2018 IL App (1st) 161022-U
Nos. 1-16-1022 & 16-2711 cons.
Order filed July 13, 2018
Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JONATHAN STEWART,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 8714
	)	
MAMA G., LLC d/b/a PROOF and VIET HUYNH,	)	The Honorable
	)	James Michael Varga
Defendants,	)	Judge, Presiding.
	)	
(MAMA G., LLC d/b/a PROOF, Defendant-Appellee).	)	

JUSTICE HALL delivered the judgment of the court, with opinion.
Justices Lampkin and Rochford concurred in the judgment and opinion.

ORDER

¶ 1 *Held*: We lack a sufficient record to consider plaintiff's contention that the special interrogatory was not properly given to the jury where plaintiff failed to file a report of proceedings from the instructions conference. We lack jurisdiction to consider plaintiff's

arguments concerning the trial court's denial of his motion to certify his proposed bystander's report as his notice of appeal was untimely filed and dismiss his appeal from that denial. Plaintiff forfeited review of his claim that the special interrogatory should not have been given to the jury by failing to file a complete report of proceedings. Plaintiff forfeited his claim that the trial court improperly entered judgment on the special interrogatory in the absence of a general verdict.

¶ 2 Plaintiff Jonathan Stewart appeals from the trial court's March 10, 2016, order entering judgment for defendant Mama G, LLC d/b/a Proof (Proof) pursuant to the jury's response to a special interrogatory; the trial court's order of May 18, 2016, denying plaintiff's motion to certify his proposed bystander's report; and the trial court's order of October 6, 2016, denying plaintiff's motion to reconsider the denial. On appeal, plaintiff contends that: 1) the trial court erred in refusing to certify the bystander's report, thereby violating the unambiguous language of Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c), eff. Dec. 13, 2005); 2) the trial court applied the wrong standard in denying his motion to reconsider the ruling denying his motion to certify the proposed bystander's report; and 3) the trial court erred in entering judgment for defendant based on the special interrogatory because it should not have been submitted to the jury, the special interrogatory was not clearly and absolutely irreconcilable with the general verdict, there was no general verdict, and the trial court should have declared a mistrial. For the following reasons, we dismiss the appeal from the denial of his motion to certify his proposed bystander's report and affirm the judgment entered on the special interrogatory.

¶ 3 BACKGROUND

¶ 4 A. Trial Court Proceedings

¶ 5 We have not been provided with a full transcript of all proceedings at the trial level; plaintiff has filed only the common law record and a report of proceedings from the post-trial proceedings, beginning with the date that judgment was entered on the special interrogatory.

¶ 6 Based on the common law record, plaintiff filed a personal injury complaint in the law division of the circuit court of Cook County against Proof on August 3, 2012. Count I alleged that plaintiff was a patron of Proof nightclub located at 1045 North Rush Street in Chicago on April 7, 2012. While at the club, agents and/or employees of Proof punched plaintiff in the face and caused serious injury. Additionally, during the process of defending himself from those parties, plaintiff broke his hand and required surgery on April 23, 2012. Plaintiff further alleged that Adam Staehle, an agent and employee of Proof, indicated that the attack was recorded on video and that the attack was unjustified. In Count II, plaintiff alleged that Proof negligently hired and retained employees ("John Does") that created danger to its patrons and that this practice proximately caused his injuries. Plaintiff sought compensatory damages in excess of $50,000 plus costs and other relief.

¶ 7 On August 9, 2012, plaintiff filed an emergency motion for Proof to preserve the videotape of the incident that formed the basis of the complaint, which was granted.

¶ 8 Defendant Proof filed its appearance on August 22, 2012, and subsequently filed its answer to plaintiff's complaint and affirmative defenses on September 24, 2012. As affirmative defenses, Proof alleged: 1) plaintiff's contributory fault was more than 50% of the proximate cause of his own injuries/damages and was barred from recovery from Proof; 2) Proof's fault is less than 25% of the total fault attributable to plaintiff; 3) plaintiff provoked the incident by acting in an unreasonable and unruly manner which caused or contributed to his injuries; 4) defendant's employees acted in self-defense in fear of physical harm by plaintiff; 5) Proof had no

duty to protect plaintiff from third-party criminal acts; and 6) John Does were not employees or agents of Proof.

