

NOTICE
Decision filed 03/23/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140179-U

NO. 5-14-0179

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

BRITTANY R. KRUSE,
Plaintiff-Appellant,

v.

BUDGET TRUCK RENTAL, LLC, MICHELLE D. MARTINEZ, JAMES R. EDWARDS, and MASCHHOFF TRANSPORT, LLC,

Defendants-Appellees.

) Appeal from the
) Circuit Court of
) Madison County.
)
) No. 13-L-467
)
)
) Honorable
) A. A. Matoesian,
) Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

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

¶ 2 Plaintiff, Brittany R. Kruse, appeals from an order of the circuit court of Madison County denying her motion to reconsider the trial court's earlier order transferring the case from Madison County to Montgomery County on *forum non conveniens* grounds. Plaintiff raises two issues on appeal: (1) whether the trial court erred in denying the motion to reconsider on the basis that such a motion is not a legally recognized motion under Illinois law; and (2) whether the trial court abused its discretion in granting the

motion to transfer venue. In this appeal, defendants, James R. Edwards (Edwards) and Maschhoff Transport, LLC (Maschhoff), filed a motion to dismiss, arguing this court lacks jurisdiction to hear the appeal because plaintiff's petition for leave to appeal was untimely. We agree that we lack jurisdiction to hear this appeal.

¶ 3

BACKGROUND

¶ 4 On March 21, 2013, plaintiff, who lives in Montgomery County, filed a complaint in Madison County against defendants, Budget Truck Rental, LLC (Budget), Michelle D. Martinez (Martinez), Edwards, and Maschhoff, for injuries she sustained in an automobile accident on March 21, 2011, in Montgomery County. In her complaint, plaintiff alleges Martinez was operating a vehicle owned by Budget and pulling a dolly trailer also owned by Budget when the dolly became detached and traveled into oncoming traffic. Edwards struck the dolly, which in turn struck plaintiff's automobile. The complaint also alleges Edwards was acting within the scope of his employment for Maschhoff when the accident occurred. Plaintiff further alleges Martinez and Budget failed to properly secure the dolly to the truck, Martinez and Edwards failed to keep a proper lookout, Martinez drove her automobile in a reckless manner, Martinez and Edwards drove their vehicles at a speed greater than is reasonable and proper with regard to traffic conditions and use of the highway, Martinez failed to drive her vehicle on the right half of the roadway as nearly as practicable, and Martinez and Edwards failed to sound an audible horn warning and failed to reduce speed to avoid colliding with other vehicles.

¶ 5 Edwards and Maschhoff filed a motion to transfer venue to Montgomery County. In support of the motion, Edwards filed an affidavit in which he advised the court that he resides in Alma, Illinois, which is located in Marion County. Maschhoff filed an affidavit signed by its manager which advised the court that its only Illinois office is located in Carlyle, which is in Clinton County, and that it does not and has not conducted business in Madison County.

¶ 6 Budget also filed a motion to dismiss or transfer venue on the basis of *forum non conveniens* and a motion to consolidate. In the motion, Budget advised that it and Martinez were also defendants in a previously filed action in St. Clair County, cause number 13-L-130, brought by Edwards and arising from the same March 21, 2011, accident. Budget asked that the case be transferred to Montgomery County.

¶ 7 Counsel for Budget also entered an appearance on behalf of Martinez, which it later withdrew. The motion to withdraw set forth that Budget's entry of appearance on behalf of Martinez was inadvertent, it had no attorney-client relationship with Martinez, it had no contact information for Martinez, and Martinez had not been served.

¶ 8 On October 4, 2013, the trial court heard arguments on Budget's motion, after which the trial court entered an order granting the motion to transfer venue. Initially, the trial court transferred venue to St. Clair County to avoid concerns of inconsistent verdicts, but upon the request of Budget's counsel, then transferred venue to Montgomery County where the accident occurred. Plaintiff filed a motion to reconsider and a memorandum in support thereof on November 4, 2013. On December 20, 2013, plaintiff filed a supplemental memo in support of the motion to reconsider in which she claimed to

have "learned new information since filing her initial memorandum." Plaintiff claimed to have uncovered two new pieces of information since the October 4, 2013, hearing: (1) that Martinez, whose address was unknown at the hearing, actually resides in St. Clair County; and (2) that it would be more convenient for Dr. Lee, plaintiff's treating physician, to attend trial in Edwardsville (Madison County) rather than Hillsboro (Montgomery County). An affidavit signed by Dr. Lee was attached to the supplemental memo.

¶ 9 On March 21, 2014, the trial court entered an order denying the motion to reconsider. Accordingly, the trial court's order transferring the case to Montgomery County stands. On April 21, 2014, plaintiff filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306 (eff. Feb. 16, 2011). Edwards and Maschhoff filed a motion to dismiss the appeal, arguing that we lack jurisdiction to hear this appeal because plaintiff filed her petition for leave to appeal more than 30 days after the trial court granted Budget's motion to transfer venue on *forum* grounds, and, under Rule 306, the motion to reconsider did not toll the time to appeal. We agree.

