UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1344

September Term, 2015

MICHAEL TANN

v.

D. CARTER ENTERPRISES, *et. al.*

Berger,
Friedman,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 30, 2017

At the conclusion of plaintiff's case before a jury, the Circuit Court for Cecil County granted appellees; D. Carter Enterprises, d/b/a Rebs Used Autos, David Carter, and Joshua Carter (hereinafter collectively referred to as "Rebs") motion for judgment against appellant, Michael Tann. The trial court thereafter denied several post-trial motions. Appellant, *pro-se,* then filed a notice of appeal, asking us to consider whether the circuit court erred in granting judgment in favor of appellees.[1] Because Tann's notice of appeal was not timely filed, we shall dismiss his appeal.

FACTS and LEGAL PROCEEDINGS

In his amended complaint against Rebs,[2] Tann alleged "multiple tort violations committed against him," including fraud and negligent misrepresentation. The amended complaint also includes counts alleging breach of contract and breach of an implied covenant of good faith and fair dealing. All of appellant's claims arose as a result of allegedly faulty repairs made by Rebs's auto repair mechanics to Tann's 2000 Dodge Ram van on October 18, 2010. Following a flurry of pre-trial motions, the matter proceeded to jury trial on May 18, 2015.

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[1] Appellant presented the following three related questions, which we have consolidated and rephrased:

> 1. Did the Cecil County Circuit Court commit error when it dismissed Appellant's case for not having proved damages, duty, or the existence of a contract?
> 2. Did the Court violate Md. Rule 2-519, Motion for Judgment, when it dismissed Appellant's case?
> 3. Was Appellant denied his substantive right to a fair and impartial trial?

[2] Tann's original complaint was not included in the record extract.

At the close of Tann's case-in-chief, Rebs moved for judgment as to all counts in the amended complaint, arguing that Tann had not proved the necessary elements of any of the causes of action he had pled, nor presented any evidence of damages. The court granted the motion for judgment as to all counts. A judgment in favor of all defendants was docketed on May 18, 2015.

On May 27, 2015, Tann filed post-trial motions for a new trial and to alter and amend judgment and a Rule 2-535 motion to revise judgment, all of which he amended on May 28, 2015. The trial court denied each of the amended motions by written orders docketed on July 29, 2015. Tann filed his notice of appeal on Monday, August 31, 2015.

DISCUSSION

As we explained in *Edery v. Edery*, 213 Md. App. 369, 381–82 (2013):

> The general rule establishing the deadline for filing a notice of appeal to this Court is set forth in Rule 8–202(a), which states that, unless otherwise provided, "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." Rules 2–534 and 2–535 are directly relevant to the time for filing a notice of appeal to this Court under Rule 8–202, because subsection (c) of that Rule creates an exception to the 30 day filing deadline for post-judgment motions, such as motions under Rule 2–534 and 2–535, that are timely filed, *i.e.,* filed within 10 days of the entry of the judgment appealed from. Subsection (c) states:
>
> > In a civil action, when a timely motion is filed pursuant to Rule 2–532 [motion for judgment notwithstanding the verdict], 2–533 [motion for new trial], or 2–534 [motion to alter or amend judgment], the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2–533 or disposing of a motion pursuant to Rule 2–532 or 2–534.
>
> (Likewise, the exception applies when a motion under Rule 2–535 [revisory power] has been filed within 10 days after entry of judgment. *See* Committee note to Rule 8–202(c)). Thus, when a post-judgment motion has been filed

> within 10 days of the entry of judgment, the deadline for filing a notice of appeal to this Court is not 30 days from the date of entry of judgment; it is 30 days from the notice of withdrawal of the post-judgment motion or the ruling on the post-judgment motion.

Tann filed his motions for new trial, to alter or amend a judgment, and to exercise the Court's revisory power on May 27, 2015, which was within 10 days of the court's entry of the May 18, 2015 judgment. Therefore, under Rule 8–202(c), Tann's motions tolled the time for filing a notice of appeal to this Court until 30 days after the motions were denied.

The trial court filed its orders denying Tann's motions on July 29, 2015. To be timely, Tann's notice of appeal had to be filed within 30 days thereafter. His notice of appeal, filed on August 31, 2015, was not within that 30–day period that ended on Friday, August 28, 2015, and therefore was not timely filed. As such, his appeal must be dismissed.[3] See *In re Nicole B.*, 410 Md. 33, 62 (2009) (quoting *Houghton v. Cnty. Comm'rs of Kent Cnty.*, 305 Md. 407, 413 (1986)). ("'The requirement . . . that an order of appeal be filed within thirty days of a final judgment is jurisdictional; if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed.'"); *Eastgate Associates v. Apper*, 276 Md. 698, 701 (1976) ("Where appellate jurisdiction is lacking, the appellate court will dismiss the appeal *sua sponte").*

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.

[3] Under Maryland law, no special treatment is given to a *pro se* party. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 554–55 (1997).