¶ 9 Plaintiff filed an amended complaint at law on October 24, 2012, in which he added defendant Viet Huynh[1] (Huynh). Most of the allegations were the same as in the original complaint except where as noted. In Count I of the amended complaint, plaintiff alleged that Huynh was the employee of Proof that punched him in the face. In Count II of the amended complaint, plaintiff alleged that Proof negligently hired and retained Hyunh, who committed acts which caused injury to plaintiff, which was the proximate cause of plaintiff's injury. The amended complaint also added Count III- negligence, which alleged that Proof negligently destroyed the video tapes of the incident, which harmed plaintiff's attempt to prove his underlying cause of action.

¶ 10 Proof filed an answer to plaintiff's amended complaint and affirmative defenses on December 13, 2012, that were essentially the same as its initial filing.

¶ 11 Defendant Huynh filed his appearance, answer and affirmative defenses on January 31, 2013. In his affirmative defenses, Huynh alleged: 1) he acted properly in the defense of Byron Medina; 2) he observed an individual viciously and maliciously battering and assaulting Medina without his consent on April 7, 2012, at 1045 North Rush Street; and 3) he acted properly in the defense of Medina to rescue him from the individual who was maliciously battering and assaulting Medina without consent; Huynh used only appropriate force to effect the defense of Medina.

¶ 12 On February 15, 2013, Proof filed a request for Huynh to admit that he was not working for Proof on the night of April 7, 2012, or the morning hours of April 8, 2012. On February 25,

[1] Defendant Huynh is not a party to this appeal.

2013, Huynh filed its responses to Proof's requests, in which he denied being an employee of Proof at the time of the events alleged in plaintiff's complaint or that he was indemnified by Proof's insurance.

¶ 13 On August 19, 2014, plaintiff moved to file a second amended complaint. On August 27, 2014, Proof filed a motion for summary judgment. The trial court granted plaintiff leave to file the second amended complaint on September 3, 2014. In the second amended complaint, plaintiff alleged: 1) Huynh was employed as a bouncer by Proof at the time of the incident; 2) Huynh and another assailant were violent, belligerent, dangerous and aggressive with one of plaintiff's friends, Proof security removed both of plaintiff's friends from the club and plaintiff was left to "fend for himself" against Huynh and a co-assailant; 3) Huynh punched plaintiff, knocked him to the ground and kicked him; 4) in defending himself, plaintiff's eye was swollen shut and his hand was broken and required multiple surgeries; and 5) after review of the videotape, Huynh was fired. In Count I- negligent security, plaintiff alleged that Proof's security failed to properly protect him from unreasonable risk of harm by removing his friends from the bar when they should have known that it was reasonably foreseeable that this would put plaintiff at a risk of harm; failed to treat Huynh like any other patron and gave him preferential treatment because he was an employee; and failed to remove Huynh and his co-assailant from the club after it had become or should have become apparent that this put plaintiff at risk of serious harm. Count II, negligent spoliation, was essentially the same as in the first amended complaint. Count III, battery against Huynh, alleged that the contact by Huynh against plaintiff was intentional, unjustified, harmful, offensive, willful and malicious; plaintiff did not consent to the contact; and plaintiff's injuries were a direct and proximate result of Huynh's contact.

