FIRST DIVISION
MARCH 29, 2013

No. 1-11-3118

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANN RANGEL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 08 M2 3079
AMERICAN COMMUNITY MANAGEMENT,	)	
AUTUMN CREST CONDO ASSOCIATION,	)	
and HIGH LAKE SERVICE,	)	Honorable
	)	Roger Fein,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The plaintiff's appeal is dismissed for lack of jurisdiction because the plaintiff filed the notice of appeal more than 30 days after the trial court ruled on the plaintiff's first postjudgment motion.

¶ 2 Plaintiff-appellant Ann Rangel (Rangel) appeals from the following: (1) an April 20, 2011 order entered by the circuit court of Cook County which dismissed her complaint with prejudice as a discovery sanction pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002); (2) a May 25, 2011 order entered by the trial court which denied her motion to vacate the April 20, 2011 order;

and (3) an August 10, 2011 order entered by the trial court which denied her motions to vacate the April 20, 2011 and May 25, 2011 orders. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 This case arose from an incident that occurred on December 3, 2006, during which Rangel suffered personal injuries as a result of falling on an icy walkway attached to a building that is owned and operated by defendants-appellees American Community Management (American Community), Autumn Crest Condo Association (Autumn Crest), and High Lake Service (High Lake) (collectively, the property owners). On December 3, 2008, Rangel filed a single-count complaint in the circuit court of Cook County alleging negligence against the property owners. On March 9, 2011, High Lake filed a motion to dismiss Rangel's complaint as a discovery sanction pursuant to Rule 219(c). In its motion to dismiss, High Lake claimed, in pertinent part, that Rangel failed to appear for her deposition as required, on three separate dates: December 1, 2010; January 24, 2011; and February 28, 2011. On March 17, 2011, counsel for Rangel filed a motion to withdraw as counsel. On March 30, 2011, the trial court granted Rangel's counsel's motion to withdraw, and granted Rangel 21 days to appear through substitute counsel or appear *pro se*. On March 31, 2011, American Community and Autumn Crest filed a motion to dismiss Rangel's complaint and join High Lake's motion to dismiss.

¶ 5 On April 20, 2011, the trial court granted the property owners' motions to dismiss with prejudice pursuant to Rule 219(c) due to Rangel's failure to comply with discovery in repeatedly refusing to appear for her deposition. Further, the trial court noted that Rangel failed to file an

appearance *pro se* or through counsel within 21 days of March 30, 2011, as ordered by the court. The court also noted that Rangel failed to personally appear in court on April 20, 2011, the date on which the court ruled on the property owners' motions to dismiss.

¶ 6 On May 3, 2011, Rangel filed a *pro se* motion to vacate the trial court's April 20, 2011 order which dismissed her case with prejudice. On May 11, 2011, the trial court entered an order denying Rangel's motion to vacate its April 20, 2011 order, without prejudice. However, the trial court's order granted Rangel 10 days to retain counsel or file a *pro se* appearance. On May 25, 2011, the trial court entered yet another order which stated that the court's April 20, 2011 order which dismissed Rangel's case, with prejudice, would stand. The court noted that Rangel had not filed an appearance *pro se* or through counsel as required by the court's two previous orders. On June 10, 2011, Rangel, through counsel, filed a motion to vacate the trial court's May 25, 2011 order which had denied Rangel's motion to vacate the April 20, 2011 order. On June 29, 2011, the property owners responded by filing objections to Rangel's June 10, 2011 motion to vacate. On July 20, 2011, Rangel filed a reply to the property owners' objection to her motion to vacate the court's order of May 25, 2011.

¶ 7 On August 10, 2011, the trial court entered an order which denied Rangel's motions to vacate the trial court orders of May 25, 2011 and April 20, 2011. On September 8, 2011, Rangel filed a motion to reconsider and/or clarify the trial court's August 10, 2011 order. On September 20, 2011, the trial court denied Rangel's motion to reconsider and/or clarify. On October 17, 2011, Rangel filed a notice of appeal.

¶ 8 ANALYSIS

¶ 9 We note that in their briefs on appeal, the parties do not present arguments regarding the issue of this court's jurisdiction to consider Rangel's appeal. However, this court has a duty to examine our jurisdiction before considering the merits of a case. *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 9. Illinois Supreme Court Rule 303 (eff. June 4, 2008) states, in pertinent part:

> "(1) The 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* ***.
>
> (2) *** No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule." (Emphasis added.) Ill. S. Ct. R. 303(a)(1), (2) (eff. June 4, 2008).

Additionally, Illinois Supreme Court Rule 274 (eff. Jan. 1, 2006) mandates that each party may only file one postjudgment motion directed against a judgment that is otherwise final.

