

No. 1-12-0401

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ARLENE OTIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 M1 113776
	)	
TARGET,	)	Honorable
	)	Pamela E. Hill-Veal,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE NEVILLE delivered the judgment of the court.  
Justices Hyman and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where plaintiff appeals from the dismissal of her complaint for want of prosecution, which does not constitute a final order, this court lacks jurisdiction to consider the appeal; the appeal was dismissed.

¶ 2 Plaintiff, Arlene Otis, appeals, *pro se*, from the trial court's order denying her motion to reconsider the dismissal of her complaint for want of prosecution against Target Corporation. On appeal, Otis contends the trial court erred in failing to rule on her oral motion for recusal or substitution of judge. Although Target has not filed a brief in this proceeding, we may consider the merits of this appeal on Otis's brief alone. See *First Capital Mortgage Corp. v. Talandis*

*Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (such review allowable if the record is simple and errors can be considered without additional briefing). We dismiss this appeal for lack of jurisdiction.

¶ 3 On February 23, 2011, Otis filed a *pro se* complaint alleging that a transaction at a Target store resulted in an overcharge, and that a Target representative used racial slurs when Otis sought resolution of the matter. The complaint alleged that although Otis asked the clerk to split a purchase between her Target credit card and her debit card, the entire amount of the purchase was charged to her debit card and an additional \$50 was charged to her Target card. Otis further alleged in the complaint that "Target then changed the dates to justify keeping all my money." The complaint included a jury demand and sought \$50 for the overcharge and \$5,000 for "racial discrimination" based on Otis's claim that she was "insulted, belittled and racially profiled."

¶ 4 On May 20, 2011, Otis filed a motion seeking a default judgment against Target, asserting Target had been served with the complaint and had failed to respond. Otis filed a second similar motion dated June 17, 2011; the copy of that motion contained in the record is not file stamped. The record indicates those motions were later withdrawn.

¶ 5 On July 7, 2011, Target filed a motion asking the court to vacate any default judgment entered against the company and requesting an extension of time to respond to the complaint. Target stated Otis had served notice of her complaint at a retail store at 8600 South Cottage Grove in Chicago but the nearest Target location was at 8560 South Cottage Grove. The court granted Target leave to respond to the complaint and set a hearing date for September 15, 2011.

¶ 6 On August 1, 2011, Target filed a motion to dismiss the complaint, asserting that Otis failed to state a cause of action. The motion asserted that Otis failed to provide any detail about the transaction or the alleged discriminatory behavior, and the motion stated Otis had filed about 40 lawsuits in the last 10 years against the City of Chicago, companies such as Best Buy and McDonald's and various individuals.

¶ 7 On September 12, 2011, Otis filed a response to Target's motion to dismiss, setting out additional details of her claim against Target. Otis also asserted in that motion that the trial judge should recuse herself from the case because the judge displayed prejudice against *pro se* litigants. Otis requested a "recusal as of right."

¶ 8 On September 15, 2011, the trial court dismissed the complaint and allowed Otis 45 days to file an amended complaint. The court set the matter for a status hearing on November 16, 2011. Otis sought an extension of time to file an amended complaint due to a health issue; however, no amended complaint was filed. On the date of the status hearing, Otis failed to appear, and the court dismissed the case for want of prosecution.

¶ 9 Two days after that dismissal, on November 18, 2011, Otis filed a *pro se* motion asking that her complaint be reinstated. Otis stated in her motion that she missed the November 16 court date because of an emergency doctor's visit and that she had asked her daughter to appear in court in her stead. The motion asserted the "[j]udge is prejudiced against *pro se* litigants and does not allow them to be sick or have health problems and should have recused herself."

¶ 10 On December 9, 2011, a different judge entered an order striking Otis's motion to reinstate her complaint. On December 13, 2011, Otis filed a motion to reconsider the November 16, 2011, order and renewing her request for the original judge to "recuse herself from all further dealings with plaintiff \*\*\* because she is prejudiced."

¶ 11 On January 6, 2012, the original judge entered an order denying Otis's motion for reconsideration of the dismissal of the case. The court found Otis had "made conflicting misrepresentations during presentation of the motion versus her previous motions." The order also stated Otis was "admonished that, pursuant to [Supreme Court] Rule 137, any future frivolous motions will subject her to sanctions." On February 3, 2012, Otis filed a notice of appeal from the January 6, 2012, order.

¶ 12 On appeal, Otis contends the trial court erred in denying her September 2011 motion for recusal based on the judge's "bias and prejudice" towards *pro se* litigants. Otis contends she requested a substitution of judge as of right before the judge made a substantive ruling. She further asserts that because the trial court did not address her motion for recusal, the court lacked jurisdiction over the subsequent proceedings.

¶ 13 Otis appealed from the court's order denying reconsideration of the dismissal of her complaint for want of prosecution. The jurisdiction of this appellate court is limited to appeals from final orders of the circuit court, subject to certain exceptions provided by statute or supreme court rule. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989).

¶ 14 A dismissal for want of prosecution does not constitute a final order or an adjudication on the merits of the case because a plaintiff has an absolute right to refile the action against the same party or parties and to reallege the same cause or causes of action. *Bank Financial, FSB v. Tandon*, 2013 IL App (1st) 113152, ¶ 29. An action that has been dismissed for want of prosecution may be refiled if the time for commencing the action has not expired. 735 ILCS 5/13-217 (West 2010). Thus, a dismissal of want of prosecution becomes a final order only when the period for refiling the action expires. *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 497 (1998).

¶ 15 In the instant case, the trial court dismissed Otis's complaint on September 15, 2011, allowed her 45 days to replead, and dismissed the case for want of prosecution when she failed to appear at the status hearing, of which she had notice. Otis requested reinstatement of her original complaint but did not file a new complaint even though she had been granted leave to amend. An action that is refiled under section 13-217 is a new action, not a reinstatement of the old action. *Dubina v. Mesirov Realty Development, Inc.*, 178 Ill. 2d 496, 504 (1997). Because Otis now appeals the order dismissing her complaint for want of prosecution, which was not a final order, this court lacks jurisdiction to consider the arguments she has raised in this appeal, including her claim that she

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should have been granted a substitution of judge. Accordingly, Otis's appeal in this case is dismissed.

¶ 16 Appeal dismissed.