¶ 14 Proof subsequently filed a motion to dismiss count I of plaintiff's second amended complaint on October 1, 2014. The trial court entered a memorandum opinion and order denying Proof's motion on January 15, 2015, and on February 17, 2015, Proof filed its answer and affirmative defenses to plaintiff's second amended complaint. In its answer and affirmative defenses, Proof made essentially the same allegations as its previously filed affirmative defenses. Huynh filed his answer and affirmative defenses to plaintiff's second amended complaint on March 3, 2015, and his affirmative defenses alleged: 1) self-defense from plaintiff's intoxicated attack; 2) defense of others; 3) plaintiff's own contributory action of more than 50% to his injuries; 4) unclean hands; 5) fraud and perjury by plaintiff; and 6) conspiracy to bring false claims.

¶ 15 The matter was initially set for a jury trial on December 4, 2015, but on Huynh's motion for continuance, was eventually rescheduled for January 6, 2016. The trial commenced on a battery claim against Huynh and direct negligence claims against Proof.

¶ 16 The record contains Verdict Forms A, B, and C, as well as the special interrogatory. Verdict form A had two inquiries: 1) On the count of negligence, we, the jury find for Jonathan Stewart and against Mama G d/b/a Proof Nightclub and 2) On the count of battery, we the jury, find for Jonathan Stewart and against Viet Huynh. Both questions had yes or no responses available for the jury to select. For the first question related to Proof, "no" was checked and crossed out, and a second handwritten "no" that was also checked and crossed out. The second question, related to Huynh, had "no" checked. Verdict Form B stated: "We, the jury find for the Defendant Mama G d/b/a Proof Nightclub, and against Jonathan Stewart," and was apparently initially signed by all 12 jurors, but one of the names was crossed out. The special interrogatory asked the jury: "Was the alleged criminal attack on the plaintiff reasonably foreseeable to

defendant Proof Nightclub?" The jury checked "no" and all 12 jurors signed it. Verdict Form C, which was signed by all 12 jurors, found for Huynh and against plaintiff.

¶ 17 Also contained in the record were copies of questions, presumably from the jury, that were sent to the trial court during deliberations. Of pertinence to this appeal were the following questions and answers:

> "Is the bar responsible for what Viet does in this incident because he is occasionally employed by the bar? [Answer] No"
>
> "If we are 10 to 2 and not 100% what do we do? How long do we deliberate today? [Answer] 4:20"
>
> "Can we award an amount if we find for both defendants on the damages as worded. [Answer] No"
>
> "If we find for both defendants do we discuss damages? Do we have to discuss comparative damages? [Answer] If you find for both defendants, you do not have to discuss damages or comparative damages."

¶ 18 Additionally, the record contained numerous drafts of proposed jury instructions submitted by the parties, most with editing notes of some kind that may have occurred during the instructions conference.[2]

¶ 19 On January 14, 2016, at the close of trial, judgment was entered for Huynh, after the jury returned a verdict in Huynh's favor on Verdict Form C. However, the claims against Proof were

[2] We have not been provided with transcripts from the instructions conference.

continued until January 19, 2016.[3] There is no transcript of proceedings for when the jury returned the verdicts and special interrogatories or for any polling of the jury.

¶ 20 There is no report of proceedings for the January 19, 2016, court date, however, a draft order was entered which set a briefing schedule. Proof subsequently filed a motion for judgment on the verdict based on the jury's response to the special interrogatory on February 2, 2016. Plaintiff's response to Proof's motion for judgment on the special interrogatory was filed on February 26, 2016, in which he contended that the special interrogatory should not have been given, that there was no general verdict, and that the special interrogatory was not absolutely irreconcilable with the general verdict (if there was a general verdict).

¶ 21 A hearing was held on Proof's motion on March 10, 2016; plaintiff has included a report of the proceedings as to that hearing. At the hearing, the parties discussed our supreme court's decision in *Sangster v. Van Hecke*, 67 Ill. 2d 96 (1977) and its applicability to the case. Plaintiff's counsel argued that there was reasonable doubt as to the intent of the jurors because one of the jurors, Linda Moore, said that she was not in agreement with the general verdict form during polling, and that the jury should have been dismissed at that point. Plaintiff's counsel also argued that the jury signed the special interrogatory five minutes later after the trial court told them to sign it.

