2015 IL App (1st) 143609-U

SIXTH DIVISION
Order filed: October 23, 2015

No. 1-14-3609

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WARREN MALLORY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
and	)	
	)	
TYRONE GLADNEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 12 L 11060
	)	
DIGNEY YORK ASSOCIATES, L.L.C.,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
H&H GLASS INSTALLATIONS,	)	Honorable
	)	Thomas E. Flanagan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court lacked jurisdiction to order a new trial. We vacated the order and reinstated the judgment on the jury's verdict.

¶ 2 The defendant, H&H Glass Installations (H&H), appeals from an order of the circuit court of Cook County which vacated its judgment on the jury's verdict in favor of the plaintiff, Warren Mallory, and granted Mallory a new trial. For the reasons which follow, we vacate the order granting the new trial and reinstate the judgment entered on the verdict.

¶ 3 Mallory and Tyrone Gladney filed the instant negligence action against H&H and Digney York Associates, L.L.C. (Digney), alleging personal injuries sustained as the result of an accident that occurred at a construction site on April 13, 2007. Following *voir dire* examination of potential jurors, but prior to opening statements, Mallory and Gladney dismissed their actions against Digney, and Gladney dismissed his actions against H&H. Consequently, neither Gladney nor Digney are parties to this appeal.

¶ 4 The matter was tried before a jury on Mallory's negligence claim against H&H. On June 13, 2014, following trial, the jury returned a verdict in favor of Mallory, finding that he sustained $60,000 in total damages, but that his own negligence was responsible for 50% of his loss. Consequently, the jury assessed Mallory's recoverable damages at $30,000. On July 10, 2014, the trial court entered judgment on the verdict.

¶ 5 On August 8, 2014, Mallory filed a post-judgment motion, asserting that he had made a *prima facie* case of discrimination in H&H's use of peremptory challenges to exclude three African-American individuals from serving on the jury and requesting that H&H "be required to provide a race-neutral reason for striking" the three individuals. On October 22, 2014, while his post-judgment motion was pending and undetermined, Mallory filed a motion to amend the motion to add a prayer for relief. The prayer for relief in the amended motion requested that the trial court "conduct a full *Batson* hearing and enter an order granting the Plaintiff [Mallory] a

new trial." On November 5, 2014, the trial court entered an order granting Mallory leave to file his amended motion, but finding that he had "not proven a *prima facie* case of discrimination under *Batson* [*v. Kentucky*, 476 U.S. 79 (1986)]." In that same order, the trial court granted Mallory a new trial "because the court believes the verdict was against the manifest weight of the evidence."

¶ 6 H&H filed a timely petition pursuant to Illinois Supreme Court Rule 306(a)(1) (eff. July 1, 2014) for leave to appeal from the trial court's order granting Mallory a new trial. This court granted the petition for leave to appeal on January 13, 2015.

¶ 7 In its brief, H&H argues that: (1) the trial court lacked subject matter jurisdiction to grant Mallory a new trial because he "did not timely request a new trial or raise an issue for which the remedy was a new trial;" and (2) the trial court erred when it *sua sponte* ordered a new trial in the absence of any issues addressed to the verdict in Mallory's post-judgment motion and in the absence of any evidence that the verdict is against the manifest weight of the evidence. Mallory has addressed the merits of each of H&H's arguments on appeal and requests that we affirm the trial court's order granting a new trial. In addition, Mallory argues that the trial judge erred in finding that he failed to make a *prima facie* case of racial discrimination in the exclusion of African-Americans from the jury and requests that we remand the case back to the trial court for "a full *Batson* hearing." H&H has moved to strike Mallory's later argument, and we have taken the motion with the case.

¶ 8 For its first assignment of error, H&H argues that the trial court lacked subject-matter jurisdiction to grant a new trial. As correctly asserted by H&H, the sole issue raised by Mallory in his original post-judgment motion was his contention that he had made out a *prima facie* case of discrimination in the exclusion of African-Americans from the jury. He requested only that

H&H be required to provide a race-neutral reason for exercising peremptory challenges to exclude three African-American veniremen. It was not until Mallory filed his amended motion on November 5, 2014, that he requested the entry of an order granting him a new trial based upon H&H's alleged *Batson* violation. H&H argues that, because Mallory never requested a new trial in his original post-judgment motion, the trial court lacked subject-matter jurisdiction to order such relief. We agree.

¶ 9 Whether the trial court possessed subject matter jurisdiction to enter an order presents a question of law which we review *de novo*. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 26.

¶ 10 In general, a trial court loses jurisdiction to vacate or modify its judgment 30 days after the judgment is entered unless a timely post-trial motion is filed. *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991). Post-trial motions must be filed within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extension thereof. 735 ILCS 5/2-1202(c) (West 2012).

