SECOND DIVISION
June 12, 2012

No. 1-11-2078

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LIDDELL LACY,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County.
	)	
v.	)	No. 08 L 010716
	)	
SCHIFF, GORMAN & KRKLIES, LLC,	)	Honorable
	)	Joseph D. Panarese,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

O R D E R

¶ *1* ***Held:*** Plaintiff's notice of appeal was untimely as it was filed more than 30 days after entry of the final judgment granting defendant's motion for summary judgment. Plaintiff's motion to reconsider was properly stricken. Therefore, this court lacks subject matter jurisdiction to hear plaintiff's appeal.

¶ 2 The plaintiff filed a complaint alleging a tort of intentional infliction of emotional distress against a law firm that had previously represented him in a personal injury action. Plaintiff appeals after the entry of summary judgment in favor of defendant.

¶ 3 BACKGROUND

¶ 4 Plaintiff initiated his lawsuit *pro se*, but after the circuit court dismissed his third amended complaint, plaintiff secured an attorney. On May 13, 2010, the circuit court granted plaintiff's attorney leave to file an appearance. The next amended complaint filed by the attorney survived defendant's renewed motion to dismiss on August 26, 2010. Plaintiff's attorney continued his vigorous representation through the summary judgment motion phase of the litigation. Defendant's motion for summary judgment was granted on May 24, 2011. We note that no motion to withdraw as counsel was ever filed by plaintiff's attorney in the circuit court. Additionally, neither a notice of motion nor a motion for reconsideration appears as part of the lower court record. However, what does appear is an order dated June 23, 2011, entered by the circuit court that struck plaintiff's motion for reconsideration. Plaintiff filed his notice of appeal, *pro se*, on July 20, 2011 and listed the June 23, 2011 order striking his motion for reconsideration as the order he is appealing.

¶ 5 On appeal, plaintiff argues that the summary judgment entered in favor of defendants on May 24, 2011 should be vacated. He claims there are issues of material fact which preclude disposition of his case without a full trial on the merits. The defendant argues, among other things, that this court lacks jurisdiction to hear this case because the notice of appeal filed by the plaintiff was more than 30 days after final judgment was entered and no valid motion that would extend the allotted 30 days was ever filed by the plaintiff. Plaintiff replied to defendant's position by filing a motion in the appellate court to supplement the circuit court record on appeal prior to the due date of his reply brief. The supplements consisted of a *pro se* notice of motion for June 23, 2011 and a one-page *pro se* motion with one line that stated "Motion by Liddell Lacy for Reconsider (sic)

Summery (sic) Judgement (sic) Ruling." Both documents contain the file-stamp of June 13, 2011 by the clerk of the circuit court. This court entered an order dated April 12, 2012 denying plaintiff's request to supplement the circuit court record on appeal. Subsequently, in his reply brief, plaintiff did not directly address the jurisdictional defect of his appeal raised by the defendants other than to refer to it as a "non-issue."

¶ 6 ANALYSIS

¶ 7 A party in any action has no right to appear both *pro se* and by counsel. *Commonwealth Eastern Mortgage Co. v. Vaugh*, 179 Ill. App. 3d 129 (1989). In other words, a *pro se* litigant does not become a co-counsel to his new attorney. In the instant case, plaintiff was unsuccessful in his *pro se* attempts to file a complaint that could withstand defendant's motions to dismiss. Plaintiff then chose to proceed with counsel. Plaintiff's chosen counsel was granted leave of court to file an appearance on plaintiff's behalf. An attorney who has filed an appearance on behalf of a party cannot terminate his duty to represent that party until he or she has made a motion to formally withdraw of record and the court has granted the motion. If this is not done, the relationship and counsel's duties continue until the end of the case in that court, at least, insofar as the court and opposing counsel are concerned. *Bergman v. Hedges*, 111 Ill. App. 2d 35 (1969). In the instant case, plaintiff's counsel never filed for withdrawal from this case in the circuit court. Therefore, plaintiff's *pro se* motion for reconsideration was properly stricken for that reason alone.

¶ 8 Additionally, there is no motion for reconsideration in the original record sent from the circuit court on appeal. This omission was brought to light by defendant in his responsive appellate brief. The appellant bears the burden to see that this court is presented with a complete record of the

circuit court's proceedings on appeal. *In re Marriage of Baniak*, 2011 IL App. (1st) 092017, ¶ 30 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). This court previously denied the *pro se* appellant's motion to have the exhibits attached to his motion as a supplement the circuit court's record on appeal in this court.