¶ 22 The trial court found that, pursuant to the supreme court's holding in *Sangster*, the law is that a general verdict is not necessary and the special interrogatory controls. The trial court

[3] The draft order, prepared by plaintiff's counsel, initially stated "As to Jonathan Stewart's claims against Mama G d/b/a Proof the jury having been unable to render a verdict the court declares a mistrial." However, this was lined out and instead stated: "As to Jonathan Stewart's claims against Mama G d/b/a Proof the cause is continued until January 19, 2016."

further found that even if the verdict was for the plaintiff, the special interrogatory would control because of the foreseeability issue, and entered judgment for Proof on the special interrogatory.

¶ 23 The proceedings went off the record while the judgment order was signed. When the proceedings returned on record, the trial court indicated that it wanted to clarify an inference in one of plaintiff's documents that it "told the jury to go back and sign the special interrogatory and then poof, like five minutes later they came back and signed it, like [it] ordered them to sign it. That's not true. * * * So that's where that language comes from. It's in the IPI Chapter 45 of the verdict that they go in and sign it, return it. I don't say go in deliberate and sign it. So that's where that language came from. It's from the IPI and verdicts. So I just said the same thing for the special interrogatory."

¶ 24 On April 8, 2016, plaintiff filed a notice of appeal from the March 10, 2016, order entering judgment for Proof on the special interrogatory (case number 16-1022).[4] Subsequently, on May 16, 2016, plaintiff filed a motion to certify his proposed bystander's report. In his motion, plaintiff indicated that he served the proposed bystander's report to Proof's counsel on April 27, 2016, and no amendments were proposed, nor was the proposed report stipulated to. Plaintiff's proposed bystander's report stated as follows:

> "1. Between January 6th, 2016 and January 14th, 2016 the case of *Jonathan Stewart v. Mama G d/b/a Proof*, case number 2012 L 8714 was tried before the Honorable James Varga.
>
> 2. On January 14th, 2016, the jury appeared in open court, and the jury foreman told the court that it was unable to reach a verdict on Count I of the complaint directed

[4] Defendant Viet Huynh is not a party to this appeal.

at the defendant, Mama G LLC d/b/a Proof Nightclub.

3. The foreman indicated that further deliberations would not cause the jury to be able to reach a verdict on Count I.

4. The foreman handed the Court Verdict Form A, copy attached, in which in response to "On the count of negligence, we, the jury find for Jonathan Steward and against Mama G d/b/a Proof Nightclub:" the jury crossed out the checked box "no" and crossed out "no" in a separate check. (Exhibit A).

5. In Verdict Form B which the foreman handed to the court in response to "We, the jury find for defendant Mama G d/b/a Proof Nightclub, and against Jonathan Stewart," it was signed by all jurors but one. Juror Linda Moore had crossed out her name. (Exhibit B) When Ms. Moore was polled in open court by the court clerk, she told the court that she had crossed out her name because she did not agree with a jury finding for defendant Mama G d/b/a Proof Nightclub and against Jonathan Stewart.

6. At this point, the trial court observed that the verdict forms tendered by the jury foreman did not include any signatures on the special interrogatory. The trial court then instructed the jury to go back into the jury room and "sign" the special interrogatory. The trial court did not tell the jury to "deliberate" on the special interrogatory. Five minutes later the jury emerged from the jury room with "no" checked on the special interrogatory and all the jurors signed that special interrogatory. (Exhibit C)"

