

No. 1-18-2217

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 JUDICIAL DISTRICT

LISA GILLARD,)	On Appeal from the Circuit Court
)	of Cook County, Illinois
Plaintiff-Appellant,)	
)	
v.)	No. 18 L 9043
)	
)	
CLARE ELIZABETH McWILLIAMS,)	
)	Honorable Irwin Solganick,
Defendant.)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 **Held:** We dismiss the appeal for lack of jurisdiction because the notice of appeal was not filed within 30 days of the final dispositional order. We strongly admonish the appellant that filing lawsuits against judges for actions they have taken in their official capacity are barred by the doctrine of judicial immunity and are sanctionable.

¶ 2 Plaintiff-appellant Lisa Gillard sued a judge who had ruled against her in a separate case. The circuit court dismissed this case with prejudice on the basis of judicial immunity. We dismiss the appeal for lack of jurisdiction.

¶ 3 As explained in other cases we are issuing contemporaneously with this opinion¹ and in an order we issued last year (*Gillard v. Northwestern Hospital*, 2018 IL App (1st) 180922-U, ¶ 23), Gillard is a prolific self-represented litigant who has filed many frivolous and duplicative lawsuits against individuals, officials, institutions, and businesses over the course of at least the last twenty years. Among her tactics is the practice of accusing judges of being biased against her, and clogging the judicial process with numerous meritless motions to substitute those judges. These efforts have extended beyond the realm of litigation to include physical confrontations, as well. In *People v. Gillard*, 2018 IL App (1st) 173035-U, this court dismissed her *pro se* direct appeal of a conviction for resisting a peace officer, a Cook County Sheriff who was executing a warrant for her arrest. This court dismissed that appeal because her brief was in a wholly inadequate and incomprehensible form and did not address the conviction she had appealed. *Id.*, ¶¶ 10-16. In *People v. Gillard*, 2018 IL App (1st) 173036-U, this court similarly dismissed her appeal from a conviction for the crime of harassment by telephone, where the victim was an official court reporter. And in *People v. Gillard*, 2018 IL App (1st) 171121-U, this court affirmed her conviction for battery of a Northwestern Memorial Hospital security guard.

¶ 4 In this case, Gillard filed a two-count complaint against the Honorable Clare Elizabeth McWilliams, a judge of the circuit court of Cook County who presided over parts of some of Gillard’s many lawsuits. The general allegations of the complaint, which we take as true for the purposes of this appeal, are as follows. Judge McWilliams was assigned to hear an unspecified case involving Gillard in May 2018, and Gillard reported to the judge “continuous harassment and stalking by county government employees” which was “due to cases against government officials and other law agents.” The judge told Gillard “that she needs to report these incidents to

¹ *Gillard v. Caradang*, 2019 IL App (1st) 181793-U, *Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348, *Gillard v. Panera, LLC*, 2019 IL App (1st) 182520-U, and *Gillard v. Dart*, 2019 IL App (1st) 182521-U.

a different courtroom as the Law Division does not oversee stalking and harassment cases even in this room.” Gillard requested that Judge McWilliams recuse herself and she refused to do so. The judge also admonished Gillard regarding her “conduct in court” in case 16 L 9575².

¶ 5 Count I of Gillard’s complaint is a claim under 42 U. S. C. § 1983, the federal civil rights law which provides a remedy for violation of constitutional rights committed under color of state law. Count II of the complaint alleges that Judge McWilliams entered into an “agreement with other government staff” to deprive Gillard of her constitutional rights. This count is framed under 42 U. S. C. § 1985, which provides a remedy against conspiracies to deprive individuals of their constitutional rights. Again without providing any detail, this count alleges that the misconduct “was undertaken with malice, willfulness, and reckless indifference to the rights of others” under the “policy and practice” of the Illinois Supreme Court Rules. Both counts broadly allege that Gillard suffered “mental anguish and emotional distress” but provide no further details.

