

2018 IL App (2d) 170716WC-U
No. 2-17-0716WC
Order filed September 28, 2018

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
SECOND DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JOSE VALDEZ,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellant,)	
)	
v.)	No. 16-MR-574
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION,)	Honorable
)	Thomas A. Meyer,
(KAP Roofing, Defendant-Appellee).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The failure of claimant's attorney to timely file a notice of appeal with the circuit court deprived the appellate court of jurisdiction and warranted dismissal of claimant's appeal.

¶ 2 Claimant, Jose Valdez, appeals from the judgment of the circuit court of McHenry County confirming a decision of the Illinois Workers' Compensation Commission (Commission) denying his petition to reinstate his application for adjustment of claim following a dismissal for

want of prosecution. We conclude that the failure of claimant's attorney to file a notice of appeal with the clerk of the circuit court within 30 days after entry of the final judgment appealed from deprived this court of jurisdiction. Accordingly, we dismiss claimant's appeal.

¶ 3

I. BACKGROUND

¶ 4 On November 18, 2005, claimant filed an application for adjustment of claim alleging injuries to his back on October 11, 2005, when he fell off a roof while working for respondent, KAP Roofing. At that time, claimant was represented by attorney David Martay. On October 21, 2009, Martay withdrew his appearance as claimant's lawyer and attorney James Geraghty entered an appearance on claimant's behalf. On the stipulation-to-substitute-attorney form filed with the Commission, Geraghty listed his address as 111 W. Washington Street, Suite 1861, Chicago, Illinois 60602.

¶ 5 Counsel for respondent noticed the matter for hearing on February 5, 2014, before Arbitrator Joann Fratianni. The day prior to the scheduled hearing, attorney Nicholis Stein advised respondent's counsel that he would be entering an appearance on claimant's behalf, but did not yet have the file materials. Counsel for respondent agreed to continue the case, and the matter was placed on Arbitrator Fratianni's May 7, 2014, status call. On May 7, 2014, the matter was set for hearing on May 9, 2014.

¶ 6 Although Stein had yet to file a written appearance on claimant's behalf, and Geraghty had not withdrawn as attorney of record, Stein appeared before Arbitrator Fratianni on May 9, 2014. At that time, Stein indicated that he was not prepared to proceed. Respondent moved for dismissal, noting that the claim was 8½ years old. Arbitrator Fratianni denied respondent's request for dismissal and continued the matter to the August 6, 2014, status call. On August 6, 2014, Arbitrator Fratianni set the matter for trial on August 8, 2014. Neither claimant nor his

attorney appeared for trial on August 8, 2014. Accordingly, Arbitrator Fratianni dismissed the matter for want of prosecution. The Commission mailed a notice of case dismissal dated August 27, 2014, to the parties' attorneys of record. Because Stein had yet to file with the Commission a stipulation-to-substitute-attorney form or otherwise enter a written appearance, the Commission's file reflected Geraghty as claimant's attorney of record. Accordingly, the Commission mailed the notice of case dismissal to Geraghty at the Washington Street address on file.

¶ 7 On February 11, 2015, claimant filed with the Commission a stipulation to substitute attorney whereby Geraghty withdrew his appearance as claimant's counsel of record and Stein filed an appearance on claimant's behalf. On February 26, 2015, Stein filed a notice of motion and order seeking the reinstatement of claimant's case. Stein attached to the motion a "Petition to Vacate Dismissal." In the petition to vacate dismissal, Stein alleged as follows:

"4. Attorney *** Stein took the case over in late November [2013]. He had sent a substitution of attorney form to *** Geraghty, the attorney of record on the Commission web site. Due to inadvertence on *** Stein's part, the substitution form was never filed with the Commission.

5. Because of this error *** Stein was never notified of the trial date of August 8, 2014. As such, *** Stein did not appear and the case was dismissed for want of prosecution ***.

