

Nos. 127464 & 127487 (consolidated)

In the
Supreme Court of Illinois

MARTIN KOPF,

Appellee/Cross-Appellant,

v.

BRENDAN KELLY, in his official capacity as Director of the Illinois State Police,
 and State Police, KWAME RAOUL, in his official capacity as Attorney General of the
 State of Illinois, and JOE McMAHON, in his official capacity as
 Kane County State's Attorney,

Appellants/Cross-Appellees,

and

HAMPSHIRE POLICE DEPARTMENT,

Appellee/Cross-Appellant.

On Appeal to the Illinois Supreme Court
 from the Sixteenth Judicial Circuit, Kane County, Illinois,
 Chancery Division, No. 19 CH 000883.
 The Honorable **Kevin T. Busch**, Judge Presiding.

BRIEF OF HAMPSHIRE POLICE DEPARTMENT

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Issues Presented For Review

- (1) Whether a Notice of Appeal must comply with specification and designation requirements in Supreme Court Rule 303 in order to perfect an appeal.
- (2) Whether a ‘cross-appeal’ can be taken against a non-appellant.
- (3) Whether, on a direct appeal to the Supreme Court, a separate appeal is necessary to vest jurisdiction over a part of the Circuit Court’s judgment involving a non-appellant.
- (4) Whether jurisdiction exists to pursue a separate appeal after 30 days post-judgment.
- (5) What period of time applies to appealing parts of judgment involving a non-appellant.

Illinois Supreme Court Rules Involved**Illinois Supreme Court Rule 303 - Appeals from Final Judgments of the Circuit Court in Civil Cases****(a)Time; Filing; Transmission of Transmission of Notice of Appeal.**

(1) The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, 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 directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a). A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or order. The notice of appeal may be filed by any party or by any attorney representing the party appealing, regardless of whether that attorney has filed an appearance in the circuit court case being appealed.

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered. A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion. No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.

(3) If a timely notice of appeal is filed and served by a party, any other party, within 10 days after service upon him or her,

or within 30 days from the entry of the judgment or order being appealed, or within 30 days of the entry of the order disposing of the last pending postjudgment motion, whichever is later, may join in the appeal, appeal separately, or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken. (4) Within five days after the filing of a notice of appeal, or an amendment of a notice of appeal filed in the circuit court pursuant to subparagraph (b)(5) of this rule, the clerk of the circuit court shall file the notice of appeal or of the amendment with the clerk of the court to which the appeal is being taken.

(b) Form and Contents of Notice of Appeal.

(1) The notice of appeal shall be captioned as follows: (i) At the top shall appear the statement "Appeal to the _____ Court," naming the court to which the appeal is taken, and below this shall be the statement "From the Circuit Court of _____," naming the court from which the appeal is taken. (ii) It shall bear the title of the case, naming and designating the parties in the same manner as in the circuit court and adding the further designation "appellant" or "appellee," e.g., "Plaintiff-Appellee." (iii) It shall be designated "Notice of Appeal," "Joining Prior Appeal," "Separate Appeal," or "Cross-Appeal," as appropriate. (2) It shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court. (3) A notice of appeal filed pursuant to Rule 302(a)(1) from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state shall have appended thereto a copy of the court's findings made in compliance with Rule 18. (4) It shall contain the name and address of each appellant or appellant's attorney. (5) The notice of appeal may be amended without leave of court within the original 30-day period to file the notice as set forth in paragraph (a) above. Thereafter it may be amended only on motion, in the reviewing court, pursuant to paragraph (d) of this rule. Amendments relate back to the time of the filing of the notice of appeal.

(c) Service of Notice of Appeal. The party filing the notice of appeal or an amendment as of right, shall, within 7 days, file a notice of filing with the reviewing court and serve the notice of appeal upon every other party and upon any other person or officer entitled by law to notice. Proof of service, as provided by Rule 12, shall be filed with the notice.