¶ 25 A hearing was subsequently held on plaintiff's motion to certify his proposed bystander's report on May 18, 2016, for which transcripts were included with the record on appeal. At the hearing, Proof's counsel indicated that he was generally fine with the bystander's report except for one thing which he wanted to clarify with the court. The trial court stated that it did not think the proposed bystander's report was that good; and further stated that it was slanted, incomplete and biased. The trial court then stated that it would not certify the proposed bystander's report because it was inaccurate. The court specifically noted that the proposed bystander's report made it appear as if the court forced the jurors to sign the special interrogatory. The court further noted that it had provided law to both parties' counsels which controlled if there was a mistrial prior to the jurors signing of the special interrogatory. The trial court reiterated that it followed Illinois Pattern Instructions (IPI) B45 when it directed the jury to go back because the verdict was not complete, and that the bystander's report was just a snippet of what occurred, favoring plaintiff's position and implying that the court did something wrong. The trial court stated that a bystander's report should be neutral and should not favor one side; the types of statements contained in plaintiff's bystander's report belong in arguments and motions but not in the record. Proof's counsel stated that the court could make changes to the bystander's report or give him 14 days to make the proposed amendments. The court suggested that the parties try to come up with an agreed statement of facts pursuant to Supreme Court Rule 323(d) (Ill. S. Ct. 323(d) (eff. Dec. 13, 2005)).

¶ 26 Plaintiff's counsel reiterated that he tendered his proposed bystander's report prior to the hearing date as required by the rule, and that Proof's counsel did not object. The trial court asked repeatedly what plaintiff's counsel was going to do about a bystander's report because it was not going to certify the one presented. Plaintiff's counsel then suggested that the trial court could

write its own bystander's report, to which the trial court responded that it would not write one. The trial court suggested that plaintiff's counsel work with Proof's counsel, who the court noted was amenable to working out the issues with the proposed bystander's report. However, plaintiff's counsel indicated that would violate Rule 323. The trial court then entered an order denying plaintiff's motion to certify his proposed bystander's report on May 18, 2016.

¶ 27 B. Further Proceedings

¶ 28 Plaintiff filed a motion for a writ of *mandamus* in the Supreme Court (case number 120869) on June 6, 2016, seeking review of the trial court's order denying his motion to certify the proposed bystander's report, which was denied on June 27, 2016. Plaintiff filed a motion in this court on July 5, 2016, to have this court direct the circuit court clerk to include his proposed bystander's report as part of the certified record on appeal, which was denied on July 14, 2016, as it failed to meet the requirements of Rule 323(c). Plaintiff's July 26, 2016, motion to reconsider or for clarification was denied by this court on August 4, 2016.

¶ 29 Plaintiff subsequently filed a motion to reconsider the May 18, 2016, denial of certification of his proposed bystander's report in the trial court on September 22, 2016, which was denied on October 6, 2016. He filed a second notice of appeal from the October 6, 2016, denial of his motion to reconsider the denial of his motion to certify the bystander's report on October 17, 2016 (case number 16-2711).

¶ 30 The two appeals were consolidated on plaintiff's motion on November 9, 2016. Plaintiff filed a motion for extension of time to file a supplemental record[5] on December 8, 2016, which

[5] The supplemental record consists of the report of proceedings from the May 18, 2016, hearing on plaintiff's motion to certify his proposed bystander's report, plaintiff's motion for the trial court to reconsider the May 18, 2016, denial of certification of his proposed bystander's report, and the order denying the motion to reconsider.

was denied. Plaintiff subsequently filed a motion to reconsider on January 6, 2017, which this court denied without prejudice on January 18, 2017, and reserved the right for plaintiff to renew his motion when he was prepared to tender a properly certified and bound proposed supplement with his motion.

¶ 31 This court dismissed plaintiff's appeal for want of prosecution on January 26, 2017. Plaintiff filed for a supervisory order in the supreme court (case number 122442) on July 6, 2017. The supreme court allowed plaintiff's motion, and directed this court to reinstate plaintiff's appeal on August 3, 2017. Plaintiff's appeal was reinstated on August 8, 2017.

¶ 32 ANALYSIS

¶ 33 A. Violation of Supreme Court Rule 321

¶ 34 As a preliminary matter, Proof argues that plaintiff's appeal should be dismissed for his failure to file a complete report of proceedings in violation of Supreme Court Rule 321 (Ill. S. Ct. R. 321, eff. Dec. 17, 1993). Alternately, Proof contends that in the absence of the complete trial record, it should be presumed that the trial court's decisions had a sufficient basis and conformed to the law as supported by the Supreme Court's decision in *Foutch v. O'Bryant*, 99 Ill. 2d 398 (1984).

