

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

v

Case No. 16-155472-CB
Hon. Martha Anderson

SS MITX, LLC and LAMAR ADVERTISING
OF MICHIGAN, INC.,

Defendant,

and

LAMAR ADVERTISING OF MICHIGAN,
INC., d/b/a THE LAMAR COMPANIES and
SS MITX, LLC, d/b/a SIMPLY SELF STORAGE,

Plaintiffs,

v

Case No. 16-155489-CB
Hon. Martha Anderson

INTERNATIONAL OUTDOOR, INC.,

Defendant.

NOTICE OF HEARING

TO: All Counsel of Record

PLEASE TAKE NOTICE that Plaintiff's Motion to Dismiss or Deny Motion for Relief from Judgment for Lack of Jurisdiction in the Trial Court will be brought on for hearing before the Honorable Martha Anderson on Wednesday, August 7, 2019 at 8:30 a.m., or as soon thereafter as counsel may be heard.

By: /s/Thomas P. Bruetsch (P57473)
OTTENWESS, TAWHEEL & SCHENK, PLC
Attorney for International Outdoor, Inc.
535 Griswold St., Suite 850
Detroit, MI 48226
(313) 965-2121

Dated: July 31, 2019

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

INTERFNATIONAL OUTDOOR, INC.,

Plaintiff,

v

Case No. 16-155472-CB
Hon. Martha Anderson

SS MITX, LLC and LAMAR ADVERTISING
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Plaintiffs,

v

Case No. 16-155489-CB
Hon. Martha Anderson

INTERNATIONAL OUTDOOR, INC.,

Defendant.

THOMAS P. BRUETSCH (P57473)
OTTENWESS, TAWEEL & SCHENK, PLC
Attorney for International Outdoor, Inc.
535 Griswold Street, Suite 850
Detroit, MI 48226
(313) 965-2121
tbruetsch@ottenwesslaw.com

KENNETH F. NEUMAN (P39429)
STEPHEN T. McKENNEY (P65673)
ALTIOR LAW, P.C.
Attorneys for Lamar Advertising
401 South Old Woodward Ave., Suite 460
Birmingham, MI 48009
(248) 594-5252
kneuman@altiorlaw.com
smckenney@altiorlaw.com

CHRISTOPHER E. LeVASSEUR (P35981)
STARK REAGAN, PLC
Attorney for Simply Self Storage
1111 West Long Lake Road, Suite 202
Troy, MI 48098
(248) 641-9955
clevasseur@starkreagan.com

**MOTION TO DISMISS OR DENY MOTION FOR RELIEF FROM
JUDGMENT FOR LACK OF JURISDICTION IN THE TRIAL COURT**

Plaintiff, International Outdoor, Inc., moves to dismiss or deny, without prejudice, the Motion for Relief from Judgment filed by Defendants, on the ground that the Claim of Appeal filed in this matter has divested the Court of jurisdiction under MCR 7.208(A). In further support of its Motion, International Outdoor relies on the attached Brief.

By: /s/Thomas P. Bruetsch (P57473)
OTTENWESS, TAWEEL & SCHENK, PLC
Attorney for International Outdoor, Inc.
535 Griswold St., Suite 850
Detroit, MI 48226
(313) 965-2121
tbruetsch@ottenwesslaw.com

Dated: July 31, 2019

**BRIEF IN SUPPORT OF MOTION TO DENY MOTION FOR RELIEF FROM
JUDGMENT FOR LACK OF JURISDICTION IN THE TRIAL COURT**

On June 6, 2019, Defendants SS MITX and Lamar Advertising of Michigan (“Lamar”) filed a Motion for Relief from Judgment under MCR 2.612(C)(1)(c), seeking to have this Court vacate the jury verdict and final Judgment entered on June 7, 2018.

However, because that Judgment is currently on appeal, the Court lacks jurisdiction to hear the Motion or relieve the Defendants from the Judgment. Lamar filed a Claim of Appeal from the Judgment on October 8, 2018. *Ex. A.* By Court Rule, “[a]fter a claim of appeal is filed ... the trial court ... may not set aside or amend the judgment or order appealed from.” MCR 7.208(A).¹

¹ The Rule contains four exceptions, none of which are applicable here.

“Filing of a claim of appeal divests the circuit court of its jurisdiction to amend its final orders.” *Wilson v General Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990).² Because Lamar filed its Claim of Appeal before it filed its Motion for Relief from Judgment, “the trial court lacked jurisdiction to grant relief from the order.” *Northington v Mich Dep’t of Corrections*, 2002 WL 31376755 (Unpublished, Mich. App. October 22, 2002); MCR 7.208(A).
Ex. B.