(d)Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing. If the reviewing court allows leave to file a late notice of appeal, any other party may, within 10 days of the order allowing the filing of the late notice, join in the appeal separately or cross-appeal as set forth in Rule 303(a)(3).

(e)Docketing. Upon receipt of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or receipt of a motion for leave to appeal under paragraph (d) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

Movant’s Statement of Facts and Law Supporting Dismissal

INTRODUCTION

“When it appears that this court is without jurisdiction, it is our duty to decline to proceed in the cause.” *Wainwright v. McDonough*, 364 Ill. 626, 627 (1936). This brief addresses a novel, technical, and important question of appellate jurisdiction and the interpretation of Supreme Court Rule 303. The broader context is a lawsuit brought by *pro se* plaintiff Martin Kopf, challenging portions of the Sex Offender Registration Act (“SORA”). The Circuit Judge declared certain portions of SORA unconstitutional, and certain defendants, chief among the Illinois Attorney General, appealed directly to this Court, as their right pursuant to Rule 302(a)(1). Significant as that underlying appeal and the constitutionality of certain SORA provisions may be, the Hampshire Police Department is not properly a party to that direct appeal and should be dismissed. The Hampshire PD previously filed a motion on this issue on October 13, 2021. On November 3, 2021, this Court ordered the issue to be briefed as part of the case proper.

Dismissal is compelled because no proper notice of appeal has ever been filed against the Hampshire Police Department (the “Local PD”). The Circuit Court dismissed the Local PD. The Local PD did not appeal that decision, and its interests are discrete from the other defendants who sought a direct appeal but did not appeal that part of the decision related to the Local PD. Kopf did not appeal that part of the decision either—at least, not in the manner prescribed by Rule 303. He eventually asked this Court for leave to file a “cross appeal,” which this Court granted, and Kopf purported to file. However, as it pertains to the Local PD, that filing is a nullity because a *cross*-appeal presupposes that the other side is already a party to the direct appeal. The Local PD was not. Thus,

neither Kopf's filing nor anything else in the record creates appellate jurisdiction over the Local PD.

STATEMENT OF FACTS

In September 2020, Martin Kopf filed a six-count Complaint in case 19 CH 883 against four defendants: Kwame Raoul, as Illinois Attorney General and Brendan Kelly, as Director of Illinois State Police ("State Defendants"); Joe McMahon, as Kane County State's Attorney; and the Local PD. Kopf challenged the constitutionality of portions of SORA. All defendants sought motions to dismiss Kopf's case.

On June 22, 2021, the Circuit Court dismissed the Local PD (C 588, 590).¹ It ruled that the negligence claim against the Local PD failed because it is not an entity subject to a suit for damages and because the municipality that employs those officers enjoys statutory immunity from suits not alleging willful and wanton conduct (*id.*). As to the other defendants, however, the court denied dismissal of constitutional claims that challenged portions of SORA and issued a permanent injunction that prevented those defendants from interfering with Kopf's residence under SORA (C 594). The next day, the court clarified that the dismissal order was final and appealable (C 595).

The following list may aid the Court in the Rule 303 timeline after the Circuit Court's June 22, 2021 decision:

¹ The common law record, filed in this Court on September 21, 2021, is cited as "C ____." The Hampshire Police Department's Motion For Leave To File Supplemental Record *Instantly* was filed with this supplemental brief on July 28, 2022 and is thus pending. As such, the pending supplemental record is cited herein as "Sup C ____."

- (7/19/21) 27 days post-judgment, the State Defendants filed a joint notice of appeal to the Illinois Appellate Court of the Second Judicial District (Sup C1-3).
- (7/20/21) 28 days post-judgment, the State Defendants filed a joint notice of direct appeal to this Court and withdrew their appeal to the Second District (C 608; Sup C4-6).
- (7/22/21) 30 days post-judgment, the State's Attorney's Office filed a notice of direct appeal (C 621-22), and the 30-day period for a notice of appeal ended.

