

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130034-U

NO. 4-13-0034

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 19, 2013
Carla Bender
4th District Appellate
Court, IL

THE CITY OF QUINCY,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
TIFFANY DOUGLAS,	)	No. 12OV1276
Defendant-Appellant.	)	
	)	Honorable
	)	Chet W. Vahle,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justice Appleton specially concurred.
Justice Pope specially concurred.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 In July 2012, defendant, Tiffany Douglas, received a citation for the offense of malicious mischief. On October 22, 2012, the trial court found her not guilty at her bench trial. The following day, the court *sua sponte* reconsidered its ruling and found her guilty. In December 2012, defendant filed a motion to reconsider, which the court denied as not timely filed.

¶ 3 On appeal, defendant argues the trial court's *sua sponte* order finding her guilty, the day after finding her not guilty, violated the prohibition against double jeopardy. We dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 In July 2012, defendant received a citation and complaint for the offense of

malicious mischief. On October 22, 2012, defendant's bench trial commenced. Defendant appeared *pro se*.

¶ 6 Sidney Albright testified she was a passenger in a vehicle at the drive-through of a Taco Bell on the evening of June 29, 2012. Defendant was the driver of the vehicle in front of her at the drive-through. Occupants of Albright's vehicle were throwing "poppers," firework devices that pop when thrown on the ground. Occupants of defendant's car began yelling at those behind them, and defendant "got out and just stood there in front of the line like she was gonna [*sic*] stop our car." Both vehicles left Taco Bell, and Albright saw objects being thrown out of defendant's vehicle. Albright identified photographs showing damage to her vehicle, and she received a repair estimate that totaled \$1,239.19. Albright stated she was charged with malicious mischief in this case as she threw a rock through defendant's window. She pleaded guilty.

¶ 7 Quincy police officer Chad Scott testified he responded to a report of a rock being thrown at defendant's vehicle. Scott made contact with Albright and Christopher Riggs, both of whom were suspects. Albright and Riggs made a complaint against defendant, claiming she threw something at their vehicle. Officer Scott took photographs of the alleged damage. Scott made contact with defendant, who denied throwing anything from her vehicle. Scott arrested defendant based on the damage and the statements from Albright and Riggs.

¶ 8 Christopher Riggs testified he was the driver of Albright's vehicle. After leaving Taco Bell, defendant's vehicle caught up to them and he heard something hit the passenger side of Albright's vehicle. Riggs stated defendant was the driver of the other vehicle.

¶ 9 Defendant called Ricky Green as a witness. He testified it took them "at least three" stoplights to catch up to Albright's vehicle so they could take down the license plate

number. On cross-examination, Green stated he did not see defendant throw anything from her vehicle. They followed behind Albright's car, took down the license plate number, and called police to report the occupants were throwing firecrackers at cars.

¶ 10 Defendant testified she followed the car to get the license plate number. She stated she never came up next to the car.

¶ 11 Following closing arguments, the trial court stated all of the witnesses sounded "believable" and it could not tell that it was more likely than not that defendant was guilty. Thus, the court found her not guilty.

¶ 12 On October 23, 2012, the day after the trial, the trial court entered the following order:

"The trial in this case was held on October 22, 2012, and the defendant was found not guilty by the court. Upon further review and reconsideration of the evidence, the court finds that the judgment finding the defendant not guilty was entered in error. The court finds that the prosecution witnesses were credible and the defendant and her witness were not credible regarding whether defendant threw objects that hit the complaining witness' vehicle. The court believes it is more likely so than not that the defendant did throw the objects that caused damage, and that the defendant is therefore guilty by a preponderance of the evidence of malicious mischief under City of Quincy Code Section 31.144."

The court entered judgment against defendant and ordered her to pay \$304 in fines and costs and

\$620 in restitution. The court continued the case to November 29, 2012, at which time defendant was to personally appear unless she had made full payment.

¶ 13 On November 29, 2012, defendant appeared and a rule to show cause was entered as a result of her failure to pay. The case was continued until January 31, 2013.

¶ 14 On December 7, 2012, defendant, now represented by counsel, filed a motion to reconsider and/or set aside the trial court's judgment. The motion stated that after the conclusion of the bench trial, the case was not taken under advisement, no issues or rulings were reserved, plaintiff did not ask to supplement any evidence or submit any authority, and plaintiff did not ask the court to reconsider its ruling. Defendant argued the order entered was an acquittal and was *res judicata* on the issue of guilt. Further, defendant contended the October 23, 2012, order violated her right against double jeopardy.

¶ 15 On December 12, 2012, the trial court denied the motion to reconsider, finding it untimely. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues the trial court's order finding her guilty of an ordinance violation, the day after finding her not guilty (a highly irregular occurrence to say the least) violated the constitutional prohibition against double jeopardy. But before we can even consider the propriety of the court's overnight change of mind within the overall civil context of municipal ordinance violations, we must consider whether we have jurisdiction to consider this appeal. In her statement of jurisdiction, defendant states this court has jurisdiction from the trial court's final order under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Also, defendant claims she is seeking relief from a void judgment and any order granting or denying such relief is

a final ruling appealable under Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010).

¶ 18 An appellate court has a duty to consider its jurisdiction and must dismiss an appeal if that jurisdiction is lacking. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024, 822 N.E.2d 941, 942 (2005). This court has jurisdiction over an appeal if it is timely filed under Illinois Supreme Court Rule 303. *Gilchrist v. Snyder*, 351 Ill. App. 3d 639, 641, 814 N.E.2d 147, 149 (2004). "The timely filing of a notice of appeal is mandatory and jurisdictional." *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 965, 811 N.E.2d 260, 265 (2004).

