

No. 1-14-3696

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CLEVE HEIDELBERG,)	Appeal from the
)	Circuit Court of Cook County
)	
Plaintiff-Appellant,)	
)	
(C and L Number Prisoners, Michael Baptist,)	
Plaintiffs and Proposed Class Members,))	
)	
)	
v.)	No. 12 CH 45638
)	
)	
BRUCE RAUNER, in his official capacity as Governor,)	
ILLINOIS DEPARTMENT OF CORRECTIONS,)	
and ILLINOIS PRISONER REVIEW BOARD,)	Honorable
)	Rodolfo Garcia,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction, where the plaintiff failed to file a notice of appeal within 30 days of the entry of the final judgment dismissing his complaint.

¶ 2 The plaintiff, Cleve Heidelberg, filed a *pro se* "class action" lawsuit, purporting to represent himself and other similarly-situated incarcerated individuals, against the defendants, Bruce Rauner,¹ Governor of Illinois the Illinois Department of Corrections, and the Illinois Prisoner Review Board. The circuit court dismissed the lawsuit under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), for failure to state a claim upon which relief could be granted. The plaintiff now appeals. We dismiss the appeal for lack of jurisdiction.

¶ 3 In the complaint, the plaintiff alleged that he and a class of "C and L Number inmates" had been denied their right to an "early release fixed-release date," based upon the defendants' misconstruction and misapplication of section 3-3-2.1 of the Unified Code of Corrections (730 ILCS 5/3-3-2.1 (West 2010)). Although the plaintiff claimed to be representing a class of inmates, including Michael Baptist, no one aside from the plaintiff appears as a signatory on the complaint.

¶ 4 On October 4, 2013, the defendants filed their motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). On November 27, 2013, the circuit court issued an order stating that it would rule on the motion by mail on or before January 31, 2014. On January 31, 2014, the court entered a written order granting the defendants' motion and dismissing the complaint with prejudice. The dismissal order expressly provided that a copy of the order "is to be mailed to the plaintiff *** by the Clerk of the Court and by counsel for defendants."

¶ 5 On August 12, 2014, the plaintiff filed a notice of appeal (No. 1-14-2529), from the dismissal of his complaint. The notice of appeal stated that the dismissal order of January 31,

¹ We have substituted the current Governor, Bruce Rauner, for Pat Quinn, pursuant to section 2-1008(d) of the Code of Civil Procedure (735 ILCS 5/2-1008(d) (West 2010)).

2014, was mailed to the plaintiff "on August 5, 2014, by the Appellee's Attorney Lisa Madigan."²

¶ 6 On October 8, 2014, the defendants filed a motion seeking the "entry of [a] final judgment." The motion alleged that, although the January 31, 2014, dismissal order had instructed defense counsel and the circuit court clerk to mail a copy of the order to the class plaintiffs, defense counsel could not verify that such a copy "was received by Plaintiffs at that time." The motion stated that, in fact, a copy of the order had been mailed to the plaintiffs on July 31, 2014. Accordingly, in order to prevent the plaintiffs' appeal from "potentially be[ing] dismissed as untimely," the defendants requested that the court, in the interest of justice, enter another final judgment in this matter. The defendants asserted that they would then suggest to the plaintiffs that they file another notice of appeal within 30 days of the entry of that judgment.

¶ 7 On October 30, 2014, the court granted the defendants' motion for the "entry of a final judgment." It entered an order which was identical to that of December 31, 2014, but added language that the order was "final and appealable."

¶ 8 On October 31, 2014, this court dismissed the appeal (No 1-14-2529) for want of prosecution.

¶ 9 On December 1, 2014, the plaintiff filed the instant notice of appeal from the order of October 30, 2014.

¶ 10 Illinois Supreme Court Rule 303(a)(1) (eff. June 1, 2008) generally provides that, if a party wishes to appeal, he must file a notice of appeal within 30 days after entry of the final

² A certificate of service in the record confirms that a copy of the January 31, 2014, dismissal order was mailed to the plaintiff by an Assistant Attorney General on July 31, 2014.

judgment from which he is challenging. A timely notice of appeal is necessary to vest this court with jurisdiction. *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138 (2009). An order dismissing a lawsuit with prejudice against all parties is a final and appealable order. See *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997); *Pick v. Pick*, 58 Ill. App. 3d 357, 359 (1978).

¶ 11 There is no dispute that the circuit court's dismissal order of January 31, 2014, disposed of the plaintiff's case on the merits and in its entirety under Illinois Supreme Court Rule 303 (eff. June 1, 2008). We note in passing that the original notice of appeal from that order was not filed until August 12, 2014, more than six months after the final order was entered. Accordingly, although that appeal ultimately was dismissed for want of prosecution, we lacked jurisdiction over it.

¶ 12 We now turn to the order that is the subject of this appeal. In an effort to avoid the consequences of the plaintiff's initial untimely appeal, the circuit court entered the October 31, 2014, order, which was essentially identical to that of January 31. However, this order was without effect. A trial court lacks authority to extend the time for filing a notice of appeal, or, in other words, to attempt to extend subject matter jurisdiction. See *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 149 (1994) (re-entry of the same order will not allow party "a new 30-day clock" from which to file notice of appeal); see also *Granite City Lodge No. 272, Loyal Order of the Moose v. City of Granite City*, 141 Ill. 2d 122, 126-27 (1990). Once the 30-day period had elapsed from the time of the final order disposing of the complaint, the circuit court lost jurisdiction over all matters resolved in that order. *Mitchell*, 158 Ill. 2d at 149. Accordingly, the order of October 31, 2014, was invalid at its inception, and the appeal from it, of December 1, 2014, was similarly invalid.

1-14-3696

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

¶ 14 Appeal dismissed.