In those 30 days post-judgment, Kopf did not file any appeal of the part of the Circuit Court decision that dismissed the Local PD. Because the Local PD received a favorable decision and had no reason to appeal, it did not file an appeal itself, or join in any other appeal.

After the 30-day post-judgment period ended, the following occurred:

- (7/27/21) 35 days post-judgment, Kopf submitted a notice of “cross-appeal,” which was rejected as deficient (Sup C18).
- (8/2/21) 41 days post-judgment, after Kopf had waited five days, he resubmitted his notice of cross-appeal, which was again rejected because filings were not properly attached (Sup C22).
- (8/3/21) 42 days post-judgment. Kopf resubmitted (Sup C23).
- (8/20/21) Kopf called the Clerk of the Supreme Court and was informed that his August 3, 2021 “Notice of Cross-Appeal” (filed 14 and 12 days

after the respective corresponding notices of appeal) was rejected because the deadline for Kopf to do so had passed (Sup C8).

- (8/24/21) 63 days post-judgment, Kopf filed his Motion for Leave to File Cross-Appeal Instanter (36 and 33 days after the respective Notices) and attached what he identified as a “Notice of Cross-Appeal” (Sup C27-29).

Kopf admitted in his Motion for Leave that this rejection resulted from his own procedural errors (Sup C8). The Clerk’s Office had informed Kopf why his notice of cross-appeal was rejected and that he needed to accordingly adjust his date of filing whenever he refiled (Sup C18) (“please update your certificate of service to reflect filing and service . . .”).

On September 1, 2021, this Court granted Kopf leave to file only a “Notice of Cross-Appeal” (Sup C30). His Notice represented to the Court that he specifically sought a “cross-appeal,” acknowledged the Supreme Court Rules, and purported it to be “timely . . . under Supreme Court Rule 303(a)(3).” (Sup C28). On October 13, 2021, the Local PD filed its “Motion To Dismiss Plaintiff’s Untimely And Improperly Designated Appeal Of Non-Appellant Hampshire Police Department For Rule 303 Noncompliance.” (Sup C31-44). On November 3, 2021, this Court took that Motion with the case and has directed the Local PD to file a brief supplementing its Motion to Dismiss (Sup C45). This is that brief. Kopf, it bears mention, has filed other motions since then, but nothing related to the Local PD.

MEMORANDUM OF LAW SUPPORTING DISMISSAL

**THERE IS NO JURISDICTION OVER THE PART OF THE CASE THAT
RELEASED THE HAMPSHIRE POLICE DEPARTMENT; THUS, IT SHOULD
BE DISMISSED**

**I. Supreme Court Rule 303 Dictates Jurisdiction Of Appeals To This
Court.**

Without a properly filed notice of appeal, this Court lacks jurisdiction over the matter and must dismiss the appeal. *Gen. Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). Jurisdiction arises only when an appellant files a timely notice of appeal. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 521 (2001). This Court “emphasize[s] that the timely filing of an appeal is both jurisdictional and mandatory and the court must determine its own jurisdiction even if no party objects.” *Secura Ins. Co. v. Illinois Farmers Ins. Co.*, 232 Ill. 2d 209, 217 (2009). Moreover, it cannot be waived or negotiated. *See Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 925 (2006) (interpreting Rule 303 timeliness). Rule 302(c)(1) governs direct appeals to the Supreme Court and cautions that, after briefs have been filed, the Court may nevertheless dispose of any case without oral argument or opinion if jurisdiction is lacking or no substantial question is presented.

The Illinois Supreme Court Rules “have the same binding force upon parties, as well as upon the court, as have statutes.” *N. Ave. Bldg. & Loan Ass’n v. Huber*, 286 Ill. 375, 383 (1918). This is not something from which *pro se* litigants are excused. *Peeples v. Vill. of Johnsborg*, 403 Ill. App. 3d 333, 335 (2010). Rather, they “are presumed to have full knowledge of applicable court rules and procedures, including procedural deadlines with respect to filing motions.” *Steinbrecher*, 197 Ill. 2d at 528 (2001).

