

2019 IL App (1st) 180950-U
No. 1-18-0950
Order filed September 30, 2019

Third Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

YVONNE BROWN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 16 M1 16137
)	
ANTHONY WILSON,)	Honorable
)	Clare J. Quish,
Defendant-Appellee.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appeal dismissed for lack of appellate jurisdiction where plaintiff failed to file a timely notice of appeal.
- ¶ 2 Plaintiff Yvonne Brown appeals from a circuit court order entered, after trial, in favor of defendant Anthony Wilson in this action for intentional tort. Defendant has not filed a responsive brief, and we ordered the case taken on the record and plaintiff's brief only. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976) (setting forth the

principles for the disposition of appeals in cases where the appellee has not filed a brief). For the reasons that follow, we dismiss the appeal for lack of appellate jurisdiction.

¶ 3 The record on appeal shows that on December 30, 2016, plaintiff filed a complaint alleging an intentional tort against defendant and seeking an amount not to exceed \$15,000.00 plus costs to recover for her alleged injuries. On January 16, 2018, the trial court issued a judgment for defendant on plaintiff's amended complaint, finding plaintiff not credible and defendant credible.

¶ 4 On February 7, 2018, plaintiff filed a motion for retrial, modification, and to vacate judgment. On March 2, 2018, defendant filed his response to plaintiff's motion. In an April 4, 2018, order, the trial court denied plaintiff's post-trial motion "for reasons stated in open court and because when finding in favor of [d]efendant at the trial, the court weighed the credibility of the witnesses and found plaintiff to be not credible and defendant to be credible."

¶ 5 Plaintiff electronically filed a notice of appeal on May 7, 2018. The notice of appeal reflects the date of "judgment/order" being appealed as "Jan[uary] 16, 2018 and April 6, 2018."¹ In the notice, plaintiff requests this court to reverse the trial court's order and enter judgment in her favor or, in the alternative, to vacate judgment for defendant and order a new trial.

¶ 6 This court has an independent duty to ascertain our jurisdiction prior to considering the merits of an appeal (*People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009)), and to dismiss an appeal if jurisdiction is lacking (*People v. Garcia*, 2015 IL App (1st) 131180, ¶ 65). Illinois Supreme Court Rule 303 mandates that a notice of appeal be filed within 30 days of a final order, unless a "timely posttrial motion directed against the judgment is filed." Ill. S. Ct. R. 303(a)(1) (eff. July

¹ Plaintiff's notice of appeal misdates the April 4, 2018, order as having been entered on April 6, 2018.

1, 2017). In that event, the notice of appeal is due “within 30 days after the entry of the order disposing of the last pending post-judgment motion directed against that judgment or order.” *Id.* A motion to reconsider the trial court’s ruling on a post-judgment motion does not extend the time to appeal. Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017). The Illinois Supreme Court commands strict compliance with its rules governing the time limits for filing a notice of appeal, which the appellate court cannot negotiate. *Mitchell v. Fiat–Allis, Inc.*, 158 Ill. 2d 143, 150 (1994); see *People v. Lyles*, 217 Ill. 2d 210, 216-17 (2005) (stating that the appellate court’s jurisdiction turns on litigants’ compliance with the Supreme Court’s rules).

¶ 7 The timely filing of a notice of appeal is mandatory and jurisdictional. See *Clark v. Han*, 272 Ill. App. 3d 981, 984 (1995). If an appeal is untimely, the appellate court has “no discretion to take any action other than dismissing the [untimely] appeal.” *Lyles*, 217 Ill. 2d at 217; see *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189 (2000) (finding that only a timely notice of appeal confers jurisdiction on the appellate court).

¶ 8 In this case, the trial court entered a judgment for defendant on January 16, 2018. Plaintiff then filed a motion to reconsider, modify, or vacate that judgment, which was denied on April 4, 2018. Plaintiff did not file her notice of appeal until May 7, 2018, more than 30 days after the April 4, 2018 order. Therefore, plaintiff’s appeal is not timely under Illinois Supreme Court Rule 303, and we do not have jurisdiction to review it. See Ill. S. Ct. R. 303(a)(1). Accordingly, we dismiss the appeal. See *Lyles*, 217 Ill. 2d at 217 (if an appeal is untimely, the appellate court has no discretion to take any action other than to dismiss the appeal).

¶ 9 Appeal dismissed.