Illinois Official Reports

Appellate Court

Johansson v. Glink, 2021 IL App (1st) 210297

Appellate Court Caption	JANICE JOHANSSON, Plaintiff-Appellant, v. STEVEN GLINK, Defendant-Appellee.
District & No.	First District, Third Division No. 1-21-0297
Filed	September 30, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 18-L-4765; the Hon. James N. O'Hara, Judge, presiding.
Judgment	Appeal dismissed.
Counsel on Appeal	Steven H. Mora, of Palatine, for appellant. Steven E. Glink, of Northbrook, appellee *pro se*.
Panel	PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion. Justices Ellis and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Janice Johansson appeals the trial court's dismissal of her case with prejudice. Her amended complaint alleges malpractice by defendant, Steven E. Glink, the attorney who represented plaintiff during the administrative appeal of her employment termination. Plaintiff, a tenured teacher in the Naperville School District, alleges in her complaint that the adverse result of her administrative appeal to the Illinois State Board of Education (Board) was due to defendant's negligence.

¶ 2 The trial court granted defendant's motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2018)), on the ground that the complaint was not filed within the applicable two-year statute of limitations.

¶ 3 On this appeal, defendant claims, first, that this court lacks jurisdiction to hear plaintiff's appeal because plaintiff's notice of appeal was filed more than 30 days after the trial court's dismissal. In the alternative, defendant argues that the trial court's finding was correct and that the statute of limitations bars plaintiff's malpractice action against him.[1]

¶ 4 For the following reasons, we find that we lack jurisdiction and dismiss the appeal.

¶ 5 BACKGROUND

¶ 6 I. Initial Proceedings

¶ 7 On May 8, 2018, plaintiff filed her initial complaint against defendant, alleging one count of attorney malpractice. On June 27, 2018, defendant moved to dismiss this initial complaint, arguing, among other things, that plaintiff failed to file her complaint within the applicable two-year statute of limitations. On October 18, 2018, the trial court granted defendant's motion, finding that plaintiff's initial complaint "as pleaded" was barred by the statute of limitations.

¶ 8 The trial court dismissed plaintiff's initial complaint "without prejudice" and gave plaintiff until November 8, 2018, to file an amended complaint, which she did.

¶ 9 II. Plaintiff's Amended Complaint

¶ 10 On November 3, 2018, plaintiff filed her amended complaint, which is the complaint that was the subject of the dismissal that plaintiff appeals.

¶ 11 In this complaint, plaintiff alleges that she was a special education teacher, that defendant was her attorney, and that she was dismissed from her employment with the Naperville School District after 21 years of employment because she allegedly failed to complete a remediation plan for herself. Plaintiff appealed the school district's decision to the Board and retained defendant to represent her in that appeal. On June 26, 2015, after a hearing, the Board affirmed

[1]Defendant also asks us to strike plaintiff's appellate brief for failing to comply with Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020) and Rule 342 (eff. Oct. 1, 2019). Defendant argues numerous examples of noncompliance, such as the brief's almost complete lack of record cites. (There are four record cites in total.) See Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020) (the brief shall contain the necessary facts "with appropriate reference to the pages of the record on appeal in the format as set forth in the Standards and Requirements for Electronic Filing"). Since we find that we lack jurisdiction, we will not consider this argument.

the school district's decision to dismiss. Plaintiff alleges that defendant submitted an insufficient number of documents and that he "presented no third-party witnesses at the hearing," but she does not specify the documents or witnesses that should have been submitted or called as witnesses. After the Board's decision, plaintiff retained new counsel, Tige Johnson, who appealed the Board's decision to the circuit court. After the circuit court affirmed the Board's decision, plaintiff appealed the circuit court's decision to the appellate court which also affirmed the Board's decision. *Johansson v. Naperville Community Unit School District 203*, 2017 IL App (2d) 160436-U, ¶ 2 (*Naperville*).

