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No. 3--10--0228

Order filed June 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

AARON STEWART,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	No. 08--MR--835
)	
TERRY McCANN,)	Honorable
)	Marzell Richardson,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

Held: Appellate court lacked jurisdiction over the appeal because the notice of appeal was untimely. The trial court's docket entry dismissing the plaintiff's complaint constituted a final judgment on the merits sufficient to trigger the 30 day filing period.

The plaintiff, Aaron Stewart, was convicted of attempted murder (720 ILCS 5/8--4 (West 2000)), and he is currently serving a 55 year sentence in the Department of Corrections (DOC). In this appeal, he argues that the trial court erred by dismissing his petition for writ of *habeas corpus*. We dismiss the appeal

for lack of jurisdiction; the appeal is untimely.

On August 14, 2008, the plaintiff filed a complaint for *habeas* relief alleging that he was entitled to immediate release because certain amendments to the attempted murder statute had been held to be unconstitutional. *People v. Morgan*, 203 Ill. 2d 470 (2003), *overruled*, *People v. Sharpe*, 216 Ill. 2d 481 (2005). The defendant filed a motion to dismiss. A hearing on the motion was held on September 11, 2009, with a decision to issue on November 13, 2009. However, the trial court entered a docket entry dismissing the plaintiff's complaint on October 9, 2009. On October 15, 2009, the clerk of the circuit court sent a copy of the order to the plaintiff; however, plaintiff claims that he was not notified about the order until November 20, 2009.

After discovering the docket entry, the plaintiff filed a series of motions with the trial court. The first motion was a "Motion for Issuance of a Discharge Order on Petition for Writ of Habeas Corpus Instanter," where he requested that the court enter an order discharging him from the DOC. On December 17, 2009, the plaintiff filed a petition for relief from a void judgement under section 2--1401 of the Code of Civil Procedure. See 735 ILCS 5/2--1401 (West 2008). In addition, on December 27, 2009, the plaintiff mailed a motion to vacate the docket order.

On February 25, 2010, the trial court found that no posttrial motion had been filed within 30 days of the order

granting the defendant's motion to dismiss, and ruled that the dismissal order was to stand. The court then denied all of the defendant's motions. The plaintiff filed his notice of appeal on March 15, 2010.

On appeal, the defendant argues that we should dismiss the appeal for lack of jurisdiction because the notice of appeal was filed outside of the filing deadline. To be timely, the plaintiff must have filed a notice of appeal within 30 days after entry of the judgment or within 30 days of the court's order disposing of a timely motion directed against the judgment. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). In this case, he did not file either a notice of appeal or a posttrial motion within 30 days of the October 9, 2009, docket entry. Therefore, the appeal is untimely.

Although the plaintiff may have been unaware of the docket order, that fact alone does not give us jurisdiction over an untimely appeal. Rejecting a similar claim, our supreme court held that even where there was proof that the parties did not receive notice of the trial court's judgment, an appeal or postjudgment motion will not be considered timely if filed outside the 30 day period. *Keener v. City of Herrin*, 235 Ill. 2d 338 (2009). So long as the final judgment is expressed publicly, in words, and at the situs of the proceeding, lack of actual notice will not toll the 30 day filing period. *Granite City*

Lodge No. 272, Loyal Order of the Moose v. City of Granite City, 141 Ill. 2d 122 (1990). Docket orders meet these requirements. *Keener*, 235 Ill. 2d 338.

While we acknowledge that the plaintiff was operating at a disadvantage due to his incarceration, his actions hardly amount to an excusable delay. Even if we were able to toll the filing period until he had received actual notice of the final order, he still would have been outside the filing period. While the plaintiff filed several motions after learning of the docket order, he did not mail a postjudgment motion directed against the judgment until December 27, 2009, which is more than 30 days after he received actual notice of the docket order.

In response, the plaintiff argues that jurisdiction is proper because the docket order was void. Specifically, the plaintiff alleges that the order is void because it only appeared as a docket entry and did not contain any citations to legal authority. However, as mentioned above, docket orders are final orders and they are sufficient to trigger the 30 day filing period. *Keener*, 235 Ill. 2d 338; *People v. Sizemore*, 311 Ill. App. 3d 917 (2000), *overruled on other grounds*, *People v. Trainor*, 196 Ill. 2d 318 (2001).

The plaintiff also relies on Illinois Supreme Court Rule 272 (eff. Nov. 1, 1990), which states that in certain instances a judgment only becomes final when a signed judgment is filed. The

purpose of Rule 272 is "to resolve difficulties which have arisen regarding the timeliness of an appeal where an oral announcement of judgment from the bench preceded the entry of a written judgment order." *Light v. Corey*, 255 Ill. App. 3d 873, 875 (1994). Thus, the rule clarifies that when an oral order issues from the bench, the 30 day filing period begins after the entry of the signed written judgment, not after the oral order. Since no such situation is before us in the present case, Rule 272 does not apply.

Consequently, because the plaintiff failed to file a notice of appeal or a postjudgment motion within the 30 day time period required by Rule 303, we dismiss the appeal for lack of jurisdiction.

Appeal dismissed.