¶ 35 As stated previously, plaintiff has failed to file any of the trial transcripts as part of the record on appeal. Plaintiff has filed the common law record and a report of proceedings from the post-trial proceedings, beginning with the March 10, 2016, hearing where judgment was entered on the special interrogatory.

¶ 36 Proof indicates, and plaintiff concedes, that a court reporter was present during trial, including the instructions conference where, among other things, the special interrogatory was discussed and the trial court made a ruling allowing the special interrogatory to be given.

Plaintiff responds that the rules do not require him to include the trial transcripts on appeal, the trial transcripts are irrelevant to this appeal, and argues that he has provided an adequate record to preserve his claimed errors to the extent possible.

¶ 37 We note that ordinarily, in the absence of a record of the proceedings below, it is presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. However, those transcripts may be unnecessary when an appeal presents solely a question of law and our review is *de novo*. *Watkins v. Office of State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19.

¶ 38 In the case at bar, we find that the portion of plaintiff's appeal which concerns whether the trial court properly entered judgment on the special interrogatory is supported by a report of proceedings and is reviewable and not forfeited. However, the portion of plaintiff's appeal which concerns whether the special interrogatory was properly given to the jury is not reviewable as it was not properly preserved for appellate review where there is no verbatim transcript of trial court proceedings, and no transcript of the instructions conference in violation of Rule 321. See *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764 (1994). It is the duty of every appellant before a reviewing court to properly preserve the record of proceedings for the information of the court and where the evidence is not all brought before this court, a presumption exists that the evidence supported the trial court's rulings. *Tekansky*, 263 Ill. App. 3d at 764 (citing *Wyman-Gordon Co. v. Bernardi*, 135 Ill. App. 3d 685, 689 (1985)).

¶ 39 We now turn to a discussion of plaintiff's remaining claims.

¶ 40 B. Denial of Plaintiff's Motion to Certify Proposed Bystander's Report

¶ 41 Plaintiff first contends that the trial court violated Supreme Court Rule 323 by refusing to certify his proposed bystander's report. Plaintiff sought to have a bystander's report certified for

the events that occurred after the jury retired to deliberate through the signing of the special interrogatory. Plaintiff has not indicated why the court reporter was not present during this time. He does, however, argue that his proposed bystander's report represented a *bona fide* effort to render an accurate account and that the trial court improperly directed that he and defendant work out their objections. Plaintiff further argues that the trial court did not provide direction as to what revisions would be required for certification. As such, he contends that the trial court's refusal to certify his proposed bystander's report must be reversed because it is extremely prejudicial and that this court should remand with instructions to the trial court to certify the report.

¶ 42 However, we find that we have no jurisdiction to address this issue.

¶ 43 This court has an independent obligation to consider whether or not it has jurisdiction to hear an appeal. *A.M. Realty Western, L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 67. Our supreme court has stated that the ascertainment of a court's own jurisdiction is one of the "most important tasks of an appellate court panel when beginning the review of a case." *People v. Smith*, 228 Ill. 2d 95, 106 (2008).

¶ 44 The timely filing of a notice of appeal is both mandatory and jurisdictional. *Dus v. Provena St. Marty's Hosp.*, 2012 IL App (3d) 091064, ¶ 10. Accordingly, our supreme court commands strict compliance with its rules governing the time limits set for filing a notice of appeal, and neither a circuit court nor an appellate court has the authority to excuse compliance with the filing requirements mandated by the supreme court's rules. *Dus*, 2012 IL App (3d) 091054, ¶ 10. When an appeal is untimely under a supreme court rule, the appellate court has no discretion to take any action other than dismissing the appeal. *Dus*, 2012 IL App (3d) 091054, ¶ 10.