¶ 6 About a week after she filed the complaint, Gillard filed a motion for waiver of court fees pursuant to Illinois Supreme Court Rule 298 (eff. Jan. 1, 2018, later amended eff. July 1, 2019). In her motion, she claimed under oath that she: (1) lived alone; (2) received no government benefits such as Social Security or General Assistance; (3) had no monthly income whatsoever whether through employment or other sources; (4) had no monthly expenses whatsoever for things such as rent, food, mortgage, utilities, or medical needs; and (5) had no belongings whatsoever, including bank accounts, real estate, or automobiles. She listed a post office box as her address.

² That is the underlying case in *Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348.

¶ 7 Apparently, the court set the fee waiver motion for a hearing to be held on September 12, 2018. On September 10, Gillard filed a motion to continue that hearing, claiming that she would be on vacation. No order entered on September 12 appears in the record.

¶ 8 On September 13, the circuit court (Judge Solganick, presiding) issued a *sua sponte* order reading, in full:

“This matter coming before the Court on an Application and Affidavit to Sue or Defend as an Indigent Person, the Court being fully advised in the premises,

IT IS HEREBY ORDERED;

Pursuant to Supreme Court Rule 298 and 735 ILCS 5/5-105:

The application is denied because the Applicant is attempting to sue a sitting judge for acts the Applicant alleges took place during the course of a judicial proceeding in the Law Division of the Circuit Court of Cook County. ‘The Supreme Court has recognized that the common law provides for absolute immunity for judges.’ *Vlastelica v. Brend*, 2011 IL App (1st) 102587, ¶ 21 (*reviewing Brisco v. LaHue*, 460 U.S. 325, 334-35 (1983)). ‘A judge is *absolutely* immune from liability for acts committed while exercising authority vested in him.’ *Grund v. Donegan*, 298 Ill. App. 3d 1034, 1039 (1st Dist. 1998). Thus, Judge McWilliams is immune from liability for acts she committed while presiding over Applicant’s civil lawsuit. Further, it is fundamental that a trial court has the ability to control its own docket. *People v. Smith*, 188 Ill. 2d 335, 346 (1999). Because the Applicant is attempting to sue an immune defendant, the Court finds that approving the application would unnecessarily expend judicial resources because there is no cause of action to litigate. The application is denied. The case is dismissed with prejudice because

there is no way for the Applicant to remedy her pleadings under these facts to state a cause of action.”

¶ 9 This final and appealable order resolved all pending issues in the case and dismissed the case with prejudice. Ill. Sup. Ct. R. 303(a)(1) (eff. July 1, 2017); *Big Sky Excavating, Inc. v. Illinois Bell Tel. Co.*, 217 Ill. 2d 221, 232-233 (2005) (“A final judgment is a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.”).

¶ 10 On September 17, 2018, Gillard filed an “emergency motion to sue as an indigent person,” again reciting facts about her vacation. This motion does not request reconsideration of the September 13 dismissal order, and only addresses the fee waiver. Gillard set this motion, which was not an emergency of any sort, for hearing before the Presiding Judge of the Law Division for a date a month later—October 17. It appears that this motion was to be heard by Judge Moira Johnson. On September 20, 2018, Judge Johnson entered an order noting the previous dismissal, recusing herself, and stating that further proceedings would be “heard at the discretion of the assignment court,” apparently referring to the Law Division assignment call. On September 24, Gillard filed another “emergency” motion for “case reassignment” and noticed that motion for hearing on October 16. Again, this motion does not request reconsideration of the dismissal order and only refers to the fee waiver denial. No other order resolving either of the emergency motions appears in the record. No motion to reconsider the September 13 dismissal order appears in the record.

¶ 11 Rule 303(a)(1) requires that a notice of appeal in a civil case must be filed with the clerk of the circuit court within 30 days after either entry of the final judgment or, if a timely postjudgment motion is filed, the order disposing of the that motion. Ill. S. Ct. R. 303(a)(1) (eff.

