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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD FRAZIER,)
)
Appellant-Defendant,)
)
vs.) No. 71A03-0803-CV-123
)
MIDLAND CREDIT MANAGEMENT, INC.,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
The Honorable David T. Ready, Magistrate
Cause No. 71C01-0609-CC-1368

October 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Donald Frazier appeals the judgment in favor of Midland Credit Management, Inc. (“Midland”) for \$4,476.05. We dismiss.

Issue

Frazier raises two issues. We address the dispositive issue, which we restate as whether Frazier’s notice of appeal was timely filed.

Facts

Midland, as an assignee of Citibank, filed suit against Frazier to collect a debt in the St. Joseph Circuit Court on September 27, 2006.¹ The chronological case summary (“CCS”) reflects that Frazier was served with notice on October 5, 2006. The trial court entered a default judgment of \$4,476.05 plus costs against Frazier on December 5, 2006. Following a proceeding supplemental, the trial court issued an order regarding garnishment of wages on August 20, 2007.

Frazier did not file a notice of appeal within thirty days of either the default judgment or the order following the proceeding supplemental. Instead, Frazier filed a “Motion to Dismiss Proceedings Supplemental” on November 14, 2007, alleging that he was improperly served, that the wage garnishment amounts to an extreme hardship, and that the debt was invalid. Following a telephonic hearing, the trial court denied Frazier’s motion on December 4, 2007. Frazier did not appeal that order. On February 8, 2008, Frazier filed two motions with the trial court requesting it to vacate the judgment and

¹ The clerk assigned cause number 71C01-0609-CC-1368 to this matter. We disregard the additional pleadings under other cause numbers included in Frazier’s appendix.

quash the proceedings supplemental. The trial court found that the motions were “an attempt to relitigate a prior motion filed on December 4, 2007” and denied both motions. Appellant’s App. p. 22. This appeal followed.

Analysis

“A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of Final Judgment. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court’s ruling on such motion” Ind. Appellate Rule 9(A)(1). Frazier did not file a proper notice of appeal within thirty days of the trial court’s December 5, 2006 default judgment or the August 20, 2007 order; nor did he file a timely motion to correct error to extend the time for an appeal.²

In this appeal, he attempts to argue his initial motion to dismiss constituted a proper Indiana Trial Rule 60(B) motion. We disagree. Even if that motion was a properly made Rule 60(B) motion, the trial court denied it on December 4, 2007 and any notice of appeal would have had to be filed within thirty days. Frazier’s subsequent attempts to vacate the judgment were merely repetitive and did not extend his time to file an appeal. See Ind. Trial Rule 53.4(A) (explaining that such repetitive motions “shall not delay the trial or any proceedings in the case, or extend the time for any further required or permitted action, motion, or proceedings under these rules.”)

² We note that Frazier did file an untimely brief and subsequently moved for a permission to file a belated brief, which was granted. The allowance of a belated brief, however, does not change the nature of Frazier’s belated notice of appeal.

“The timely filing of a notice of appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal.” Trinity Baptist Church v. Howard, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), trans. denied; App. R. 9(A)(5) (“Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited”). Frazier’s right to appeal has been forfeited.

Conclusion

Frazier did not timely file this appeal, and it must be dismissed.

Dismissed.

FRIEDLANDER, J., and DARDEN, J., concur.