¶ 9 Supreme Court Rule 329 (210 Ill. 2d R. 329, eff. Jan. 1, 2006) allows the parties to "supplement the record on appeal to include omissions, correct errors, and settle controversies as to whether the record accurately reflects what occurred in the trial court." *Jones v. Ford Motor Co.*, 347 Ill. App. 3d 176, 180 (2004). The record on appeal can be "supplemented only with evidence actually before the trial court." *Id*. Here, the two documents that plaintiff sought to include were file-stamped by the circuit court clerk's office on June 13, 2011 and were considered by the circuit court prior to its entry of the order dated June 23, 2011 striking the plaintiff's motion. The court's order does appear in the original record. Because the plaintiff's motion was for purposes of bringing two documents before this court that were considered by the trial court, we vacate our order of April 12, 2012, in part, and allow these two documents to be made a part of the record on appeal.

¶ 10 Although defendant's appellate brief had already been filed at the time plaintiff's motion to supplement the record was filed, we believe this supplement, even at this late date, does not unfairly prejudice the defendant. In the circuit court, defendant was properly served with plaintiff's *pro se* notice of motion and motion and appeared at the hearing on plaintiff's motion before the circuit court on June 23, 2011 and was responsible for drafting the circuit court's order striking the plaintiff's motion to reconsider. Defendant chose to argue that the motion does not appear of record, but should have anticipated a motion by plaintiff to supplement the record once the deficiency was

highlighted in defendant's brief. *People v. Span*, 156 Ill. App. 3d 1046, 1053 (1987). Therefore, even given the tardiness of plaintiff's motion to supplement, defendant is not unduly prejudiced. This is especially true because no supplemental briefing is required because plaintiff never addressed the timeliness of his appeal in his reply brief other than to refer to it as a "non-issue." After all, these two documents were initially not allowed as supplements to the record when plaintiff's reply brief was filed, either. See *People v. Pertz*, 242 Ill. App. 3d 864, 905 (1993).

¶ 11 As to the timeliness of plaintiff's appeal, certainly, the circuit court's entry of summary judgment in favor of defendant on May 24, 2011 was a final, appealable order. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 80 (2006). Clearly, the plaintiff did not appeal the grant of summary judgment within 30 days. Plaintiff's notice of appeal, filed on July 20, 2011, specifically stated an appeal was being taken of the June 23, 2011 order striking his motion to reconsider. It made no mention of the prior summary judgment order of May 24, 2011.

¶ 12 Supreme Court Rule 303(a)(1) provides that if a timely postjudgment motion is filed, the time within which to file a notice of appeal is tolled. The appealing party must then file a notice of appeal "within 30 days after entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Ill. Sup. Ct. R. 303(a)(1) (eff. May 1, 2007). We have already ruled in this opinion, *infra* at ¶ 7, that the circuit court was correct in striking the plaintiff's *pro se* motion to reconsider.

¶ 13 Even if the motion had not been stricken, it was insufficient to be considered a postjudgment motion that had the effect of tolling the time in which to appeal the summary judgment. *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 485, 462 (1990). A motion is said to be directed against

the judgment when it attacks the judgment in one of the statutorily authorized ways, which include by requesting rehearing, retrial, modification or vacation of the judgment. 735 ILCS 5/2-1203 (West 2008); *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 461 (1990). In the instant case, plaintiff's motion to reconsider does not attack the judgment or its underlying rationale. It consists of nothing more than a caption.

¶ 14 It has long been held that "[t]he nature of a motion is determined by its substance rather than its caption." *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81 (2006) (quoting *J.D. Marshall International, Inc. v. First National Bank of Chicago*, 272 Ill. App. 3d 883, 888 (1995)). A proper postjudgment motion that tolls the appeal time must specifically seek at least one of the forms of relief set out in section 2-1203 (735 ILCS 5/2-1203) and must specify the grounds for warranting such relief. Plaintiff's motion, even if not properly stricken, does neither of these two things.

¶ 15 Accordingly, we find that plaintiff's motion to reconsider was properly stricken and, in any event, was not a viable motion under section 2-1203 and did not toll the time within which the notice of appeal must be filed. Plaintiff's notice of appeal was filed July 20, 2011, which was significantly past the 30 days allowed under Rule 303 to file an appeal from the circuit court's grant of summary judgment in favor of defendant. Therefore, we do not have jurisdiction to consider any issues relating to the May 24, 2011 summary judgment order which is the subject of the issues raised by the plaintiff's *pro se* appeal.

¶ 16 We dismiss the portion of plaintiff's appeal relating to the circuit court's grant of summary judgment on May 24, 2011 for lack of subject matter jurisdiction because it was untimely filed. We

affirm the circuit court's order of June 23, 2011 which struck plaintiff's *pro se* motion for reconsideration.

¶ 17 Appeal dismissed in part, affirmed in part.