¶ 12 Regarding the statute of limitations, plaintiff's amended complaint alleges:

> "29. Throughout the entire appeal process which ended in June of 2017 with the denial of [plaintiff's] appeal to the Illinois Appellate Court, neither Mr. Johnson nor anyone else indicated that [defendant] had committed malpractice in his representation of [plaintiff] before the [Board].
>
> 30. Finally, sometime in the summer of 2017, [plaintiff's] present attorney, Steven Mora, told [plaintiff] that [defendant] committed malpractice in representing her in her appeal before the [Board].
>
> 31. That was the first time it had occurred to [plaintiff] that [defendant] had committed malpractice.
>
> 32. This case is filed within the two-year statute of limitations for attorney malpractice because [defendant] concealed his malpractice from [plaintiff] as it did not occur to her until the summer of 2017 when Mr. Mora suggested to her that [defendant] had committed malpractice that [defendant] had in fact committed malpractice."

¶ 13 Plaintiff attached to her complaint a signed and notarized affidavit, dated November 12, 2018, in which she averred:

> "9. Throughout the entire appeal process which ended in June of 2017 with the denial of my appeal by the Illinois Appellate Court, neither Mr. Johnson nor anyone else indicated that [defendant] had committed malpractice in his representation of me before the [Board].
>
> 10. Finally, sometime in the summer of 2017, my present attorney, Steven Mora, told me that [defendant] committed malpractice in representing me in my appeal to the [Board].
>
> 11. That was the first time it had occurred to me that [defendant] had committed malpractice."

Plaintiff alleges that defendant committed malpractice by failing to offer into evidence all the documents and witnesses that were available to him; however, she does not specify which documents should have been offered into evidence or name which additional witnesses should have been called.

¶ 14 III. Prior Appeal to the Appellate Court

¶ 15 As noted in her amended complaint, plaintiff appealed the Board's decision to the appellate court, which affirmed the Board. *Naperville*, 2017 IL App (2d) 160436-U, ¶ 2.

¶ 16 In her brief filed with the appellate court on September 15, 2016, in the *Naperville* appeal, plaintiff argued that her counsel was ineffective. She argued, among other things, that he failed

to inform her of discovery deadlines until a few days before the deadline and, thus, gave her inadequate time to prepare and respond.

¶ 17 The appellate court observed that 16 witnesses, including plaintiff, testified at the seven-day hearing, that plaintiff testified for almost two full days of the hearing, and that six of plaintiff's colleagues had testified "to plaintiff's professionalism and dedication." *Naperville*, 2017 IL App (2d) 160436-U, ¶¶ 7, 9-10.[2]

¶ 18 Rejecting plaintiff's claim of ineffective assistance of counsel, the appellate court found in its February 23, 2017, order: "we agree with the trial court that plaintiff's counsel was competent. Consequently, remand is not necessary, and the Board's decision is affirmed." *Naperville*, 2017 IL App (2d) 160436-U, ¶ 25.

¶ 19 IV. Defendant's Motion to Dismiss

¶ 20 In the case at bar, defendant moved on December 11, 2018, to dismiss plaintiff's amended complaint. The trial court initially denied this motion on May 1, 2019. However, defendant moved for reconsideration on May 30, 2019; however, the trial court granted the motion, dismissing plaintiff's amended complaint on September 11, 2019.

¶ 21 In its September 11, 2019, order dismissing the case with prejudice, the trial court found that plaintiff's "legal malpractice action is time barred by the applicable statute of limitation as the action accrued on June 26, 2015." The trial court explained that plaintiff "was aware of the School District's final judgment against her as evidenced by the June 26, 2015[,] date [when] she received the written opinion as to the adverse ruling against her, as well as by the original email [defendant] sent [plaintiff] advising [plaintiff] of the School District's decision."

¶ 22 The trial court further observed that:

> "[Plaintiff's] own affidavit attests to the notion that she first consulted counsel in the summertime of 2017 and was subsequently made aware then that she may have a claim against [defendant] sounding in legal malpractice.
>
> This is critical, because where [plaintiff's] contentions might otherwise save her claim against defendant, [her] own attestations overlook the notion that June 26, 2015 was the date she received the written opinion ***."

