

**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).

2016 IL App (4th) 150638-U

NO. 4-15-0638

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 25, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

SAMUEL B. MARZETTE,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
THE DEPARTMENT OF CORRECTIONS, SALVADOR	)	No. 15MR167
GODINEZ, STEPHANIE DORETHY, KEVWE	)	
AKPORE, STEPHEN J. DAMEWOOD, and BILLIE W.	)	Honorable
GREER,	)	John P. Schmidt,
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court lacked jurisdiction to consider defendant's appeal where a postjudgment motion remained pending in the trial court.
- ¶ 2 On June 19, 2015, the trial court entered an order dismissing plaintiff Samuel B. Marzette's *pro se* petition for writ of *certiorari* for failure to pay the reduced \$5 filing fee. On July 6, 2015, plaintiff filed a motion to vacate the dismissal order. On July 30, 2015, plaintiff filed a notice of appeal. Our review of the record indicates plaintiff's motion to vacate is still pending in the trial court, as the record is devoid of any evidence any further action was taken on this motion.
- ¶ 3 On appeal, plaintiff, proceeding *pro se*, asks this court to vacate the order dismissing his petition and allow him to pay the reduced filing fee. Because the postjudgment motion is still pending in the trial court, this court lacks jurisdiction to hear this appeal. We

remand with directions.

¶ 4

## I. BACKGROUND

¶ 5

In February 2015, plaintiff, an Illinois Department of Corrections (DOC) inmate housed at Hill Correctional Center, filed a petition for writ of *certiorari* seeking the trial court's review of a DOC disciplinary action against him. Plaintiff also filed a "motion for leave to file and proceed as a poor person." In a March 2015 docket entry, the court indicated it had reviewed plaintiff's filings and ordered him to provide a copy of his most current inmate trust fund account. In April 2015, plaintiff filed a response along with his trust fund account.

¶ 6

On May 4, 2015, the trial court made the following docket entry:

"The [plaintiff's] application to sue or defend as a poor person is granted in part. [Plaintiff] indicated he possesses an inmate trust fund with a balance of \$21.08. [Plaintiff] is an inmate in [DOC]. [DOC] provides the [plaintiff] meals, clothes[,] and shelter. [Plaintiff] is ordered to pay a reduced filing fee of \$5.00. Once Sangamon County Circuit Clerk receives the reduced filing fee, the Clerk is ordered to file [plaintiff's] pleadings and issue summons to defendant(s). Copy of this docket entry to the [plaintiff]."

According to a proof of service, the clerk mailed the docket entry to plaintiff on May 7, 2015. In a separate letter to plaintiff, dated May 13, 2015, the clerk advised plaintiff as follows:

"Attached is the 'Application to Sue or Defend as a Poor Person' that you filed on April 13, 2015. The Presiding Judge has reviewed your application and has approved your petition in part

for the reasons indicated within the order.

If you would like to pursue your case with the court, the reduced filing fee(s) of \$5.00 must be paid by June 15, 2015[,] as indicated on the order. If you do not pay your filing fees on or before the date indicated, your cause will be dismissed along with your application."

¶ 7 On June 19, 2015, the trial court dismissed plaintiff's cause of action for failing to pay the \$5 filing fee. On July 6, 2015, plaintiff filed a motion to vacate the order dismissing the petition in which he alleged he had not received a notice of the deadline within which to pay the filing fee. He further alleged, at the time the court set the reduced filing fee, he did not have any funds in his account, so he would not have been able to pay the fee even if he had known about the deadline.

¶ 8 On July 30, 2015, plaintiff filed a notice of appeal. On August 11, 2015, this court dismissed the appeal for failure to timely file in the circuit court.

¶ 9 On September 8, 2015, plaintiff filed a motion to supplement the motion to vacate in which he alleged, "[p]laintiff never received any notice or compliance date that he had to have the five \$5.00 sent to the court at whatever time the clerk of the court forward said pauper's petition compliance date (order) it was not received by plaintiff."

¶ 10 On September 28, 2015, this court recalled the mandate and the order dismissing the appeal for failure to timely file the appeal was vacated.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff asks this court to vacate the order dismissing his petition and

allow him to pay the reduced filing fee.

¶ 14 This court lacks jurisdiction to entertain defendant's appeal pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015) because a postjudgment motion is pending in the trial court.

¶ 15 Rule 303(a)(2) provides, in relevant part, as follows:

"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." Ill. S. Ct. R. 303(a)(2) (eff. Jan 1, 2015).

¶ 16 "[W]hen there has been no disposition of a timely posttrial motion directed against the judgment, a notice of appeal does not vest the appellate court with jurisdiction." *People v. Willoughby*, 362 Ill. App. 3d 480, 482, 840 N.E.2d 803, 805 (2005).

¶ 17 In this case, plaintiff filed a motion to vacate the order dismissing his petition for writ of *certiorari* on July 6, 2015. This motion is a postjudgment motion directed against the judgment. Our review of the record does not reveal any rulings made by the trial court on this motion. We note abandonment of a pending motion requires more than filing a notice of appeal before the disposition of a postjudgment motion; an affirmative indication of abandonment is necessary. See *Willoughby*, 362 Ill. App. 3d at 482, 840 N.E.2d at 804. Nothing in plaintiff's brief indicates an intent to abandon the motion currently pending in the trial court. While we recognize plaintiff filed a notice of appeal, his appeal is premature due to his pending

postjudgment motion in the trial court and, thus, this court lacks jurisdiction to address the merits of this case.

¶ 18 Here, plaintiff filed a timely motion to vacate within 30 days of the order dismissing his petition. Accordingly, we remand the cause with directions to strike the notice of appeal and hear plaintiff's motion to vacate.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we remand with directions for a hearing and disposition of plaintiff's postjudgment motion.

¶ 21 Cause remanded with directions.