing ***. If a hearing cannot be timely afforded[,] Plaintiff's [*sic*] respectfully request withdrawal of Motion to Reconsider and allow Plaintiff's [*sic*] their right to appeal."

¶ 9 On July 25, 2014, the trial court entered the following docket entry: "The matter is currently on appeal to the Fourth District Appellate Court. The Court has no jurisdiction. The request for hearing is denied. The matter is in front of the Fourth District Appellate Court."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff Edens argues the trial court's dismissal of his complaint was

in error. This court has a duty to, *sua sponte*, consider its jurisdiction prior to addressing the merits of an appeal and to dismiss the appeal if it finds jurisdiction is lacking. *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765, 826 N.E.2d 1057, 1062 (2005); *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453, 845 N.E.2d 792, 800 (2006). After reviewing the record on appeal, we conclude we are without jurisdiction to address the merits of plaintiff Edens' argument.

¶ 13 A. Parties to this Appeal

¶ 14 As an initial matter, we must address the parties to this appeal. Illinois Supreme Court Rule 303(b)(4) (eff. May 30, 2008) mandates a notice of appeal "shall contain the signature and address of each appellant or appellant's attorney." An appeal will be considered taken only by the party signing the notice of appeal. *People v. Krueger*, 146 Ill. App. 3d 530, 533, 495 N.E.2d 993, 996 (1986). Here, the notice of appeal lists plaintiff Edens as the sole appellant and contains only his signature. Here, although coplaintiffs May and Boggan are listed in the caption of the briefs on appeal, the briefs are not signed by May and Boggan. Therefore, coplaintiffs May and Boggan are not parties to this appeal.

¶ 15 B. Jurisdiction

¶ 16 Plaintiff Edens asserts this court has jurisdiction over this appeal. Specifically, plaintiff Edens contends, after the court dismissed his *mandamus* complaint on March 5, 2014, he filed a "timely" notice of appeal on July 21, 2014.

¶ 17 Defendant likewise asserts this court has jurisdiction over this appeal. Specifically, defendant contends plaintiff Edens filed his notice of appeal while his timely motion for reconsideration was pending, and upon the trial court's entry of its order denying his

motion on July 25, 2014, his notice became effective under Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008). We find neither party's contentions accurate based on the record before us.

¶ 18 On March 7, 2014, the trial court entered a written order granting defendant's section 2-615 motion to dismiss. The dismissal order failed to specify whether (1) the dismissal was with or without prejudice, or (2) plaintiffs were granted leave to amend. A "[p]laintiff bears the burden of persuading the [trial] court either to include a specification that the dismissal is without prejudice or to permit an amendment if he wishes to plead over." *Dunavan v. Calandrino*, 167 Ill. App. 3d 952, 957, 522 N.E.2d 347, 349 (1988). Where an order fails to indicate whether a plaintiff has met this burden, Illinois Supreme Court Rule 273 (eff. Jan. 1, 1967) mandates an involuntary dismissal operates as adjudication on the merits. *Dunavan* 167 Ill. App. 3d at 957, 522 N.E.2d at 349. Therefore, the March 7 order was final as the order did not state the dismissal was without prejudice and did not grant leave to amend.

¶ 19 On April 5, 2014, as evident by a notarized and signed proof of service, plaintiff Edens placed in the institutional mail at Dixon Correctional Center a motion for reconsideration. Although the motion was not file-stamped by the circuit clerk until April 14, 2014, a court will consider an incarcerated individual's postjudgment motion timely filed if he or she placed it in the prison mail system within the 30-day period. See *People v. Tlatenchi*, 391 Ill. App. 3d 705, 713, 909 N.E.2d 198, 206 (2009). Therefore, plaintiff Edens filed a timely postjudgment motion directed against the trial court's March 7 judgment.

¶ 20 On July 21, 2014, plaintiff Edens filed a notice of appeal from his "Mandamus Civil Complaint." On July 25, 2014, while coplaintiffs' requests for a hearing were pending, the

trial court entered the following docket entry: "The matter is currently on appeal to the Fourth District Appellate Court. The Court has no jurisdiction. The request for hearing is denied. The matter is in front of the Fourth District Appellate Court." Although this entry may support an argument the trial court ruled on coplaintiffs' requests for a hearing, it cannot support defendant's argument this was a ruling on plaintiff Edens' timely filed postjudgment motion. The record contains no transcript, bystander's report, or agreed statement of facts for the July 25, 2014, hearing. A review of the common-law record, including the docket entries contained therein, fails to indicate whether the trial court ruled on plaintiff Edens' timely filed postjudgment motion. Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008) provides, in relevant part:

"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.*" (Emphasis added.)

Therefore, because the record fails to indicate an order disposing of plaintiff Edens' timely filed postjudgment motion was entered, plaintiff Edens' notice of appeal is premature and jurisdiction has not vested in this court.

¶ 21

III. CONCLUSION

¶ 22 We dismiss the appeal, concluding plaintiff Edens' notice of appeal is ineffective while a timely filed postjudgment motion is pending in the trial court. We remand for further proceedings on plaintiff Edens' motion.

¶ 23 Appeal dismissed; cause remanded.