¶ 10

ANALYSIS

¶ 11 Supreme Court Rule 306 permits interlocutory appeals from certain orders. Rule 306(a)(2) permits an appeal from an order allowing or denying a *forum non conveniens* motion or from an order allowing or denying a motion to transfer to another county on such grounds. Ill. S. Ct. R. 306(a)(2) (eff. Feb. 16, 2011). As a prerequisite to invoking appellate jurisdiction, the rule requires the filing of a petition "in the Appellate Court in accordance with the requirements for briefs *within 30 days after the entry of the order.*"

(Emphasis added.) Ill. S. Ct. R. 306(c)(1). The 30-day time limit under Rule 306 is jurisdictional. *Kemner v. Monsanto Corp.*, 112 Ill. 2d 223, 236, 492 N.E.2d 1327, 1333 (1986); *National Seal Co. v. Greenblatt*, 321 Ill. App. 3d 306, 308, 748 N.E.2d 333, 335 (2001). A motion to reconsider filed in the trial court does not postpone the time allowed to appeal. *Odom v. Bowman*, 159 Ill. App. 3d 568, 571, 511 N.E.2d 1265, 1267 (1987); *Buckland v. Lazar*, 145 Ill. App. 3d 436, 438, 495 N.E.2d 1254, 1256 (1986).

¶ 12 While plaintiff agrees that the 30-day time limit is jurisdictional, she argues that her motion to reconsider alleged "new facts" and, therefore, the purpose of the motion was not to toll time for an appeal, but rather to bring to light new information previously unavailable and misrepresented by Budget at the October 4, 2013, hearing. In support of her argument, plaintiff cites *Kemner* and *McClain v. Illinois Central Gulf R.R. Co.*, 121 Ill. 2d 278, 520 N.E.2d 368 (1988). However, both *Kemner* and *McClain* are distinguishable from the instant case because here plaintiff did not allege any new matters in her November 4, 2013, motion to reconsider, but instead asked for reconsideration of previous motions and orders. It was not until December 20, 2013, when plaintiff filed her supplemental memorandum in support of its motion to reconsider, that she asserted two new matters, the residence of Martinez and an affidavit from one of plaintiff's treating physicians, Dr. Lee, in which he asserted that it would be more convenient for him to attend trial in Madison County rather than Montgomery County.

¶ 13 The instant case is similar to *National Seal Co.* in which our colleagues in the Second District distinguished *Kemner* and found that because defendant did not seek to appeal the order denying his motion to transfer venue, but filed a motion to reconsider

which failed to raise any new matters, they were without jurisdiction to hear the appeal, specifically stating as follows:

"Here, unlike in *Kemner*, Greenblatt did not seek to appeal the order denying his motion to transfer venue. Instead, within 30 days of that order, he sought reconsideration. This motion did not extend the time to appeal. Contrary to Greenblatt's argument, the critical factor in *Kemner* was that the defendant pursued appeals of each of the three orders, not that the successive motions alleged 'new facts.' Moreover, the motion to reconsider does not allege any new facts but merely includes more details in support of the arguments raised in the original motion." *National Seal Co.*, 321 Ill. App. 3d at 309, 748 N.E.2d at 335.

So, too, in the instant case, plaintiff's motion to reconsider does not allege any new facts, but instead includes additional details to support the argument raised in the original motion.

¶ 14 *Kemner* is also distinguishable from the instant case because here defendants' *forum* motion was granted rather than denied, and plaintiff, as the aggrieved party, was asking the trial court to reconsider its earlier ruling. The alleged "new facts" were not presented until December 20, 2013, nearly two months after the 30-day period had expired. Plaintiff did not file a petition for leave to appeal until April 21, 2014, over six months after the trial court entered the order allowing Budget's motion to transfer venue.

¶ 15 Even if a party files a motion to reconsider within the 30-day time period, he or she is still required to file a petition for leave to appeal within 30 days because "orders granting or denying a motion to transfer a case based on intrastate *forum non conveniens*

are interlocutory in nature, and the law is well settled in Illinois that a motion filed subsequent to the entry of an interlocutory order will not postpone the time in which to file a timely notice of appeal." *Buckland*, 145 Ill. App. 3d at 438, 495 N.E.2d at 1256. After careful consideration, we find that plaintiff's motion to reconsider filed in the trial court did not postpone the time in which to appeal. Accordingly, we are without jurisdiction to hear this appeal.

¶ 16 For the foregoing reasons, the appeal is untimely and is dismissed.

¶ 17 Appeal dismissed.