2012 IL App (1st) 110199-U

FOURTH DIVISION
July 19, 2012

No. 1-11-0199

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHASE BANK USA, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 M1 108683
	)	
MERDELIN JOHNSON,	)	The Honorable
	)	Martin P. Moltz,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

O R D E R

¶ *1* *Held:* Appeal dismissed for lack of jurisdiction where defendant's successive post-judgment motions did not toll the time for filing an appeal.

¶ 2 Defendant, Merdelin Johnson, *pro se*, appeals the judgment of $10,565.59, plus costs, which was entered against her and in favor of plaintiff, Chase Bank U.S.A., N.A., in a breach of contract matter stemming from defendant's failure to pay money due and owing on her credit

card. Defendant subsequently filed five motions to reconsider and/or vacate that judgment, each of which was denied by the circuit court of Cook County. Plaintiff has not filed a brief in response; however, we may consider the appeal pursuant to the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976), which permits this court to decide the merits of the appeal without the aid of an appellee's brief. For the reason that follow, defendant's appeal is dismissed for lack of jurisdiction.

¶ 3 On January 31, 2009, plaintiff filed a verified breach of contract complaint alleging that defendant entered into a "credit card retail installment credit agreement" with it, then subsequently defaulted on making payments, and currently owed $10,640.59. Plaintiff alleged that it demanded payment from defendant, but that defendant failed to pay the amount owed. In support of the complaint, plaintiff attached a statement issued to defendant which showed a credit card balance of $10,640.59, and a minimum payment of $3,080.59 due January 13, 2009.

¶ 4 On July 17, 2009, defendant filed an answer to plaintiff's complaint. Defendant admitted that she entered into a credit card agreement with plaintiff, but denied the remaining allegations regarding that agreement.

¶ 5 On February 11, 2010, the circuit court entered an *ex parte* default judgment in favor of plaintiff and against defendant for $10,565.59, plus costs. In its written order, the court noted that it found no just reason to delay enforcement or appeal of this judgment.

¶ 6 On March 4, 2010, defendant filed a motion to vacate the default judgment alleging that she was under medical care and inadvertently missed the court date. Defendant further alleged that plaintiff failed to provide her a copy of "said contract in question." On March 22, 2010, the circuit court denied defendant's motion to vacate the default judgment.

¶ 7 The next day, defendant filed a motion for reconsideration and to vacate the order denying her motion to vacate the default judgment. Defendant repeated the allegations in her prior motion to vacate, which she noted was filed pursuant to section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2010)). Defendant maintained that she presented appropriate grounds for the circuit court to reconsider its order of March 22, 2010, denying her motion to vacate the default judgment entered against her, *i.e.*, that she was being treated for cardiac problems, and in her doctor's expert opinion, her trial date should be delayed. Defendant attached a letter in which her doctor stated: "Please allow [defendant] to delay her court case as she is being actively evaluated for a cardiac condition."

¶ 8 Defendant's motion for reconsideration was set for hearing on July 8, 2010, and on that date, the court denied defendant's motion to reconsider, with leave to refile within 30 days. On August 6, 2010, defendant filed another motion for reconsideration and to vacate the order entered on March 22, 2010. In this motion, defendant noted that on July 8, 2010, the court gave her leave to refile within 30 days, and provide further documentation from her physician. Defendant repeated the allegations in her prior motions, and specifically noted that she was incorporating in this motion her March 22, 2010, motion for reconsideration. Defendant attached another letter in which her doctor stated that she had a normal stress test, and that it was okay for her to follow through with her court date.

¶ 9 A hearing date was set on defendant's motion for September 16, 2010. On that date, the court denied defendant's motion to reconsider without prejudice, and granted her leave to refile within 30 days.

¶ 10 On October 15, 2010, defendant filed another motion to reconsider and vacate the order

entered on March 22, 2010, denying her motion to vacate the default judgment entered on February 11, 2010. In this motion, defendant essentially reiterated the allegations presented in her prior motions to reconsider, and attached another letter from her doctor dated October 14, 2010, which contained no information regarding her absence on February 11, 2010. The circuit court denied this motion on November 3, 2010, and in the written order, the court provided that the order was final and appealable pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 11 On December 2, 2010, defendant filed a motion for rehearing/reconsideration alleging that on November 3, 2010, she missed the hearing on her motion due to illness, and requested a new one in the matter. On December 20, 2010, the circuit court denied the motion. In its written order, the court noted that it was denying defendant's motion based on her "inability to produce a doctor's note with sufficient specificity to explain [her] absence on the trial date." The court noted that the order was final and appealable pursuant to Rule 304(a) (eff. Feb. 26, 2010), and on January 18, 2011, defendant filed a notice of appeal from the order entered on December 20, 2010. Defendant now seeks reversal and remand of the circuit court's order granting a default judgment in favor of plaintiff.