¶ 45 Supreme Court Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015)) provides, in pertinent part: "The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of a final judgment appealed from, or, if a timely post-trial 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 post-judgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of nonfinal orders that were modified pursuant to postjudgment motions." According to section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2016)), only motions for rehearing, retrial, modification of the judgment, or vacation of the judgment qualify as posttrial motions directed against the judgment, which extend the 30-day deadline for filing a notice of appeal. Supreme Court Rule 303(a)(2) provides, however that no request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed. Ill. S. Ct. 303(a)(2) (eff. Jan. 1, 2015). Additionally, a motion requesting further relief does not constitute a posttrial motion within the meaning of Rule 303(a)(1) or section 2-1203 of the Code because it is not directed against the original judgment, but is incidental to that judgment. See *Dijkas v. Grafft*, 344 Ill. App. 3d 1, 12 (2003).

¶ 46 In the case at bar, the record shows that the trial court entered judgment for Proof and against plaintiff on March 10, 2016. Plaintiff did not file a post trial motion, opting instead to file a notice of appeal on April 8, 2016 (case number 16-1022). While our inquiry regarding this court's jurisdiction over the appeal from the trial court's March 10, 2016, order would normally cease at this juncture in our analysis, the unique set of procedural facts in this case compels us to further determine whether we have jurisdiction over the denial of plaintiff's subsequent motion to certify his proposed bystander's report and what effect, if any, it had on the finality and

appealability of the March 10, 2016, order. See *Indiana Ins. Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22.

¶ 47 After filing his first notice of appeal, plaintiff subsequently filed a motion in the circuit court to certify his proposed bystander's report on May 16, 2016, which the trial court denied on May 18, 2016. Despite a notice of appeal having been filed against the March 10, 2016, judgment for Proof, the trial court retained jurisdiction to hear plaintiff's motion to certify his proposed bystander's report. The circuit court retains jurisdiction to decide matters that are independent of or collateral or incidental to the judgment. *Moenning v. Union Pacific R. Co.*, 2012 IL App (1st) 101866, ¶ 22. Collateral or supplemental matters include those outside of the issues in the appeal or arising after entry of the judgment appealed from. *Moenning*, 2012 IL App (1st) 101866, ¶ 22. Here, this subsequent motion was not a posttrial motion under Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015)) because it was not directed against the original judgment and thus did not affect the appealability of the March 10, 2016, order. See *Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 23-24.

¶ 48 After the motion to certify his proposed bystander's report was denied in the trial court, plaintiff, instead of filing a motion to reconsider the decision or a notice of appeal, filed a writ of *mandamus* in the supreme court regarding the certification of his proposed bystander's report which was denied on June 27, 2016. He subsequently filed a motion in this court, requesting that we direct the circuit court clerk to include the proposed bystander's report on July 5, 2016, which was denied on August 4, 2016.

¶ 49 Plaintiff then went back to the trial court on September 22, 2016, and filed a motion to reconsider the May 18, 2016, order denying his request for certification of his bystander's report. The trial court denied plaintiff's motion to reconsider on October 6, 2016, and plaintiff filed a

second notice of appeal from the denial of that motion on October 17, 2016 (case number 16-2711). We find that the trial court lacked jurisdiction to hear plaintiff's motion to reconsider as it was filed more than 30 days after entry of the underlying order.

¶ 50 After entry of a judgment adjudicating all claims, the trial court loses jurisdiction over a matter within 30 days. *Kral v. Fredhill Press Co., Inc.*, 304 Ill. App. 3d 988, 993 (1999). After 30 days, the trial court is without jurisdiction to change, alter, or amend a final judgment unless a petition has been filed that is sufficient to grant relief under section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2016); *Burnidge Corp.*, 309 Ill. App. 3d at 579. That did not happen here.

