

NOTICE
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2015 IL App (4th) 150074-U
NO. 4-15-0074

FILED
November 30, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: MARRIAGE OF DAVID ENGST,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
and)	McLean County
MICHELLE ENGST,)	No. 13D392
Respondent-Appellee.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* Where the record on appeal does not show a final decision on a pending postjudgment motion, the appellate court lacks jurisdiction to hear the appeal.

¶ 2 In August 2013, petitioner, David Engst, filed a petition for the dissolution of his marriage to respondent, Michelle Engst, under the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/401 (West 2012)). In January 2015, the trial court entered a dissolution judgment.

¶ 3 Petitioner appeals, arguing the trial court erred in (1) considering the value of his Social Security benefits in dividing the parties' retirement assets and (2) dismissing his motion to reconsider prior to the entry of a judgment of dissolution of marriage. Because we are without jurisdiction, we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 The parties were married on September 12, 1992. Throughout the marriage, petitioner worked as a driver for United Parcel Service. Social Security taxes were withheld from his paycheck. Respondent worked as a teacher and did not have Social Security taxes withheld from her paycheck. Instead, respondent participated in the Teacher Retirement System (TRS), a pension plan of the State of Illinois.

¶ 6 On August 2, 2013, petitioner filed a petition seeking the dissolution of the parties' marriage. The parties settled most of the disputed issues by way of stipulated agreement and an agreed order. In September 2014, the trial court held a hearing on the remaining issues. One of the remaining disputed issues was the allocation of respondent's pension benefits through TRS.

¶ 7 On November 19, 2014, the court entered an order specifically addressing the parties' respective interests in their Social Security and TRS benefits, stating, in part:

"b. Petitioner seeks a QDRO disposition of the Respondent's Teacher's Retirement (TRS) pension interest. He argues that Respondent has not paid Social Security and thus has received more take-home income and further argues that his Social Security benefits are not subject to division under the law while Respondent's public pension is subject to (possible) division under the law. Respondent argues that her pension is essentially comparable to Petitioner's Social Security benefit and urges that she be allocated her undivided pension. The Court has not received any evidence as to actual or theoretical present cash values of

these two retirement interests. They appear to serve reciprocal and comparable purposes. The fact that the law prohibits the Court's division of Petitioner's Social Security and permits the Court's division of Respondent's TRS benefit is not a meaningful justification for the latter. Nor is it a meaningful justification for the latter by pointing to the fact that there was additional take-home income arguably received by the Respondent. If such income was received (which fact is argued without proof), it was likely received during the marriage and inured to the benefit of the family. Accordingly, the Court finds that the TRS interest shall be distributed to the Respondent. For want of evidence as to value, it is deemed to be sufficiently comparable in value to Petitioner's Social Security to be deemed equal in the equitable distribution of marital property."

¶ 8 The trial court's order concluded with language directing petitioner's attorney to prepare a written judgment. On December 18, 2014, petitioner's counsel filed a motion to reconsider, challenging the court's award of respondent's TRS pension benefits. On January 20, 2015, the trial court struck petitioner's motion to reconsider on respondent's oral motion. The same day, the court entered a written dissolution judgment which incorporated the November 2014 order. Also on January 20, 2015, and subsequent to its entering the dissolution judgment, the trial court made a docket entry indicating it considered petitioner's motion to reconsider re-filed. On January 26, 2015, petitioner filed his notice of appeal. On March 10, 2015, the court

heard petitioner's motion to reconsider, directed the "parties to submit authorities within seven days," and took the motion under advisement. The record on appeal contains no ruling on petitioner's motion to reconsider.

¶ 9

II. ANALYSIS

¶ 10 Petitioner raises two issues on appeal: whether the court (1) properly considered petitioner's Social Security benefits in dividing the parties' retirement interests, and (2) improperly dismissed petitioner's motion to reconsider prior to issuing the dissolution judgment.

¶ 11 While neither party has addressed whether this court has jurisdiction over the appeal, we have an independent duty to ensure that jurisdiction is proper. *In re Marriage of Guadia*, 368 Ill. App. 3d 153, 156, 857 N.E.2d 332, 334 (2006). In his brief, appellant suggests jurisdiction is conferred on this court pursuant to Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015). Rule 303(a)(1) states, in part:

"(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[.]"
Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 12 If a postjudgment motion is filed, an appeal does not become effective until the last pending postjudgment motion is decided. Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015). Rule 303(a)(2) states, in part:

"(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." *Id.*

¶ 13 Here, in his notice of appeal, appellant indicates he is appealing the trial court's November 19, 2014, order as well as the written judgment entered on January 20, 2015.

However, appellant filed a motion to reconsider which, according to the record, was heard by the trial court on March 10, 2015. The record is silent as to the disposition of the motion to reconsider. Thus, according to Rule 303(a), the judgment of the trial court is not final and the notice of appeal is ineffective.

¶ 14 We note that appellee appended to her brief a copy of what purports to be an order disposing of the motion to reconsider. As noted, however, no such order appears in the record. "Attachments to briefs not otherwise of record are not properly before a reviewing court and cannot be used to supplement the record." Therefore, we will not consider the attachment to appellee's brief. *Cottrill v. Russell*, 253 Ill. App. 3d 934, 939, 625 N.E.2d 888, 891 (1993).

¶ 15 III. CONCLUSION

¶ 16 Since the record on appeal does not reflect a final judgment, appellant's notice of appeal was untimely, and we dismiss the appeal due to a lack of jurisdiction.

¶ 17 Appeal dismissed.