6. No [claimant's] attorney received notice of the dismissal because *** Stein had not filed his appearance so therefore would not have received notice and attorney-of-record *** Geraghty has not maintained an office at 111 West Washington Street, Chicago, Illinois for several years. This is the address that the Commission maintains for

*** Geraghty ***.

7. During a routine status check of active cases on October 30, 2014, *** Stein realized that this case was dismissed on August 8, 2014.”¹

Stein further alleged that claimant’s case was meritorious and should be reinstated. Attached to the petition to vacate dismissal was an affidavit from Geraghty stating that on August 8, 2014, he was the attorney of record for claimant, that his registered business office was located at 105 West Adams Street, Chicago, Illinois 60603, and that he never received a notice from the Commission that claimant’s case had been dismissed for want of prosecution on August 8, 2014. On March 6, 2015, respondent filed an objection to claimant’s petition to reinstate. Among other matters, respondent argued that Stein’s petition to reinstate was untimely because it was not filed within 60 days from receipt of the dismissal order as required by Commission rules. See 50 Ill. Admin. Code § 7020.90(a) (2014) (now recodified at 50 Ill. Admin. Code § 9020.90(a) (eff. July 10, 2015)). Following a hearing on March 26, 2015, Arbitrator Robert Falcioni denied claimant’s motion, explaining that because the motion to reinstate was filed “outside the 60

¹ In the filings before this court, Stein represents that he filed a petition to vacate dismissal on November 14, 2014. However, the Commission found that its docket did not reflect any filing by Stein in this case on November 14, 2014. The Commission further noted that even if Stein had submitted a filing on November 14, 2014, it would not have been recognized because Stein had yet to enter a proper appearance by that date. See 50 Ill. Admin. Code § 7020.20(b) (2014) (now recodified at 50 Ill. Admin. Code § 9020.30(b) (eff. July 10, 2015) (providing that no attorney or law firm will be recognized in any case before the Commission unless he or it has duly entered a written appearance)).

days,” he lacked authority to consider it.

¶ 8 On May 21, 2015, claimant filed a request for review of the arbitration decision. On November 24, 2015, the Commission entered a written opinion on review affirming the arbitrator’s decision and finding that claimant had not shown justification for reinstatement of his case. On February 16, 2016, claimant sought judicial review of the Commission’s decision. A hearing on the matter was held on May 25, 2017, before the Judge Thomas Meyer. On June 16, 2017, Judge Meyer entered a written decision confirming the decision of the Commission.

¶ 9 On July 12, 2017, Stein electronically transmitted a notice of appeal to the appellate court. The electronic filing system rejected the transmission and issued a document captioned “Filing Returned.” That document provided that the filing was returned due to “Absence of Circuit Clerk File-mark.” The document further instructed Stein to “file this document with the Circuit Court, if not done so already, and [that] the document(s) must be filed as a ‘Subsequent Filing’ as well as including the Notice of Filing/Cert of Serv of same.” On August 11, 2017, Stein electronically transmitted an amended notice of appeal. The amended notice of appeal was also rejected. On August 24, 2017, Stein filed a notice of appeal in the circuit court of McHenry County. On September 14, 2017, claimant’s notice of appeal was received and filed with this appellate court. On September 25, 2017, respondent filed a motion to dismiss claimant’s appeal for lack of jurisdiction. On October 5, 2017, claimant filed a response to respondent’s motion to dismiss and a “Motion to File Notice of Appeal Late or Relation Back to Attempted Filing of July 12, 2017.” On November 2, 2017, this court entered an order taking the outstanding motions with the case.² For the reasons that follow, we now grant respondent’s motion to

² On October 16, 2017, respondent also filed a motion for leave to file a reply to

dismiss claimant's appeal for lack of jurisdiction and deny claimant's "Motion to File Notice of Appeal Late or Relation Back to Attempted Filing of July 12, 2017."

¶ 10

II. ANALYSIS

¶ 11 Appellate review is initiated by the filing of a notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8. "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). In the absence of a properly filed notice of appeal, the appellate court lacks jurisdiction and must dismiss the appeal. *Huber*, 2014 IL 117293, ¶ 8.