Rule 303(a)(1) requires that a notice of appeal must be “timely” filed within 30 days of the entry of final judgment appealed from. Il. Sup. Ct. R. 303(a)(1). An untimely must be dismissed for lack of jurisdiction. *See Barter v. Slayback*, 235 Ill. App. 3d 18, 21, 24 (1992); *see also McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 23 (“McNally’s cross-appeal was therefore untimely, because it was not filed within the required 30 days from the denial of a postjudgment motion or a final order. As such, this court is without the jurisdiction to consider the substantive merits of McNally’s cross-appeal.”). Rule 303 jurisdiction “must be determined prior to deciding the merits of an appeal.” *Canel & Hale, Ltd. v. Tobin*, 304 Ill. App. 3d 906, 922 (1999) (granting Motion to Dismiss Cross Appeal, for Rule 303(a) lack of timeliness and consequent lack of jurisdiction).

Because of these jurisdictional implications, a litigant who seeks to appeal a circuit court decision must comply with all Rule 303(b) form requirements for a Notice of Appeal. One must: distinguish all who are to be made a party to the appeal, specify which parts of judgment are appealed, distinguish which type of notice of appeal is appropriate based on those factors and comport with the applicable jurisdictional limitations of time in order to vest appellate jurisdiction.

a. *Rule 303(b) requirements: Specified part(s) and designated parties in a notice of appeal.*

Rule 303(b) dictates that a proper notice of appeal must specify the part(s) of judgment being appealed and the relief sought. Il. Sup. Ct. R. 303 (b)(2). This is because “[a] notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal.” *Pappas*, 242 Ill. 2d at 176. One must also designate the “parties” in relation to the appropriate type of appeal

being taken. *Id.* at (b)(1)(ii-iii). Because *all* notices of appeal are subject to Rule 303(b) requirements, Rule 303's overall meaning of the word "party" takes its meaning from Rule 303(b)(1)(ii), which states "naming and designating the parties . . . adding the further designation 'appellant' or 'appellee.'" *Id.* at (b)(1)(ii). Thus, only those properly designated as "appellant" or "appellee" are parties to a notice of appeal.

b. *Rule 303(b)(1)(iii) requirement: Type(s) of appeal, as appropriate.*

Rule 303(b)(1)(iii) provides that a notice of appeal must be designated with the type of appeal "as appropriate." They are: "'Notice of Appeal,' 'Joining Prior Appeal,' 'Separate Appeal,' or Cross-Appeal.'" *Id.* at (b)(1)(ii). The first to file a timely notice of appeal appropriately designates it as a "Notice of Appeal." Any person who wishes to join a preceding notice of appeal appropriately does so by "Joining Prior Appeal" and becomes a party thereto by specifying which appeal is joined. However, to confer jurisdiction over specified parts of a judgment from which appeal has not previously been taken—as Kopf wished to do with the Local PD—a separate notice of appeal is necessary. *Bd. of Ed. of City of Chicago v. Chicago Tchrs. Union, Loc. 1, Am. Fed'n of Tchrs.*, 26 Ill. App. 3d 806, 810, n.1 (1975); *Pappas*, 242 Ill. 2d at 176. Likewise, if one seeks to appeal against a person or entity not previously designated as "appellant" or "appellee," a separate notice of appeal is necessary.

A cross-appeal is appropriate when an appellant filed a timely notice of appeal and identified an "appellee" who then wishes to "cross-appeal" against that appellant and any parties who joined the appellant. Ill. Sup. Ct. R. 303(b)(1)(ii-iii). Cross-appeal is not defined in Rule 303; however, the plain common sense meaning of "cross-appeal" is "an appeal taken by an appellee against the appellant." *Cross-appeal*, Webster's Dictionary,

www.merriam-webster.com/legal/cross-appeal; *see also People v. Ward*, 215 Ill. 2d 317, 327 (2005) (“common sense should not be a stranger to our jurisprudence . . . it may play a role in statutory interpretation.”). *Cross-appeals* presume a jurisdictional avenue an appellee may cross to reach the appellant. There is no such avenue here because the Local PD is not an appellant.