The trial court observed that "[plaintiff's] own affidavit does not attest specifically to any notion that she relied specifically on any specific counsel from [defendant]."

¶ 23 On October 3, 2019, plaintiff filed a motion "requesting oral argument or permission to file [a] surresponse including [a] supplemental affidavit." The motion had no statement of facts, and it provided a one-paragraph "Argument" with four numbered sentences:

> "1. The court ruled in plaintiff's favor to dismiss defendant's motion to dismiss.
>
> 2. Subsequently, the court the [*sic*] reversed its ruling on [d]efendant['s] motion for reconsideration and granted defendant's Motion to Dismiss.
>
> 3. The case contains controversial issues of fact and law.

[2]In the *Naperville* appeal, plaintiff argued that a remand to the Board was necessary because the existing record was inadequate and that she had additional evidence. The appellate court rejected this argument, finding that "plaintiff complains of a record that she created." *Naperville*, 2017 IL App (2d) 160436-U, ¶¶ 20-21.

4. Plaintiff is submitting a supplementary affidavit of the plaintiff which addresses these issues."

¶ 24 Plaintiff attached to her motion a document entitled "supplemental affidavit," which was signed by her "under penalty of perjury," but was not dated or notarized or certified pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2018))[3]. The document stated that: "While I knew that there had been an adverse ruling against me, I relied on the statements of [defendant] that the adverse ruling by the [Board] was wrong and surprising to him, for concluding that [defendant] had done nothing wrong in his representation of me."

¶ 25 The document further stated that it did not occur to plaintiff to sue defendant for malpractice until June 2017 when she spoke with Steven Mora, her present attorney, and that, due to her own "financial limitations and health issues, it was several months before [she] retained Mr. Mora to represent [her] in this matter."[4]

¶ 26 The document enlarged upon her prior affidavit, dated November 12, 2018, in that it added the statement about her "financial limitations and health issues" and the statement that she had "relied" on defendant's statements.

¶ 27 On November 4, 2019, defendant filed "[a] response to plaintiff's motion to file a sur-reply or an affidavit or for oral argument." Defendant argued that plaintiff's "motion does not indicate what provision of law (*e.g.* the Code of Civil Procedure) it is brought under." On December 2, 2019, plaintiff's reply responded: "On October 3, 2019, plaintiff filed a motion for various kinds of relief which is probably best viewed as a request for oral argument."

¶ 28 On February 18, 2021, the trial court denied plaintiff's motion. The order began: "This matter is before the Court on plaintiff, Janice Johansson's motion requesting oral argument or for leave to file a sur-response and supplemental affidavit in further opposition of defendant Steven Glink's motion to reconsider." The order denied the motion and observed that "[t]his matter" was "dismissed with prejudice pursuant to the Court's September 11, 2019[,] order."

¶ 29 V. Notice of Appeal

¶ 30 On March 17, 2021, plaintiff filed a notice of appeal. Where the notice asked to "identify every order or judgment you want to appeal by listing the date the trial court entered it," plaintiff entered "02/18/2021." Where the form asked to "state what you want the appellate court to do," plaintiff asked this court to reverse or vacate the trial court's judgment and send the case back to the trial court for further proceedings. The form was completed by plaintiff's attorney.

¶ 31 On May 26, 2021, defendant moved in this court to dismiss plaintiff's appeal for lack of jurisdiction. Defendant's motion argued that plaintiff's October 4, 2019, motion to file a

[3]Section 1-109 permits an affidavit to have the same effect as one sworn before a notary if it states, among other things, that it was made "[u]nder penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure." 735 ILCS 5/1-109 (West 2018). The document submitted by plaintiff did not contain this language. Section 1-109 provides that a false statement made pursuant to this section subjects the affiant to a Class 3 felony. 735 ILCS 5/1-109 (West 2018).

[4]Approximately a year later, plaintiff filed suit against defendant on May 8, 2018.

surresponse was "not styled a motion for reconsideration and did not attack the substantive reasons for [the trial court's] dismissal order of September 11, 2019."