¶ 12 Under the Act, appeals from decisions of the circuit court "shall be taken to the Appellate Court in accordance with Supreme Court Rules 22(g) [*sic*] and 303." 820 ILCS 305/19(f)(2) (West 2016). Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) states in relevant part that 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." Thus, under Rule 303(a)(1), claimant's notice of appeal had to be filed with the clerk of the circuit court within 30 days after the June 16, 2017, judgment. Because the 30th day after June 16, 2017, was Sunday, July 16, 2017, claimant had until Monday, July 17, 2017, to file his notice of appeal with the clerk of the circuit court. See 5 ILCS 70/1.11 (West 2016) (providing that the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is

claimant's response to its motion to dismiss. See Ill. S. Ct. R. 361(b)(3) (eff. July 1, 2017) (providing that replies to responses to motions filed in the reviewing court will not be allowed except by order of the court). We grant respondent's motion.

Saturday, Sunday, or a holiday). However, the record on appeal reflects that Stein did not file claimant's notice of appeal in the circuit court until August 24, 2017, or 69 days after June 16, 2017. Consequently, claimant's notice of appeal was untimely, and we must dismiss his appeal. See *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶¶ 27-28 (holding that a notice of appeal filed in circuit court more than 30 days after entry of the circuit court's final order was insufficient to vest the appellate court with jurisdiction).

¶ 13 An appellant who fails to file a timely notice of appeal in the circuit court is not entirely without recourse. Illinois Supreme Court Rule 303(d) (eff. July 1, 2017) permits, in certain circumstances, an extension of time to file a notice of appeal. In fact, Stein filed on claimant's behalf a "Motion to File Notice of Appeal Late or Relation Back to Attempted Filing of July 12, 2017." Unfortunately, one of the requirements of Rule 303(d) is that the motion be filed "within 30 days after expiration of the time for filing a notice of appeal[.]" Ill. S. Ct. R. 303(d) (eff. July 1, 2017). Here, claimant's period for filing a notice of appeal expired on July 17, 2017. Thus, a Rule 303(d) motion needed to be filed with this court by August 16, 2017. Stein, however, did not file a motion for leave to file a late notice of appeal until October 5, 2017, well beyond the 30-day period set forth in Rule 303(d). Thus, the motion to file a late notice of appeal is untimely.

¶ 14 Alternatively, claimant's motion asks that we "relate the filing back to July 12, 2017 when he first attempted to file the Notice of Appeal in a timely manner." The motion, however, cites no authority that would allow us to relate back the August 24, 2017, filing to July 12, 2017, when Stein first transmitted claimant's notice of appeal. Even if we could relate back the filing, we disagree with the representation that the July 12, 2017, notice of appeal was "timely." The notice of appeal was rejected because it was erroneously filed in the appellate court as evidenced

by the “Filing Returned” document, which instructed Stein to refile the notice of appeal after he filed it with the circuit court and provided proof of service. Under these circumstances, the notice of appeal did not comply with Rule 303(a)(1)’s requirement that the notice of appeal be filed *with the clerk of the circuit court* within 30 days after the entry of the final judgment appealed from. Consequently, the July 12, 2017, notice of appeal was *not* timely. See *Swinkle v. Illinois Civil Service Comm’n*, 387 Ill. App. 3d 806, 810-11 (2009) (dismissing appeal where, in violation of Rule 303(a)(1), the appellant erroneously filed his notice of appeal in the appellate court instead of the circuit court); *First Bank v. Phillips*, 379 Ill. App. 3d 186, 188 (2008) (same).

¶ 15 Accordingly, for the reasons set forth above, we grant respondent’s motion to dismiss claimant’s appeal for lack of jurisdiction and we deny claimant’s “Motion to File Notice of Appeal Late or Relation back to Attempted Filing of July 12, 2017.”

¶ 16 Appeal dismissed.