c. *Rule 303(a)(3) subsequent notices of appeal involving part(s) of judgment and designated parties in a previous notice of appeal.*

Rule 303(a)(2) dictates procedural implications for appeals of cases involving post-judgment motions, and Rule 303(a)(3) dictates the procedure for parties previously designated in a timely and proper notice of appeal. Under Rule 303(a)(3) (and subject to Rule 303(b)), any such party may join in the appeal, cross-appeal, or seek a separate notice of appeal “as appropriate” against those designated parties. *Il. Sup. Ct. R. 303(a)(3)*. The party must likewise designate parties as they relate to the type of appeal taken and specify both the part(s) of judgment implicated and relief sought. *Id.* at 303(a)(3) and (b)(1-2).

Rule 303(a)(3) sets the timeline for such requests. A party may join in the appellant’s appeal, cross-appeal against the appellant, or seek a separate appeal “as appropriate” against any party designated in the appellant’s notice of appeal within the later of 30 days post-judgment or 10 days after the party received service. *Id.* at 303(a)(3) and (b)(1)(ii-iii). However, the aforementioned jurisdictional implications of a subsequent appeal over a part of the case that has not been previously specified and involves a person/entity who is not a party to any preceding notice of appeal are such that Rule 303(a)(3) cannot apply, and a notice of appeal must be pursued separately under the default rule.

d. *Subsequent notices of appeal for parts unspecified and persons/entities undesignated by any previous notice of appeal.*

When one wishes—as Kopf did with the Local PD—to file a notice of appeal specifying a part of judgment not previously appealed and involving a previously undesignated person or entity, a Rule 303(a)(1) notice of appeal must be filed within 30 days post-judgment under the default rule to confer appellate jurisdiction over that part of the case and that party. *Id.* at 303(a)(1) and (b)(1)(ii-iii). Moreover, these requirements are crucial in a direct appeal to the Supreme Court in which Rule 318(a) does not apply because the case bypassed the Appellate Court and the Court consequently does not know the briefed contentions of the appellants and appellees. *C.f.* Ill. Sup. Ct. R. 318(a) (“In all appeals, by whatever method, from the Appellate Court to the Supreme Court, any appellee, respondent, or co-party may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal.”). Here, only the constitutional issues of SORA had been taken on direct appeal by the State Defendants and the State’s Attorney to the extent they were adverse to them (C 608-09; C 621-22).

The First District Appellate Court has noted the nuance of Rule 303(a) that already exists as a baseline in cases with only one appellant and one appellee. In *Board of Education of City of Chicago v. Chicago Teachers Union, Local 1, American Federation of Teachers*, the appellant appealed the trial court’s judgment entered under Count I and the appellee attempted to cross-appeal from another part of the case, a denial of relief under Count II which *had not* been brought before the court by the appellant’s initial notice of appeal. *Chicago Tchrs. Union, Loc. 1, Am. Fed’n of Tchrs.*, 26 Ill. App. 3d at 810, n.1 (citing *Parish Bank & Trust Co.*, 300 Ill. App. 73). The appellee filed a “Notice

of Cross-Appeals.” *Id.* The Appellate Court acknowledged that Rule 303(a) created numerous questions if that filing was construed as a cross-appeal, and it wished to avoid those issues by treating the appellee’s filing as a separate notice of appeal because it had been filed within 30 days of the entry of judgment. *Id.* By contrast, Kopf sought to file his improperly designated appeal against the Local PD 63 days after judgment, well past the deadline (Sup C7).