¶ 32 On June 9, 2021, a different panel of this court denied defendant's motion.

¶ 33 ANALYSIS

¶ 34 I. Duty to Consider Jurisdiction

¶ 35 An appellate court panel always has an independent duty to consider its own jurisdiction. *People v. Smith*, 228 Ill. 2d 95, 106 (2008).

¶ 36 Our supreme court has stated that the ascertainment of a court's own jurisdiction is one of the "most important tasks of an appellate court panel when beginning the review of a case." *Smith*, 228 Ill. 2d at 106 ("We take this opportunity to remind our appellate court of the importance of ascertaining whether it has jurisdiction in an appeal."); *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998) ("A reviewing court must be certain of its jurisdiction prior to proceeding in a cause of action.").

¶ 37 An appellate court's jurisdiction is dependent on the appellant's timely filing of a notice of appeal. *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 19. In fact, the timely filing of a notice of appeal is the only jurisdictional step needed to initiate appellate review. *People v. Patrick*, 2011 IL 111666, ¶ 20. An appellant's failure to file a timely notice leaves this court without jurisdiction to hear his or her appeal. *Huber*, 2014 IL 117293, ¶ 19 (where the appellant filed his notice of appeal after the 30-day deadline provided in the relevant supreme court rule, the appellate court was correct in dismissing the appeal for lack of jurisdiction); *Patrick*, 2011 IL 111666, ¶ 20. To ascertain whether a notice of appeal was timely filed, we turn to the relevant supreme court rules.

¶ 38 II. Rules of Statutory Interpretation

¶ 39 Since interpretation of a supreme court rule presents purely a question of law, our review is *de novo*. *VC&M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 13 (the proper interpretation of Illinois Supreme Court Rule 303(a) (eff. July 1, 2017) "presents purely a question of law" and thus "proceeds *de novo*"). *De novo* consideration means that we perform the same analysis that a trial judge would perform. *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 72.

¶ 40 When interpreting a supreme court rule, we are governed by the same rules that govern statutory interpretation. *Andrews*, 2013 IL 114445, ¶ 30. Under those rules, our primary objective is to ascertain and give effect to the intent of the rule's drafters. *Andrews*, 2013 IL 114445, ¶ 30. The most reliable indicator of the drafters' intent is the language used in the rule itself, which should be given its plain and ordinary meaning. *Andrews*, 2013 IL 114445, ¶ 30. If we determine that a supreme court rule is ambiguous or susceptible to more than one reasonable interpretation, then we may consider the committee comments in order to ascertain the reason and necessity for the rule and the purpose to be served by it. *Hollywood Boulevard Cinema, LLC v. FPC Funding II, LLC*, 2014 IL App (2d) 131165, ¶ 19.

¶ 41 III. Rule 303

¶ 42 Rule 303(a)(1) provides that a 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. Ill. S. Ct. R. 303(a)(1)

(eff. July 1, 2017). In the case at bar, the trial court dismissed plaintiff's complaint with prejudice on September 11, 2019, thereby disposing of the case in its entirety.

¶ 43 However, Rule 303 further provides that, if a timely posttrial motion directed against the judgment is filed, then the notice of appeal may be filed within 30 days after the entry of the order disposing of that motion. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). Plaintiff argues that her motion was directed against the judgment and, thus, tolled the time for filing the notice of appeal.

¶ 44 For a postjudgment motion to toll the time for filing a notice of appeal, it must seek one of the types of relief listed in section 2-1203 of the Code of Civil Procedure. 735 ILCS 5/2-1203 (West 2020). Section 2-1203 provides that, in all civil non-jury cases, a party "may, within 30 days after the entry of the judgment ***, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (West 2020). Thus, pursuant to section 2-1203, "[i]n order to toll the time to appeal," a postjudgment motion must seek a rehearing, retrial, modification or vacating of the judgment or other relief. *Stanila v. Joe*, 2020 IL App (1st) 191890, ¶ 13. "The 'other relief' referred to in section 2-1203 must be similar in nature to the other forms of relief enumerated in that section." *Stanila*, 2020 IL App (1st) 191890, ¶ 13; *R&G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 321 (2004). On its face, plaintiff's motion is not one of the enumerated types. However, plaintiff argues that her motion seeking to supplement the record with a new affidavit or hold oral argument is the same as a motion for a rehearing or a motion for reconsideration.