¶ 10 In this case, on April 20, 2011, the trial court entered a final judgment which dismissed Rangel's complaint with prejudice. After the entry of this order, pursuant to the supreme court rules,

Rangel was allowed to file *one* postjudgment motion directed against the trial court's April 20, 2011 order. On May 3, 2011, Rangel filed a *pro se* motion to vacate the April 20, 2011 order. The May 3, 2011 motion was the one postjudgment motion that Rangel was allowed to file under the rules. On May 11, 2011, the trial court entered an order which denied Rangel's motion to vacate without prejudice, but granted Rangel 10 days to secure counsel or proceed *pro se*. At this point, the trial court had not completely disposed of Rangel's motion to vacate. On May 25, 2011, the trial court noted that Rangel had not yet procured counsel or filed a *pro se* appearance. On that date, the court entered an order which stated that the April 20, 2011 order which dismissed Rangel's complaint, would stand. It was at this point that the trial court completely disposed of Rangel's motion to vacate, which was the only matter then pending before the court in this case. Thus, because the trial court disposed of the last pending postjudgment motion, the 30-day period during which Rangel was required to file a notice of appeal began to run when the trial court entered the May 25, 2011 order. In other words, Rangel had 30 days from May 25, 2011, to file a timely notice of appeal. Although Rangel later procured counsel and filed another motion to vacate on June 10, 2011, that motion was an impermissible successive postjudgment motion in violation of Rule 274. See *Dus*, ¶¶11, 16-17. The trial court should not have considered or ruled on that motion. Thus, regardless of the trial court's ruling on Rangel's second postjudgment motion to vacate, the court's ruling does not cure the violation of the statutory time period in which an appeal must be filed. Simply put, Rangel's notice of appeal was not filed within 30 days of May 25, 2011. See *id*. Furthermore, pursuant to Rule 303(a)(2), Rangel's September 8, 2011 motion to reconsider was clearly filed long after the time for a notice of appeal had run. It was yet another impermissible successive postjudgment motion which

again violated Rule 274. None of these filings by Rangel tolled the time in which she was required to file her notice of appeal. Accordingly, we find that Rangel's notice of appeal was untimely.

¶ 11 We note that in her brief on appeal, Rangel briefly discusses the doctrine of revestment. The revestment doctrine states that if the requirements of the rule are satisfied, the parties may revest a court with jurisdiction after the 30-day period following final judgment has expired. *People v. Kaeding*, 98 Ill. 2d 237, 240 (1983). "[T]he parties can revest a court with jurisdiction so long as (1) the court has general jurisdiction over the matter and personal and subject-matter jurisdiction over the particular cause; (2) the parties actively participate without objection; and (3) the proceedings are inconsistent with the merits of the prior judgment." *People v. Lindmark*, 381 Ill. App. 3d 638, 652 (2008).

¶ 12 The supreme court's ruling in *Sears v. Sears*, 85 Ill. 2d 253 (1981), is instructive regarding the application of the revestment doctrine. In *Sears*, a husband filed a notice of appeal 20 days after the trial court ruled on his successive postjudgment motion, and the appellate court dismissed his appeal as untimely. *Sears*, 85 Ill. 2d at 257, 260. The supreme court found that the appellate court correctly dismissed the husband's appeal as untimely because the husband filed the successive postjudgment motion more than 30 days after the judgment. *Id*. at 259-60. The husband argued that because his wife participated in the hearing on his successive postjudgment motion, the trial court was revested with jurisdiction. *Id*. at 260. The supreme court rejected this argument and held that the revestment doctrine was inapplicable. *Id*. The supreme court concluded:

"The hearing on [the husband's successive postjudgment motion] did

> not concern the merits of the judgment; the participants did not ignore the judgment and start to retry the case, thereby implying by their conduct their consent to having the judgment set aside. On the contrary, the hearing was about whether the judgment should be set aside; and [the wife] insisted it should not. Nothing in the proceeding was inconsistent with the judgment. Nothing in [the wife's] conduct voluntarily waived her judgment or estopped her to assert it. The old judgment was never touched, and no new one was entered. The hearing on [the husband's] last motion did not render the order denying that motion appealable." *Id*.

¶ 13 The facts of this case are analogous to the facts of *Sears*. In this case, similar to *Sears*, Rangel's successive postjudgment motion to vacate did not address the merits of the trial court's April 20, 2011 judgment. The property owners did not ignore the judgment and their conduct did not imply their consent to have the court's judgment which had dismissed Rangel's case, set aside. In contrast, the hearing on Rangel's successive postjudgment motion to vacate the trial court's ruling dismissing her case, simply asked the court to vacate its ruling. The property owners repeatedly objected and insisted that the court's ruling which dismissed Rangel's lawsuit should not be set aside. Nothing in the property owners' objections to Rangel's postjudgment motion to vacate was inconsistent with the court's ruling. On the contrary, their conduct and objections did not address the merits of the lawsuit but rather were directed to persuading the court not to resurrect Rangel's

lawsuit. Under those circumstances, the property owners did not voluntarily waive the judgment thereby revesting the trial court with jurisdiction. Thus, the revestment doctrine is inapplicable to the facts of this case. The trial court was not revested with jurisdiction through the parties' conduct after Rangel's right to appeal expired on June 24, 2011. Accordingly, this appeal is dismissed for lack of jurisdiction.

¶ 14 Appeal dismissed.