For example, in *Piche v Piche*, 2009 WL 3401052, at *5 (Unpublished, Mich. App. Oct. 22, 2009) (emphasis added):

Plaintiff filed a claim of appeal ... before the trial court decided his motion for relief from judgment or a new trial. As the trial court correctly observed, MCR 7.208(A)(4) provides that “[a]fter a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except ... as otherwise provided by law.” Therefore, ... **the act of filing the claim of appeal deprived the trial court of jurisdiction to decide plaintiff’s motion for relief from judgment** or for a new trial, in which he sought to have the judgment set aside or amended. Thus, **the trial court did not err in finding that it lacked jurisdiction** to grant plaintiff’s motion.
Ex. C.

Continuing with these proceedings in light of the lack of jurisdiction would lead to a result that would be void: “A judgment entered by a court without subject-matter jurisdiction is **a void judgment** and may be vacated at any time on the court’s own motion or upon the motion of any party thereto, including the party who originally invoked the jurisdiction of the court.”

² See, also, *Moffit v Sederlund*, 145 Mich App 1, 7 (1985) (“After defendants filed a claim of appeal, jurisdiction over this case vested in this Court [and] [t]he trial court had no jurisdiction to conduct proceedings in the case.”); *People v George*, 399 Mich 638, 640, 250 NW2d 491, 492 (1977) (“jurisdiction of this case was vested in the Court of Appeals, and thus removed from the circuit court, when the defendant’s claim of appeal was filed.... Until the pending application for leave to appeal is resolved, jurisdiction is not revested in the circuit court.”).

Banner v Banner, 45 Mich App 148, 153 (1973), citing, *Carpenter v Dennison*, 208 Mich 441 (1919); *Orloff v Morehead Manufacturing Co*, 273 Mich 62 (1935); *Shane v Hackney*, 341 Mich 91 (1954); and *Millman Brothers, Inc v Detroit*, 2 Mich App 161 (1966).”

Jurisdictional defects may be raised “at any stage of the proceeding,” for the reason that “if the court proceeds without jurisdiction, the whole proceedings are null and void.” *Toledo, A.A. & N.M.R. v Munson*, 57 Mich 42, 44 (1885). *See, also, Jackson City Bank v Fredrick*, 271 Mich 538, 545 (1935) (where there is no subject-matter jurisdiction, “no matter what formalities may have been taken by the trial court, the action thereof is void.”).

At the hearing on July 31, 2019, Plaintiff contended that its Motion was allowed under MCR 7.208(A)(4), which provides that a trial court may set aside a final judgment “as otherwise provided by law.” Not so. Both the *Northington* and *Piche* cases dealt with exactly the type of Motion brought by Defendants here – a Motion for Relief from Judgment. *Northington, supra, at *3; Piche, supra at *5.*

Defendants also asserted that only Lamar, and not SS MITX, have made a Claim of Appeal. That is of little moment. There is one Judgment in this case, not two, and the matters dealt with in the Judgment – including the validity of the lease with SS MITX – are relevant to Lamar’s appeal.

It makes little sense to burden the Court, and the parties, with this matter when any resulting order would be void, requiring the proceedings to be redone after the appeal is decided and jurisdiction returned to the circuit court.

Because this Court lacks jurisdiction over Plaintiff’s Motion for Relief from Judgment while this matter is on appeal, the Court should dismiss the Motion, without prejudice, pending the Court of Appeals’ decision.

By: /s/Thomas P. Bruetsch (P57473)
OTTENWESS, TAWEEL & SCHENK, PLC
Attorney for International Outdoor, Inc.
535 Griswold St., Suite 850
Detroit, MI 48226
(313) 965-2121
tbruetsch@ottenwesslaw.com

Dated: July 31, 2019

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the MIFile system which will send notification of such filing to the attorneys of record.

