

No. 1-12-0609

**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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ROBERT BERNSTEIN, an individual, JOEL W.	)	Appeal from the Circuit Court
GREENBERG, an individual, MARSHALL J. STEIN	)	of Cook County
REVOCABLE TRUST, and ADRIENNE HEIMAN	)	
REVOCABLE TRUST,	)	
	)	No. 09 L 4010
Plaintiffs-Appellees,	)	
	)	Honorable Bill Taylor,
v.	)	Judge Presiding.
	)	
JAMES W. HALL, an individual, CASSANDRA	)	
MCCORD, an individual, JWH MANAGMENT, INC., a	)	
Florida Corporation, and JWH FAMILY PARTNERSHIP	)	
LTD., a Florida limited partnership,	)	
	)	
Defendants-Appellants.	)	

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* The matter is dismissed for lack of jurisdiction, where defendant failed to timely file a notice of appeal after the circuit court entered a final judgment order. The suit, though consolidated with another suit for discovery purposes, maintained its separate identity, thus requiring defendants to file a notice of appeal within 30 days after final judgment was entered in that specific suit.

¶ 2 Defendants, obligors, appeal the order of the circuit court of Cook County granting

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summary judgment in favor of plaintiffs, obligees, for breach of four promissory notes and corresponding guarantees. On appeal, defendants contend the circuit court erred in: (1) denying their motion to dismiss for lack of jurisdiction, as there were insufficient contacts with Illinois to fall under the Illinois long arm statute; (2) deeming their requests to admit untimely filed; and (3) granting summary judgment in favor of plaintiffs. For the reasons which follow, we conclude defendants' notice of appeal was untimely and dismiss the appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 This matter involves the consolidation, and subsequent deconsolidation, of two cases in the circuit court, the "Bernstein litigation" and the "BMD litigation."<sup>1</sup> The record on appeal discloses the following facts.

¶ 5 On April 3, 2009, plaintiffs (Robert Bernstein, Joel W. Greenberg, the Marshall J. Stein Revocable Trust, and the Adrienne Heiman Revocable Trust) commenced the Bernstein litigation by filing a complaint against defendants (James W. Hall, Cassandra McCord, JWH Management, Inc., and JWH Family Partnership, Ltd.) in the circuit court of Cook County for the breach of four promissory notes and corresponding guarantees in the amount of \$450,000, intended to fund defendants' real estate venture.

¶ 6 BMD Trading, Ltd. and Richard Cunningham subsequently commenced the BMD litigation by filing a separate lawsuit in the circuit court of Cook County against James W. Hall, JWH Family Partnership, Ltd., Scott Heiman, and Sussex Financial Group, Inc. The BMD litigation claimed James W. Hall and the JWH Family Partnership, Ltd. failed to repay funds

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<sup>1</sup>The BMD Litigation is not the subject of this appeal.

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issued to support the business of JWH Family Partnership, Ltd. secured by two promissory notes. The plaintiffs in the BMD litigation also claimed Scott Heiman and Sussex Financial Group, Inc. provided the BMD plaintiffs with negligent financial advice regarding the loan.

¶ 7 On November 3, 2009, Scott Heiman and Sussex Financial Group, Inc. moved to consolidate the two cases. The motion asserted the cases should be consolidated because both cases shared two defendants in common, James W. Hall and JWH Family Partnership, Ltd. Moreover, James W. Hall and JWH Family Partnership, Ltd. had moved in both cases to dismiss the complaints for lack of personal jurisdiction. The circuit court granted the motion, but explicitly ordered the consolidation was "for discovery purposes only." The circuit court ultimately denied James W. Hall and JWH Family Partnership, Ltd.'s motions to dismiss, finding they had the requisite minimum contacts to fall within the purview of the Illinois long arm statute. 735 ILCS 5/2-209 (West 2010).

¶ 8 On October 31, 2011, following briefing and argument in the matter, plaintiffs in the Bernstein litigation were granted summary judgment. The circuit court, however, continued the matter for hearing regarding prove up of the amounts due and owing under the notes. On January 19, 2012, the circuit court entered a judgment against defendants in the Bernstein litigation in the amount of \$876,933.07 plus costs.

¶ 9 On February 8, 2012, plaintiffs in the Bernstein litigation filed a motion for deconsolidation, which was granted. On February 27, 2012, defendants in the Bernstein litigation filed this notice of appeal.

¶ 10

ANALYSIS

¶ 11 Prior to discussing the merits of this appeal, we must determine whether this court has jurisdiction. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 607 (2007). Although neither party challenges jurisdiction, we have an independent obligation to consider our jurisdiction and to dismiss when jurisdiction is lacking. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 765 (2009).

¶ 12 In the present case, there is an issue of whether the notice of appeal was timely filed. "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Company v. Illinois Farmers Insurance Company*, 232 Ill. 2d 209, 213 (2009). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). For an appeal to be timely, the notice of appeal must be filed within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against the judgment or order. Ill. S. Ct. R. 303(a)(1) (eff. May 1, 2007); see *Secura*, 232 Ill. 2d at 213.

