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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

NICHOLE SHAVONNE ROSS,

Plaintiff and Appellant,

v.

OLD FIELD REALTY, LLC, et al.,

Defendants and Respondents.

B270777

(Los Angeles County
Super. Ct. No. BC535353)

APPEAL from an order of the Superior Court of Los Angeles
County, William F. Fahey, Judge. Appeal dismissed.

Gary Rand & Suzanne E. Rand-Lewis and Suzanne E.
Rand-Lewis for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Appellant Nichole Shavonne Ross contends that the trial court erroneously dismissed her action. The judgment of dismissal was filed on July 30, 2015, and signed by the judge and entered by the clerk on the same date. Appellant did not file this appeal until February 22, 2016—207 days after the judgment was entered—well beyond any deadline for appealing a judgment. Her appeal, therefore, is untimely; we do not have jurisdiction to consider it. Accordingly, we dismiss it.¹

FACTUAL AND PROCEDURAL SUMMARY

On February 15, 2014, appellant filed a complaint alleging multiple causes of action against Old Field Realty, LLC, Jao C. Madeiros, and Steve Brinca (respondents). Respondents did not respond to the complaint, and appellant advised the court she would seek a default judgment. After a delay of almost 18 months and six attempts, appellant failed to submit the necessary evidence to perfect her request for a default judgment. On July 15, 2015, at a hearing set to prove up the default judgment, the court dismissed the case without prejudice. The judgment of dismissal was filed, signed by the judge and entered by the clerk on the same date.

On October 19, 2015, appellant filed a motion to vacate the dismissal and to enter a default judgment. On November 10, 2015, the trial court issued a minute order taking appellant's motion to vacate off calendar due to "[n]o [p]roofs of service."

On December 11, 2015, appellant again sought to vacate the dismissal, now by way of an ex parte application. The court denied the application on December 22, 2015.

¹ "[Respondents have] not filed a respondents' brief in this case. However, we do not treat the failure to file a respondents' brief as a 'default' (i.e., an admission of error) but independently examine the record and reverse only if prejudicial error is found." (*Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203.)

On February 22, appellant filed her notice of appeal—
207 days after the judgment was entered.²

DISCUSSION

Appellant contends her appeal is timely. We disagree.

Generally, there are three possible deadlines for filing a notice of appeal: (1) 60 days after the superior court clerk serves on the party filing the notice of appeal a notice of entry of judgment or a filed-stamped copy of the judgment; (2) 60 days after a party serves on the party filing the notice of appeal a notice of entry of judgment or a filed-stamped copy of the judgment; or (3) 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).) Whichever deadline occurs first applies. (*Ibid.*) Here, the clerk served the appellant the notice of the entry of judgment on August 4, 2015. Therefore, unless extended by another rule, the applicable deadline for filing the appeal was 60 days later.

Where as here, a party files a motion to vacate a dismissal or an “ex parte application” to vacate the dismissal, the time to appeal is extended. Any extension, however, “*cannot* lengthen the time for noticing an appeal beyond 180 days after the date of entry of the appealable judgment”; “the 180-day deadline is the *outside* limit in all such cases.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 3:62, p. 3-33; see *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 818; *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 109.)

Under these rules, the last date that appellant could have filed a timely notice of appeal was 180 days after entry of judgment. The court entered judgment in this case on July 30, 2015. The

² By way of letters, dated July 13, 2016 and March 10, 2017, we notified appellant that her appeal appeared untimely, and gave her the opportunity to respond by letter brief and at oral argument.

appellant filed her notice of appeal 207 days later, on January 22, 2016, which was 27 days after the last day to file a timely notice of appeal.

“The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal.” (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56; see also *Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 662.) Equitable considerations that are available to excuse a default in other situations are not applicable to a late notice of appeal (*In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 109), and we cannot reach the merits of the appeal by treating it as a petition for an extraordinary writ (*Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 953). Accordingly, we dismiss appellant’s appeal.

DISPOSITION

The appeal is dismissed. The parties shall bear their own costs on appeal.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.