¶ 45 For the purposes of applying section 2-1203, the character of the motion is determined from its content not its caption. *R&G, Inc.*, 351 Ill. App. 3d at 321; see also *Stanila*, 2020 IL App (1st) 191890, ¶¶ 18, 21 (although finding that the caption of the motion before it was listed in section 2-1203, the court found that it was still required to examine the motion's content). To qualify, a motion must "constitute a request for modification" of the judgment. *R&G, Inc.*, 351 Ill. App. 3d at 323. "To modify an item is to change it." *R&G, Inc.*, 351 Ill. App. 3d at 323 (citing Webster's Third New International Dictionary 1452 (1981))

¶ 46 For example, in *Stanila*, this court found that defendant's postjudgment motion did not qualify because it was seeking "a different type of relief," namely, the "dismissal of plaintiff's complaint rather than vacation of the circuit court's final judgment." *Stanila*, 2020 IL App (1st) 191890, ¶ 23.

¶ 47 Similarly, in the case at bar, plaintiff's motion sought a different type of relief, namely, to supplement the record with additional factual material. In its final judgment dismissing plaintiff's complaint with prejudice, the trial court had noted both (1) a long delay between the end of defendant's representation and plaintiff's filing of a complaint against him, and (2) the lack of any assertion by her in her affidavit that she relied on statements by defendant that caused her to not file sooner. To fill the factual holes noted by the trial court in the record that plaintiff had created, plaintiff moved to supplement the record with an affidavit asserting her reliance on defendant and her health and financial issues—both facts already known to her. The time to supplement the record with already existing facts is before a decision, not after. Her request to supplement was not an attack on the validity of the judgment made by the trial court but an attempt to remedy perceived shortcomings in a record that she had provided. As a result, it sought a different type of relief and did not toll the time to appeal.

¶ 48 In the court below, defendant noted that plaintiff's motion failed to cite "what provision of law (*e.g.* the Code of Civil Procedure) it is brought under." Plaintiff's response was that it was "best viewed as a request for oral argument" on defendant's motion for reconsideration. However, the time to request oral argument on a motion is before the motion is decided, not after.

¶ 49 Before this court, plaintiff argues that her motion was a motion for reconsideration. However, a motion for reconsideration cannot be used to supplement the record with new evidence unless the movant can establish that the evidence was newly discovered and could not have been obtained earlier with due diligence. See, *e.g.*, *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409-10 (2005). Plaintiff's own statements concerning her own understanding of her own situation were not "newly discovered." See, *e.g.*, *Wolff*, 355 Ill. App. 3d at 409-10. Thus, her motion to supplement the record cannot be considered a motion for reconsideration and cannot toll the time for filing a notice of appeal.

¶ 50 There is a purpose to our procedural rules. At some point, the time for adding new factual material comes to an end and a decision is rendered.

¶ 51 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction due to an untimely notice of appeal.

¶ 52 As a final matter, we note that plaintiff asserts in the "Statement of Jurisdiction" section in her appellate brief that "[t]his court has jurisdiction over the appeal, pursuant to Illinois Supreme Court Rule 201." Rule 201 is entitled "General Discovery Provisions," and it governs the discovery, such as depositions and interrogatories, that is "obtainable" in a civil case. Ill. S. Ct. R. 201(a) (eff. July 1, 2014). It has no bearing on appellate jurisdiction in this case. The reference in plaintiff's brief does not appear to be a typographical error since defendant noted this issue in his brief, and plaintiff did not respond in her reply brief and did not supply a different provision for jurisdiction. To be clear, Rule 201 does not, and cannot, confer appellate jurisdiction in this case.

¶ 53 CONCLUSION

¶ 54 This appeal is dismissed for lack of jurisdiction.

¶ 55 Appeal dismissed.