¶ 12 Prior to considering the merits of this appeal, we must consider our jurisdiction to do so. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52 (2010); *Bell Federal Sav. & Loan Ass'n v. Bank of Ravenswood*, 203 Ill. App. 3d 219, 223 (1990). Supreme Court Rule 303(a) (eff. June 4, 2008) provides that a party must file a notice of appeal within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, 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 final orders that were modified pursuant to post-judgment motions.

¶ 13 Here, a default judgment was initially entered against defendant on February 11, 2010, and awarded plaintiff $10,565.59, plus costs. This judgment was a final order as it was a specific act that terminated the litigation and decided the dispute between the parties, with an award of damages in favor of plaintiff. *Jackson v. Hooker*, 397 Ill. App. 3d 614, 620 (2010). Defendant, however, subsequently filed a multitude of post-judgment motions, and specifically noted that the first of these five motions was filed pursuant to section 2-1301(e) of the Code (735 ILCS 5/2-1301(e) (West 2010)).

¶ 14 That section provides for relief from default judgments (*Jackson*, 397 Ill. App. 3d at 621), and provides that the trial court may, in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable. 735 ILCS 5/2-1301(e) (West 2010). This section contemplates only one such post-trial motion attacking a final order or judgment, and the circuit court has no authority to hear successive post-judgment motions even where each is filed within 30 days of the denial of the previous one. *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 56-57 (1990) (and cases cited therein).

¶ 15 The rationale underlying these decisions was expressed by the supreme court in *Sears v. Sears*, 85 Ill. 2d 253 (1981). In that case, the supreme court stated that permitting successive post-judgment motions would tend to prolong the life of a lawsuit, lending itself to harassment; and that there must be finality, a time when the case in the trial court is really over and the loser must give up or appeal. *Id.* The supreme court further stated that successive post-judgment motions interfere with that policy, and that justice is not served by permitting the losing party to

string out her attack on the judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing the next month. *Id.*

¶ 16 Here, the circuit court entered a default judgment in favor of plaintiff on February 11, 2010, and the circuit court noted in its written order that there was no just reason to delay enforcement or appeal of this judgment. On March 4, 2010, within 30 days of that default judgment, defendant filed a timely section 2-1301(e) motion to vacate that default, alleging that she was under medical care and inadvertently missed the court date. When this motion was denied on March 22, 2010, it was final, and appealable; the circuit court thereafter was without jurisdiction to enter subsequent orders relating to the merits of the underlying cause of action. *B-G Associates, Inc.*, 194 Ill. App. 3d at 59. As a consequence, the subsequent orders entered by the circuit court were void. *LVNV Funding LLC v. Trice*, 2011 Il App (1st) 092773, ¶13, citing *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379-80 (2005).

¶ 17 In reaching that conclusion, we observe that defendant's four subsequent post-judgment motions to reconsider and vacate, merely incorporated the initial motion to vacate filed on March 4, 2010, and only added a letter from plaintiff's doctor, which did not explain her absence on February 11, 2011. These motions may not be considered as section 2-1401 petitions because this procedure, which provides for relief from a final order or judgment after 30 days from the entry thereof, institutes a new matter, and is not a mere continuation of the original proceeding. *B-G Associates, Inc.*, 194 Ill. App. 3d at 59. A section 2-1401 petition contemplates the introduction of new or additional information that was not, nor could have been, included in the first motion. *Id.*

¶ 18 In this case, the allegations in defendant's successive post-judgment motions simply

duplicated those set forth in the first motion, same for a letter from defendant's doctor that could have been included in the first motion. Defendant therefore failed to set out claims in her four successive post-judgment motions consistent with the requirements of section 2-1401. As a result, they were improper, and the circuit court lacked jurisdiction to consider them. *Id.*

¶ 19 It therefore follows, that these improper successive postjudgment motions did not extend the time for appeal. *Sears*, 85 Ill. 2d at 260. The record shows that defendant had 30 days to appeal from the denial of her initial, timely filed post-judgment motion on March 22, 2010. *McCorry v. Gooneratne*, 332 Ill. App. 3d 935, 940 (2002). Defendant, instead, pursued successive post-judgment relief, and filed her notice of appeal on January 18, 2011. This notice of appeal was untimely filed, leaving this court without jurisdiction to consider it. Accordingly, we dismiss the appeal for lack of jurisdiction. *Sears*, 85 Ill. 2d at 260.

¶ 20 Appeal dismissed.