Thus, jurisdictional questions arise when in multi-party cases—in contravention of Rule 303—a party purports to file a “cross-appeal” against a person/entity who is not a part of any preceding notice of appeal and does so after the Rule’s deadline expires. Rule 303 requirements are jurisdictional and necessarily subject to strict application. Even a day late is too late. *See Rodgers-Orduno v. Cecil-Genter*, 312 Ill. App. 3d 1150, 1154 (2000), *as modified on denial of reh’g* (Apr. 18, 2000) (finding no jurisdiction existed over cross-appeal that was inadvertently filed 3 days past expiration of the 10-day window after Notice of Appeal).

Here, by July 22, 2021, 30 days after the Circuit Court’s ruling, Kopf was barred from appealing the part of the court’s judgment favorable to Local PD. The only remaining types of appeal for Kopf from that time onward were cross-appeals against the State Defendants and the State’s Attorney.² On July 27, 2021, before the expiration of Kopf’s 10-day periods to cross-appeal against the appellants, Kopf failed to file what he identified as a “Cross-Appeal,” which was rejected (Sup C17-18). Kopf conceded in his

² Under Rule 303(a)(3): Any cross-appeal upon the State Defendants needed to be timely filed within 10 days of their July 20, 2021 Notice of Appeal, no later than July 30, 2021. Likewise, any cross-appeal upon the State’s Attorney needed to be filed within 10 days of July 22, 2021, no later than August 1, 2021.

Motion for Leave that the rejection was solely “due to procedural errors on part of Plaintiff” (Sup C8). Kopf received notice with the rejection that his submission was “deficien[t]” and adversely affected his filing date. The Clerk’s Office notified Kopf that the date of service would not be July 27, 2021, but that of whenever (and if ever) he sought to properly submit those notices (Sup C18). Kopf was directed to refile and accordingly update the certificate of service to whatever day he decided to resubmit the filing (*id.*).

Kopf, however, failed to properly file *any* type of notice of appeal within the 10-day cross-appeal windows expiring respectively on July 30, 2021 and August 1, 2021. His belated Motion offers no explanation for this neglect. Rather, it was not until August 2, 2021 after all his appellate deadlines had passed that Kopf attempted to do anything further. With *all* mandatory jurisdictional periods having passed, the Local PD cannot be a part of this appeal.

Whatever Kopf intended in his filings, he did not do the one thing needed to create jurisdiction, which is file a timely and separate notice of appeal against the Local PD regarding a discrete part of the case that had not been appealed. Jurisdiction cannot be manufactured where it does not exist.

II. Kopf Failed To Preserve Jurisdiction Over The Part Of The Circuit Court’s Judgment Involving The Hampshire Police Department.

Because jurisdiction is mandatory, it is too late for this Court or for Kopf to fix this issue. Perhaps Kopf could have sought a Rule 303(d) extension or leave to separately appeal at the time in which he tried to file his cross-appeal, but he did not do so. Nor did he even respond to the Local PD’s motion to dismiss. The Court should thus dismiss the

Local PD and turn its attention to the important substantive issues ably expressed by the other defendants.

a. *Kopf never sought, nor was granted, leave to pursue a separate appeal against the Hampshire Police Department.*

On August 24, 2021, Kopf sought leave solely to pursue a “cross-appeal” instant, and this Court granted him leave for that only (Sup C30). His failures are threefold under Rule 303 and render his notice deficient by his fault alone. (1) He improperly designated his notice as a “cross-appeal” against a non-appellant, (2) he sought to appeal part of the decision not already appealed, and (3) filed after all jurisdictional windows closed.

It is only “[w]here the deficiency in notice is one of form, rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of notice is not fatal.” *People v. Smith*, 228 Ill. 2d 95, 105 (2008). Jurisdiction is nonexistent here. The jurisdictional deficiencies and defective notice prejudice the Local PD, which was completely dismissed and had no reason to appeal Judge Busch’s decision.

b. *Kopf never sought a Rule 303(d) Motion.*

Unless an appellant seeks a Rule 303(d) motion showing a *reasonable* excuse for untimely notice, jurisdiction lacks. *See Secura Ins.*, 232 Ill. 2d at 218 (dismissing the appeal for lack of jurisdiction and noting, “the record also does not show that Secura made a motion under Rule 303(d), arguing a reasonable excuse for a late notice of appeal.”). Reasonable excuses are understood to be, for example, an attorney’s good faith and honest mistake in docketing. *See Bank of Herrin v. Peoples Bank of Marion*, 105 Ill. 2d 305, 309 (1985).