July 1, 2017). If the last day falls on a Saturday, Sunday, or legal holiday, the due date is extended to the following business day. 5 ILCS 70/1.11 (West 2016); *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶ 9. By operation of these rules, Gillard was required to file a notice of appeal from the September 13 dismissal order by Monday, October 15. The thirtieth day from September 13, 2018 was Saturday, October 13, so the deadline was automatically extended to the next following business day, Monday, October 15. (The Circuit Court of Cook County had already been closed for Columbus Day on Monday, October 8.).

¶ 12 However, Gillard did not file her notice of appeal from Judge Solganick's September 13 dismissal order until Tuesday, October 16, 2018. Gillard's notice of appeal states that she was appealing the order of "10-16-18" entered by Judge Solganick and that she sought "actual damages and relief from 10-11-2018 order". The notice of appeal in the record was apparently not electronically filed. The fill-in-the-blank notice of appeal form was executed by hand in ink, and it bears a mechanical timestamp showing that it was filed on October 16 at 12:18 p.m. The dates of the dismissal order and notice of appeal in the clerk of the circuit court's electronic docket, which is in the record before us, correspond to the dates set forth on the documents themselves. No proof of service or mailing accompanies the notice of appeal, and no order entered on October 11 or 16, 2018 appears in the record or in the clerk's electronic docket. The only order ever entered by Judge Solganick that appears in the record is the September 13 dismissal order.

¶ 13 During the proceedings below, Judge McWilliams was never served and did not appear. Gillard has filed a brief in this court containing boilerplate text which she has adopted in many of her other pending appeals. The brief cites no less than 29 court cases but, rather pointedly, does not address why the case law on judicial immunity upon which the circuit court relied was

inapplicable. The Attorney General represents judges when they are sued for actions taken in furtherance of their duties. In this case, however, the Attorney General has filed a notice stating that since Judge McWilliams was not served in the trial court, he will not file a brief in this court. This court entered an order taking the case on Gillard's brief and denying Gillard's demand that the Attorney General file a brief on Judge McWilliams's behalf. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976).

¶ 14 This court has an obligation to consider its jurisdiction, even if no party raises the issue. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 217 (2009). "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Id.*, 232 Ill. 2d at 213. We must dismiss this case for lack of jurisdiction because Gillard filed her notice of appeal late and no exception to the 30-day rule applies.

¶ 15 Despite this disposition, we strongly admonish Gillard that the appropriate remedy for one aggrieved by a judicial order is to appeal the order, not to sue the judge. The doctrine of judicial immunity is well established in federal and state law. With exceptions not applicable here, "[a] judge is *absolutely* immune from liability for acts committed while exercising the authority vested in him." (Emphasis in original.) *Grund v. Donegan*, 298 Ill. App. 3d 1034, 1039 (1998). This immunity extends to actions seeking monetary damages under 42 U. S. C. § 1983. *Pierson v. Ray*, 386 U.S. 547 (1967) (holding that judicial immunity applies even "when the judge is accused of acting maliciously and corruptly"); *Stump v. Sparkman*, 435 U.S. 349, 363 (1978) (doctrine applies even in the face of "tragic consequences"). We have addressed sanctions against Gillard in an opinion issued contemporaneously (*Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348), and we advise Gillard that future attempts to file or pursue

cases that are clearly barred by binding precedent will subject her to further and more severe sanctions.

¶ 16 We also remind circuit courts of their ability and obligation to carefully scrutinize questionable fee waiver petitions, especially those submitted by serial litigants whose actions demonstrate that they may possess sufficient assets to warrant payment of required court fees. See Ill. Sup. Ct. R. 298(b) (eff. Jan. 1, 2018, am. eff. July 1, 2019). Doing so prevents both taxpayer and private dollars from being spent to defend frivolous litigation.

¶ 17 Dismissed.