¶ 11 Section 2-1202(b) of the Code of Civil Procedure (Code) (735 ILCS5/2-1202(b) (West 2012)) provides that "[r]elief desired after trial in jury cases, heretofore sought by reserved motions for directed verdict or motions for judgment not withstanding the verdict, in arrest of judgment or for new trial, must be brought in a single post-trial motion." The motion "must state the relief desired, as for example, the entry of a judgment, the granting of a new trial or other appropriate relief." 735 ILCS 5/2-1202(b) (West 2012).

¶ 12 Mallory's original post-judgment motion, requesting only that H&H "be required to provide a race-neutral reason for exercising peremptory challenges to exclude three African-American veniremen was not in the nature of a motion for directed verdict, judgment not

withstanding the verdict, arrest of judgment or for a new trial. That is to say, the motion was not directed against the judgment. Nor was the relief requested of a nature that falls within the ambit of section 2-1202(b) of the Code.

¶ 13 The doctrine of *ejusdem generis* provides that when a statutory clause specifically describes several classes of things and then includes "other things," the word "other" is interpreted as meaning "other such like." *People v. Davis*, 199 Ill. 2d 130, 138 (2002). The last antecedent doctrine of statutory construction provides that relative or qualifying words or phrases in a statute serve only to modify words or phrases which are immediately preceding. *Id.*

¶ 14 Applying the doctrine of *ejusdem generis* in conjunction with the last antecedent rule, we find that the phrase "other appropriate relief" as used in section 2-1202(b) of the Code refers to relief "such like" entry of a judgment or a new trial; that is to say relief directed against the judgment itself. In this case, however, Mallory's original post-judgment motion requested only that the defendants be required to provide race-neutral reason for striking three veniremen. The motion did not request any relief directed against the judgment. By failing to request relief other than a second stage *Batson* hearing, the original post-judgment motion filed by Mallory was not a post-trial motion within the meaning of section 2-1202(b).

¶ 15 Mallory's motion to amend his post-judgment motion to request relief in the form of a new trial, not having been filed within 30 days after the entry of the trial court's order of July 10, 2014, entering judgment on the verdict, was untimely.

¶ 16 A timely filed post-trial motion in a jury case which complies with the requirements of section 2-1202 of the Code extends the jurisdiction of the trial court and stays enforcement of the judgement. 735 ILCS 5/2-1202(d) (West 2012); *Sears v. Sears*, 85 Ill. 2d 253, 258-59 (1981).

An untimely motion or one not directed against the judgment, neither extends the trial court's jurisdiction nor stays the judgment. *Sears*, 85 Ill. 2d at 259.

¶ 17 As Mallory's original post-judgment motion was not directed against the judgment and, therefore, did not constitute a post-trial motion within the meaning of section 2-1202 of the Code, and his motion to amend that motion to include a request for relief in the form of a new trial was filed outside the 30 day period provided in the statute, the trial court lost jurisdiction to vacate or modify its judgment after August 9, 2014. We conclude, therefore, that the trial court lacked jurisdiction to enter the November 5, 2014 order, granting Mallory's motion to amend his post-judgment motion, denying the amended motion, and ordering a new trial. As a consequence, we vacate the trial court's order of November 5, 2014, and reinstate the judgment on the verdict entered on July 10, 2014.

¶ 18 Next, we briefly address the argument in Mallory's brief contending that the trial judge erred in finding that he failed to make a *prima facie* case of racial discrimination in the exclusion of African-Americans from the jury and requesting that we remand the case back to the trial court for "a full *Batson* hearing."

¶ 19 The lack of jurisdiction in the trial court, in turn, affects our own jurisdiction. Under the facts of this case, we are limited to considering only the lack of jurisdiction below, and we may not consider the substantive merits of the trial court's order. *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431-32 (2005). In addition, Mallory's failure to file a notice of appeal within the time provided in Illinois Supreme Court Rule 303(a)(3) (eff. June 4, 2008), is an additional reason why we lack jurisdiction to entertain the argument. In the absence of jurisdiction, we will not address the merits of the argument. See *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 14 (1995); *Harding v. City of Highland Park*, 228 Ill. App. 3d 561, 572 (1992).

¶ 20 Having declined to address Mallory's assignment of error on jurisdictional grounds, H&H's motion to strike that portion of Mallory's brief containing the argument is moot.

¶ 21 For the reasons stated, we vacate the trial court's order of November 5, 2014, granting a new trial, and reinstate the trial court's judgment of July 14, 2014, entered on the verdict.

¶ 22 Order vacated; judgment on verdict reinstated.