In contrast, however, a litigant's erroneous understanding of the time within which an appeal may be pursued *is not* a good faith and honest mistake. For instance, in *Berg v. Allied Sec., Inc.*, 193 Ill. 2d 186 (2000), a plaintiff's attorney mistakenly thought that a pending motion to reconsider tolled the 30-day period. This Court held that the jurisdictional deficiency existed *regardless of Plaintiff's confusion* as to the date upon which the period began to run, "plaintiff's notice of appeal was untimely and . . . the appellate court did not possess jurisdiction to hear her appeal." *Id.* at 188-89.

More to the point, Kopf never sought a Rule 303(d) Motion, and there is no basis for any such exception *sua sponte*. *Berg* is instructive and conclusive here. In the same way, under *Berg*, that an erroneous belief about a timeliness period cannot constitute a reasonable excuse, Kopf's rejected July 27, 2021 filing cannot toll or resurrect the timeliness period that expired on July 22, 2021.

c. Kopf did not respond or object to Hampshire Police Department's Motion to Dismiss.

On October 13, 2021, the Local PD filed a Motion to Dismiss Kopf's appeal for Rule 303 noncompliance (Sup C31-44). Rule 361(h) dictates the requirements for dispositive motions challenging appellate jurisdiction, which are ruled upon after the filing of an objection to that motion if any. Il. Sup. Ct. R. 361(h)(1). Written responses are to be filed: within 5 days after personal or digital service, 10 days after service by a third-party, or as allowed by the Court. Il. Sup. Ct. R. 361(b)(3). Kopf did not object to or respond to the Motion to Dismiss, which was ordered as taken with the case on November 3, 2021 (Sup C46). The Motion has presented an apparent matter of first impression for the Supreme Court: how Rule 303 governs jurisdiction of a case directly appealed to the Supreme Court, wherein the appellee has improperly designated an

appeal against a part of the judgment involving a non-appellant, and jurisdiction otherwise lacks because it is untimely. This brief expands the argument. But given Kopf's failure to respond, this Court could use its discretion and, without conclusively ruling on the issues presented, find Kopf has waived the issue, accept the Local PD's position for purposes of this case, and dismiss the Local PD.

CONCLUSION

For the foregoing reasons, Hampshire Police Department asks that this Court find that jurisdiction is not proper to hear Kopf's appeal of its dismissal and dismiss Kopf's appeal against Hampshire Police Department.

Respectfully submitted,

/s/ Christian E. Ketter

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 18 pages.

/s/ Christian E. Ketter

Christian E. Ketter

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

MARTIN KOPF,)	
)	
<i>Appellee/Cross-Appellant,</i>)	
v.)	
)	Nos. 127464 & 127487
BRENDAN KELLY, in his official capacity)	
as Director of the Illinois State Police, and State)	
Police, KWAME RAOUL in his official capacity)	
as Attorney General of the State of Illinois, and)	
JOE McMAHON, in his official capacity as Kane)	
County State’s Attorney,)	
)	
<i>Appellant/Cross-Appellee,</i>)	
and)	
)	
HAMPSHIRE POLICE DEPARTMENT,)	
)	
<i>Appellee/Cross-Appellant.</i>)	

The undersigned, being first duly sworn, deposes and states that on July 28, 2022, there was electronically filed and served upon the Clerk of the above court the Brief of Hampshire Police Department. On July 28, 2022, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following party and counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court’s file-stamp will be sent to the above court.

/s/ *Christian E. Ketter* _____

Christian E. Ketter

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ *Christian E. Ketter* _____

Christian E. Ketter