¶ 51 The trial court entered a ruling on plaintiff's motion to certify his proposed bystander's report on May 18, 2016. As such, plaintiff had 30 days from the date of that ruling to file a motion to reconsider or notice of appeal from the denial of his motion to certify his proposed bystander's report, irrespective of his subsequently filed pleadings in the supreme court and this court. Plaintiff's later motion to reconsider that denial, filed September 22, 2016, was untimely and did not toll the time to file the notice of appeal from the order of May 18, 2016, and plaintiff did not file his notice of appeal relating to those orders until October 17, 2016. Under the supreme court rules, plaintiff had until June 18, 2016, to file either a motion for reconsideration or a notice of appeal. Since he filed his motion to reconsider approximately four months after June 18, 2016, the trial court ruled on plaintiff's motion to reconsider in error as it lacked jurisdiction. Accordingly, plaintiff's notice of appeal, filed October 17, 2016, was untimely and we do not have jurisdiction to consider his arguments related to the trial court's denial of his motion to certify his proposed bystander's report. The plaintiff's appeal (no. 16-2711) is therefore dismissed.

¶ 52 C. Entry of Judgment on the Special Interrogatory

¶ 53 Finally, plaintiff contends that the trial court erred in entering judgment for defendant on the jury's response to the special interrogatory because: 1) it should not have been submitted to the jury; 2) the special interrogatory was not clearly and absolutely irreconcilable with the general verdict; 3) there was no general verdict; and 4) the trial court should have declared a mistrial.

¶ 54 As previously noted, defendant has failed to provide this court with a report of the trial court proceedings at any point prior to the March 10, 2016, hearing on whether to enter judgment on the special interrogatory. Thus, we have no record of the instructions conference where the special interrogatory was discussed by the attorneys and the trial court, or of the jury instructions, including as to the verdict forms and special interrogatory. Nor do we have a record of the jury polling. Generally, a party's failure to raise a specific objection to the form of an interrogatory forfeits that ground for appeal. *Stanphill v. Ortberg*, 2017 IL App (2d) 161086, ¶ 23. Based on the record before us, we are unable to determine whether plaintiff objected to the specific form of the special interrogatory during the instructions conference, and find that plaintiff forfeited this argument. Therefore, we are unable to review his claim that the special interrogatory should not have been submitted to the jury.

¶ 55 Plaintiff next contends that the special interrogatory was not clearly and absolutely irreconcilable with the general verdict and conversely that there was no general verdict. His brief then purports to discuss events that allegedly occurred during jury deliberations and jury polling, when a juror allegedly stated that she did not agree with the general verdict, and that the trial court ordered the jury to sign the special interrogatory.

¶ 56 As stated previously, plaintiff apparently declined to have a court reporter present for the proceedings once the jury retired to deliberate, and the trial court rejected his proposed

bystander's report as inaccurate. Thus we will not consider any extraneous information contained in plaintiff's brief concerning court proceedings relating to the jury deliberations. Without a transcript of those proceedings, we are confined to the record before us as to those issues.

¶ 57 The record does not indicate that plaintiff filed a motion to reconsider the trial court's decision to enter judgment on the special interrogatory rather than grant a mistrial. Illinois Supreme Court Rule 366 (Ill. S. Ct. R. 366, eff. Feb. 1, 1994) requires a plaintiff to file a posttrial motion in a jury case to preserve issues for appeal. *Garcia v. Seneca Nursing Home*, 2011 IL App (1st) 103085, ¶ 32. Because plaintiff failed to do so, he has therefore forfeited review of any alleged errors. *Garcia*, 2011 IL App (1st) 103085, ¶ 32.

¶ 58 CONCLUSION

¶ 59 For the foregoing reasons, we dismiss plaintiff's appeal (no. 16-2711) as we lack jurisdiction to consider the order denying plaintiff's motion to certify his proposed bystander's report, and otherwise affirm the judgment of the circuit court of Cook County.

¶ 60 Appeal dismissed (no. 16-2711); judgment affirmed (no. 16-1022).