

2013 IL App (2d) 121228-U
No. 2-12-1228
Summary Order filed September 16, 2013

NOTICE: This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

F.R.S. DEVELOPMENT CO., INC.,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellee and Cross-Appellant,)	
)	
v.)	No. 08-MR-329
)	
HUNTLEY VENTURE, L.L.C.,)	
)	Honorable
Defendant-Appellant and)	Thomas A. Meyer,
Cross-Appellee.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Zenoff concurred in the judgment.

SUMMARY ORDER

¶ 1 In this appeal, the defendant, Huntley Venture, L.L.C., seeks reversal of the judgment of the circuit court of McHenry County. The plaintiff, F.R.S. Development Company, Inc., filed a cross-appeal arguing that it was entitled to prejudgment interest. However, as the notice of appeal was not timely filed, we lack jurisdiction over both the appeal and the cross-appeal. We therefore dismiss them.

¶ 2 On July 26, 2012, the trial court entered a judgment in favor of the plaintiff. On October 1, 2012, the trial court awarded attorney fees and costs to the plaintiff and entered a final judgment in the amount of \$945,021.62.

¶ 3 On October 18, the defendant filed a motion seeking to approve an appeal bond, stay citation proceedings, and supplement the record with certain trial exhibits. The next day, the trial court issued an order setting a briefing schedule on the motion and setting the motion for hearing on November 7, 2012. The order stated that “the date for filing a notice of appeal from the October 1, 2012, judgment is extended 30 days to November 29, 2012.”

¶ 4 On November 7, following a hearing, the trial court entered an order approving the appeal bond, and another order granting the motion to supplement the record. The defendant filed a notice of appeal that same day, which stated that the defendant sought to appeal the judgments entered on July 26, 2012, and October 1, 2012. On November 9, 2012, the plaintiff filed its notice of cross-appeal.

¶ 5 In its brief on appeal, the plaintiff asserts that we lack jurisdiction over the appeal (and cross-appeal) because the notice of appeal was not timely filed. We agree. Supreme Court Rule 303(a) (eff. June 4, 2008) provides that “[t]he notice of appeal must be filed with the clerk *** within 30 days after the entry of the final judgment appealed from, or if a timely posttrial motion *directed against the judgment* is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion *directed against that judgment* or order.” (Emphasis added.) This requirement is jurisdictional: if the notice of appeal is not timely filed, we have no jurisdiction to hear the appeal. *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 23.

¶ 6 Here, the final judgment was entered on October 1, and so the deadline for filing a notice of appeal was October 31. The defendant did not file a notice of appeal until November 7. As no notice of appeal was filed within 30 days after the entry of the final judgment, the appeal is untimely.

¶ 7 The defendant argues that the 30-day period was tolled because it filed “a timely posttrial motion.” However, Rule 303(a) is clear that only a posttrial motion *directed against the judgment* will toll the time for filing an appeal. S. Ct. R. 303(a) (eff. June 4, 2008). A posttrial motion is “directed against the judgment” in a nonjury case when it seeks one of the types of relief included in section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2012)), *i.e.*, rehearing, retrial, or vacation or modification of the judgment. *Moening v. Union Pacific R. Co.*, 2012 IL App (1st) 101866, ¶ 13. Although it was filed “posttrial,” the defendant’s motion to supplement the record did not seek any such relief, and thus it was not a posttrial motion directed against the judgment. Accordingly, it did not toll the time for filing a notice of appeal.

¶ 8 In its initial jurisdictional statement in this court, the defendant suggested that the trial court’s October 19, 2012, order purporting to extend the time for filing an appeal could provide a basis on which to find its notice of appeal timely, but it appears to have withdrawn this argument in its most recent jurisdictional statement (the amended revised statement of jurisdiction filed on May 23, 2013). Any such argument would lack merit: the law is clear that trial courts lack authority to extend the time for filing a notice of appeal beyond the times specified in Rule 303(a). “[N]either the trial court nor the appellate court has the ‘authority to excuse compliance with the filing requirements of the supreme court rules governing appeals.’” *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150 (1994), quoting *In re Smith*, 80 Ill. App. 3d 380, 382 (1980). Accordingly, the trial court’s order of October

19, 2012, does not provide any basis on which the defendant's notice of appeal could be found timely.

¶ 9 The plaintiff concedes that, if the notice of appeal was untimely, the notice of cross-appeal was likewise untimely. Because we lack jurisdiction over the appeal and cross-appeal, we must dismiss them.

¶ 10 Appeal and cross-appeal dismissed.