¶ 13 In the circuit court the Bernstein litigation was consolidated with the BMD litigation. Section 2-1006 of the Code of Civil Procedure provides, "[a]n action may be severed, and actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." 735 ILCS 5/2-1006 (West 2010). "Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay the proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several

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actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts, and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit." *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008). The category into which a particular piece of litigation falls effects the finality of judgments entered therein.

¶ 14 In *Adoption of S.G. v. S.G.*, 401 Ill. App. 3d 775 (2010), for example, two adoption petitions were consolidated, as each petitioner sought to adopt the same child. Appellant's petition therein was dismissed with prejudice, thereby disposing of all issues in that particular petition. *Id.* at 778. Instead of filing an appeal after the dismissal was entered, the appellant waited until after 30 days passed, then obtained an Illinois Supreme Court Rule 304(a) finding from the trial court and filed the notice of appeal. *Id.* at 779. Appellees contended we lacked jurisdiction, as the appellant failed to file the notice of appeal within 30 days. The appellant argued the two adoption petitions merged into one action when they were consolidated, therefore the dismissal order was not a final order. We disagreed, determining the petitions each maintained a separate identity in the trial court. *Id.* at 783. This was supported by the fact separate docket entries were utilized, the petitioners were not treated as parties in the other case, and a singular order was entered dismissing the appellant's petition. *Id.* Therefore, despite the two petitions being consolidated, because each petition maintained its own identity, when the trial court dismissed the petition with prejudice it was a final and appealable order. *Id.* Appellant's failure to file its appeal within 30 days deprived the appellate court of jurisdiction.

*Id.*

¶ 15 Similarly, in *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361 (1985), plaintiffs sought review of two orders arising from two lawsuits, one filed by plaintiff for declaratory judgment, the other filed by defendants for condemnation. The suits were consolidated for evidentiary hearing. On March 31, 1983, the trial court entered judgment on behalf of defendant in the declaratory judgment action. Plaintiffs did not appeal from that judgment within 30 days. The matter proceeded to trial on the issue of just compensation and a judgment order in that suit was entered on July 25, 1983. Within 30 days of that order, plaintiffs filed their notice of appeal. In that case we determined the two suits retained their separate identities, as each suit maintained its own case number and was issued its own judgments. *Id.* at 364. Further, the consolidation was granted solely to "permit a single hearing of evidence relating to common issues and did not result in the merging of the two matters into a single suit." *Id.* Ultimately, we held, "[b]ecause the declaratory judgment action remained a separate suit, when Kassnel was faced with a final order in that action, its failure to timely file a notice of appeal deprived this court of jurisdiction, requiring dismissal of Kassnel's subsequent untimely attempted appeal from that judgment order." *Id.* at 364-65.

¶ 16 Like *Adoption of S.G.* and *Kassnel*, the notice of appeal in the case at bar was filed more than 30 days after the circuit court entered final judgment. Here, the circuit court granted summary judgment in favor of plaintiffs on October 31, 2011. A motion for summary judgment can dispose of all claims. See *McGath v. Price*, 342 Ill. App. 3d 19, 26 (2003). In this case, however, the order granting summary judgment was not final because all the issues were not

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determined. This is due to the fact the circuit court continued the matter for hearing on prove up of damages. On January 19, 2012, the circuit court entered judgment in favor of plaintiffs as to all claims, thus rendering it a final judgment. See *In re Curtis B.*, 203 Ill. 2d 53, 59 (2002).

Thereafter, on January 25, 2012, plaintiffs filed a motion for deconsolidation. On February 8, 2012, plaintiffs' motion to deconsolidate was granted. On February 27, 2012, defendants filed this notice of appeal, which was more than 30 days after final judgment, but less than 30 days after the circuit court granted the motion for deconsolidation.

¶ 17 Again, like in *Adoption of S.G. and Kassnel*, the Bernstein litigation maintained its separate identity from the BMD litigation. The consolidation of the two suits here falls within the second category of consolidation, as the circuit court granted the motion for consolidation for "discovery purposes only." Because the consolidation was done only for convenience and economy, "it did not merge the causes into a single suit, or change the rights of the parties, or make those who were parties in one suit parties in another." *Shannon v. Stookey*, 59 Ill. App. 3d 573, 577 (1978); see *Nationwide Mutual Insurance Co. V. Filos*, 285 Ill. App. 3d 528, 532 (1996). Further, each suit retained a separate case number and the circuit court granted separate orders of summary judgment as well as a judgment order in the amount of \$876,933.07, thus each suit retained its separate identity. See *Adoption of S.G.*, 401 Ill. App. 3d at 781-82.

Consequently, because the Bernstein litigation retained its distinct identity, when the circuit court entered judgment on all counts in favor of the plaintiffs in the Bernstein litigation on January 19, 2012, defendants had 30 days from the entry of that final order to file a notice of appeal. *Filos*, 285 Ill. App. 3d at 532.

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¶ 18 Defendants filed the notice of appeal on February 27, 2012, which was more than 30 days after the circuit court entered final judgment. Accordingly, since the notice was filed outside 30 days, this court was deprived of jurisdiction to hear the matter. *Kassnel*, 135 Ill. App. 3d at 364. Thus, this court is without appellate jurisdiction to consider defendants' appeal.

¶ 19 Appeal dismissed for lack of jurisdiction.