¶ 19 Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) requires a notice of appeal be filed within 30 days from the entry of a final judgment "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."

¶ 20 Section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2012)), which governs postjudgment motions in cases decided without a jury, provides as follows:

"In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief."

"Only a sufficient post[] judgment motion, timely filed, will toll the 30-day period for filing a notice of appeal." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522, 759 N.E.2d 509, 514

(2001).

¶ 21 In the case *sub judice*, the trial court's order finding defendant guilty of malicious mischief was filed on October 23, 2012. Defendant had 30 days to appeal or file a postjudgment motion. However, defendant did not file her motion to reconsider and/or set aside the court's order until December 7, 2012, more than 30 days after the final order had been entered. As the postjudgment motion was not timely filed, the 30-day period for filing a notice of appeal had expired. Thus, we have no jurisdiction to hear this case under Rule 303.

¶ 22 Defendant also claims we have jurisdiction under Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010), which allows for an appeal from "[a] judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." For this court to have jurisdiction under this rule, defendant's motion to reconsider had to have constituted a valid petition under section 2-1401. We find it did not.

¶ 23 "Section 2-1401 provides a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days." *Keener v. City of Herrin*, 235 Ill. 2d 338, 349, 919 N.E.2d 913, 920 (2009). "The petition must be supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2012).

"[A] party seeking relief under section 2-1401 must give notice to opposing parties according to supreme court rules. 735 ILCS 5/2-1401(b) (West 2010). Illinois Supreme Court Rule 106 (eff. Aug. 1, 1985) directs the moving party to provide notice via the methods set forth in Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989). Rule 105(b) provides that notice be directed to the party and must

be served either by summons, prepaid registered mail, or publication. Ill. S. Ct. R. 105(b) (eff. Jan. 1, 1989). If the notice is invalid, the trial court lacks jurisdiction and its subsequent orders are likewise invalid." *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 18, 986 N.E.2d 1194.

Moreover, the notice must state a judgment by default may be taken against the party unless he files an answer or otherwise files an appearance within 30 days after service. Ill. S. Ct. R. 105 (eff. Jan. 1, 1989).

¶ 24 In this case, defendant's motion to reconsider did not indicate it was a petition for relief from judgment under section 2-1401. No affidavits were filed. The proof of service appears to have been made by regular mail, not by one of the more formal methods set forth by supreme court rule. Also, no notice was given to plaintiff as to a possible default if they did not answer or otherwise file an appearance. In denying the motion to reconsider, the trial court did not indicate it was reviewing a section 2-1401 petition or treating it as such. A review of the motion to reconsider leads to the conclusion that it was not a valid petition for relief from judgment pursuant to section 2-1401. Instead, it was simply a motion to reconsider that was not timely filed. Thus, we have no jurisdiction to review the trial court's denial of the motion to reconsider under Illinois Supreme Court Rule 304(b)(3).

¶ 25 We note defendant argues the trial court's order was void and relies on the well-settled principle that a void order may be attacked at any time and in any court, either directly or collaterally. See *People v. Thompson*, 209 Ill. 2d 19, 25, 805 N.E.2d 1200, 1203 (2004). However, to review a void order, there must still be a timely notice of appeal conferring

jurisdiction on this court. See *People v. Green*, 188 Ill. App. 3d 1027, 1030, 544 N.E.2d 1307, 1309 (1989); see also *People v. Flowers*, 208 Ill. 2d 291, 308, 802 N.E.2d 1174, 1184 (2003) (stating that "[i]f a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void"); *People v. Permanian*, 381 Ill. App. 3d 869, 874, 886 N.E.2d 1028, 1032 (2008) (stating "although a defendant can attack a void judgment for the first time on appeal, he cannot do so without first having an independent basis of jurisdiction, in a proper proceeding before this court"); *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 504, 718 N.E.2d 539, 546 (1999) (stating "compliance with the rules is necessary before a reviewing court may properly consider an appeal from a judgment or order that is, or is asserted to be, void"). As we have no jurisdiction under Rules 303 or 304(b)(3), the issue of whether the trial court's order is void is not properly before us and we cannot address it. Moreover, with no jurisdiction, we must dismiss the appeal.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we dismiss the appeal.

¶ 28

Appeal dismissed.

¶ 29 JUSTICE APPLETON, specially concurring.

¶ 30 While I agree with Justice Turner's conclusion that the notice of appeal in this case was untimely filed, I write separately to note that the trial court's overnight change of heart, resulting in a finding of guilt after first pronouncing defendant to be not guilty, is patently void.

¶ 31 The entry of a not-guilty verdict—whether by a jury or the trial court—ends the case. That the trial court reconsidered its verdict is of no consequence as it was estopped by the first verdict. It is impossible to conceive of such a situation in a jury trial where the jury promulgates a verdict of not guilty and then later in a coffee shop further discusses the case and comes up with a contrary result. That, like the second bench verdict here, is legally impossible to conceive. The initial verdict of acquittal ended the case. In effect, the trial court's actions subjected defendant to double jeopardy and violated her constitutional right to due process of law.

¶ 32 JUSTICE POPE, specially concurring.

¶ 33 I write separately to note the majority gives an excellent summary of how to file and serve an appropriate section 2-1401 petition in ¶ 23. I also note defendant's attempts to rely on section 2-1401 in her brief. The problem is she did not file a section 2-1401 petition, as the majority points out. However, the time for filing such a petition has not yet expired and defendant may file an appropriate petition if she so desires. If that petition is denied, defendant could file a timely notice of appeal from that decision, and this court would then obtain jurisdiction over the section 2-1401 issues.