

FIRST DIVISION
March 31, 2011

No. 1-09-3433

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
FIRST JUDICIAL DISTRICT

CORNEL MCKAY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 M1 450934
)	
CITY OF CHICAGO, Department of Buildings,)	
a Municipal Corporation,)	Honorable
)	Ann Houser,
Defendant-Appellee.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hall and Justice Hoffman concurred in the judgment.

ORDER

Held: Plaintiff's appeal was dismissed for lack of jurisdiction where his notice of appeal was untimely under Rule 303(a)(1) and where he failed to file a section 2-1203(a) post-trial motion directed against the final judgment that would have tolled the time for filing the notice of appeal.

Plaintiff, Cornel McKay, appeals the order of the circuit court affirming a decision of the city of Chicago Department of Administrative Hearings (DOAH) that had found certain building code violations existed at a building owned by plaintiff and imposed fines.

Although neither party contests appellate jurisdiction, this court has a duty to examine matters pertaining to its jurisdiction *sua sponte* and to dismiss the appeal if jurisdiction is lacking.

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In re Marriage of Mackin, 391 Ill. App. 3d 518, 519 (2009).

Supreme Court Rule 303(a)(1), which governs appeals from final judgments in civil cases, provides in relevant part:

"[T]he 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, or, if a timely posttrial 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 postjudgment motion directed against that judgment or order." Ill. S.Ct. R. 303(a)(1) (eff. May 30, 2008).

For a motion in a non-jury case to qualify as a post-trial motion within the meaning of Supreme Court Rule 303(a)(1), the movant must request one or more of the types of relief set forth in section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2008)). *Hayes Machinery Movers, Inc. v. REO Movers & Van Lines, Inc.*, 338 Ill. App. 3d 443, 445 (2003). Section 2-1203(a), which governs post-judgment motions in non-jury cases, states:

"In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203(a) (West 2008).

The "other relief" language in section 2-1203(a) has been interpreted to mean relief similar in nature to the other forms of relief specifically set forth in that section. *R & G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 321 (2004). An order denying a post-trial motion under section 2-1203 "is not appealable, but merely tolls the time to file an appeal

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from a final judgment." *Cinch Manufacturing Co. v. Rosewell*, 255 Ill. App. 3d 37, 42 (1993).

In the present case, the DOAH issued an administrative decision on November 20, 2008, imposing fines for certain building code violations at a building owned by plaintiff. Plaintiff filed a *pro se* complaint in the circuit court for administrative review of the DOAH decision. The complaint named the DOAH and the city of Chicago as defendants. The circuit court entered a final judgment affirming the DOAH decision on September 22, 2009. Under Rule 303(a)(1), plaintiff had 30 days to file an appeal of the September 22, 2009, final judgment unless, within that 30-day period, he filed a post-trial motion directed against that judgment pursuant to section 2-1203(a). Such a motion would toll the time for filing the notice of appeal until the circuit court disposed of that motion. On October 20, 2009, plaintiff filed a cursory untitled motion that named and was served on only the department of buildings of the city of Chicago, an entity not named in plaintiff's complaint for administrative review. The motion stated as follows:

"MOTION BY Cornel McKay FOR review of DWM Inspection Report from the City of Chicago Sewer Department dated October 22, 2008 at 12:45, at the property address 6046 S. Vernon Ave Chicago, IL 60637. For review of city permit number 0807005 with effective date October 21, 2008 and city permit number 0806209 effective date September 18, 2008. I would also like to review the Department of buildings 2009 sewer permit requirements and fees handout, page 2, the first paragraph. And a copy of the violations of 6046 South Vernon Ave. Chicago, IL 60637."

Plaintiff noticed the motion for presentment on November 2, 2009. On November 2, the judge sitting on the call in that courtroom entered an order that stated, without an explanation or finding: "court views Plaintiff's Motion as a Motion to Reconsider. Continued to Judge Houser's call." The order set the matter for November 10, 2009, at 2 p.m. Judge Houser, on November 10, 2009, effectively denied plaintiff's October 20, 2009, motion, ruling that the September 22, 2009,

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judgment affirming the DOAH decision was "to stand" and that the case was now "off-call." Plaintiff filed an appeal on December 8, 2009, seeking review and reversal of the November 10, 2009, order.

Plaintiff's appeal was timely filed only if his October 20, 2009, motion was directed against the September 22, 2009, final judgment pursuant to Rule 303(a)(1) and if it sought a rehearing, a retrial, a modification or vacating of that judgment, or other relief similar in nature, pursuant to section 2-1203(a). Such a motion would have tolled the start-date for filing the notice of appeal until November 10, 2009, when the circuit court disposed of said motion, and, therefore, plaintiff's notice of appeal filed within 30 days thereof on December 8, 2009, would have been timely.

To determine the true character of the October 20, 2009, motion, we must look to the motion's content and substance. See *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81 (2006); *R & G, Inc.*, 351 Ill. App. 3d at 321. The October 20, 2009, motion did not in any way attack or challenge the September 22, 2009, final judgment of the circuit court affirming the decision of the DOAH. The motion did not request any relief and, therefore, did not seek a rehearing, a retrial or an order vacating or modifying the judgment. The motion was addressed to the department of buildings, an entity not named as a defendant, and sought an unspecified review of certain documents. Plaintiff, in the motion, did not set forth any reason for reviewing this material. The motion did not specifically ask the trial judge to review the material. In fact, in the motion, plaintiff asked that he review certain documents. These documents do not appear to have been before the DOAH and cannot be considered on administrative review. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004).

The October 20, 2009, motion was not a motion directed against the September 22, 2009, final judgment under Supreme Court Rule 303(a)(1) and did not constitute a post-judgment motion under section 2-1203(a). Therefore, the October 20, 2009, motion did not toll the time for filing a notice of appeal. In the absence of any tolling, plaintiff was required under Rule 303(a)(1) to file his appeal within 30 days of the September 22, 2009, final judgment. Plaintiff filed his appeal on December 8, 2009, which is significantly past the 30 days allowed under Rule 303(a)(1). Jurisdiction is confirmed upon this court only when there is a timely notice of appeal. *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000). Accordingly, we must dismiss this appeal for lack of jurisdiction.

As a result of our holding, we need not address the other issues on appeal. We understand the harshness of this result and that plaintiff pursued his case in the trial court without counsel. However, "*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). We are without authority to excuse plaintiff's failure to file a timely appeal under the supreme court rules and without jurisdiction to entertain his appeal. *Clark v. Han*, 272 Ill. App. 3d 981, 984 (1995).

For the foregoing reasons, plaintiff's appeal is dismissed.

Dismissed.