By: /s/Diane Sutherland
OTTENWESS, TAWEEL & SCHENK, PLC

Dated: July 31, 2019

EXHIBIT A

Approved, SCAO

Original - Court of Appeals/Circuit court
1st copy - Trial court

JIS CODE: COA
2nd copy - Appellee
3rd copy - Appellant

STATE OF MICHIGAN JUDICIAL <input type="checkbox"/> CIRCUIT <input type="checkbox"/> DISTRICT COUNTY <input checked="" type="checkbox"/> IN THE COURT OF APPEALS	CLAIM OF APPEAL	CASE NO. 2016-155472-CB CIRCUIT DISTRICT PROBATE
--	------------------------	--

Court address: 1200 N. Telegraph Road, Pontiac, MI 48341
 Court telephone no.: 248-858-0582

Plaintiff's/Petitioner's name(s) and address(es) International Outdoor, Inc.	v	Defendant's/Respondent's name(s) and address(es) Lamar Advertising of Michigan, Inc. d/b/a The Lamar Companies
Plaintiff's attorney, bar no., address, and telephone no. Potter DeAgostino O'Dea & Patterson Steven M. Potter (P33344) Rick J. Patterson (P55706) 2701 Cambridge Court, Suite 223 Auburn Hills, MI 48326 (248-377-1700)		Defendant's attorney, bar no., address, and telephone no. Neuman Anderson Grieco McKenney, PC Stephen T. McKenney (P65673) 401 S. Old Woodward, Suite 460 Birmingham, MI 48009 (248) 594-5252

Probate In the matter of _____
 Other interested party(ies) of probate matter _____

1. Lamar Advertising of Michigan, Inc. claims an appeal from a final judgment or order entered on June 7, 2018 in the Oakland County Circuit Court Court of the State of Michigan, by district judge circuit judge probate judge district court magistrate

Wendy Potts P29604
 Name of judge or district court magistrate Bar no.

2. Bond on appeal is filed. attached. waived. not required.

- 3. a. The transcript has been ordered.
- b. The transcript has been filed.
- c. No record was made.

- 4. THIS CASE INVOLVES
 - a. A CONTEST AS TO THE CUSTODY OF A MINOR CHILD.
 - b. AN ADULT OR MINOR GUARDIANSHIP UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE OR UNDER THE MENTAL HEALTH CODE.
 - c. AN INVOLUNTARY MENTAL HEALTH TREATMENT CASE UNDER THE MENTAL HEALTH CODE.
 - d. A RULING THAT A PROVISION OF THE MICHIGAN CONSTITUTION, A MICHIGAN STATUTE, A RULE OR REGULATION INCLUDED IN THE MICHIGAN ADMINISTRATIVE CODE, OR ANY OTHER ACTION OF THE LEGISLATIVE OR EXECUTIVE BRANCH OF STATE GOVERNMENT IS INVALID.

10/8/18
 Date

/s/ Stephen T. McKenney
 Appellant/Attorney signature

PROOF OF SERVICE

I certify that copies of this claim of appeal, Register of Actions and Jurisdictional Checklist were served on:

Steven M. Potter on 10/8/18 via the Court's TrueFiling E-File & Serve Option
 Name Date
Rick J. Patterson on 10/8/18 via the Court's TrueFiling E-File & Serve Option
 Name Date
Christopher E. LeVasseur on 10/8/18 via the Court's TrueFiling E-File & Serve Option
 Name Date

10/8/18
 Date

[Signature]
 Signature

MC 55 (9/17) CLAIM OF APPEAL

MCR 4.401(D), MCR 7.104(C), MCR 7.108(C)(3), MCR 7.204(D)

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Trial Court/Tribunal Name:
Oakland County Circuit
Court

Court of Appeals, State of Michigan
Jurisdictional Checklist

CASE NO.
Trial Court/Tribunal:
2016-155472-CB
Court of Appeals:

Case Name: International Outdoor, Inc. v Lamar Advertising of Michigan, Inc.

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

1. A **signed** claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).
- a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
- b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
- c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (***Even if a party is not an appellee, they must be served.***)
6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: 7.202(6)(a)(i)
- The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

10/8/18
Date

/s/ Stephen T. McKenney
Preparer's Signature

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STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

INTERNATIONAL OUTDOOR, INC.,
a Michigan corporation,

Plaintiff,

vs.

SS MITX, LLC, a Delaware limited liability
Company d/b/a **SIMPLY SELF STORAGE** and
LAMAR ADVERTISING OF MICHIGAN, INC.,
a Michigan corporation

Defendants,

and

LAMAR ADVERTISING OF MICHIGAN, INC.
d/b/a **THE LAMAR COMPANIES** and
SS MITX, LLC d/b/a **SIMPLY SELF STORAGE**

Plaintiffs,

vs.

INTERNATIONAL OUTDOOR, INC.,

Defendant.

Case No. 2016-155472-CB

Hon. Wendy Potts

Case No. 16-155489-CB

Hon. Wendy Potts

STEVEN M. POTTER (P33344)
RICK J. PATTERSON (P55706)
**POTTER, DeAGOSTINO, O'DEA &
PATTERSON**
Attorneys for Plaintiff International Outdoor,
Inc.
2701 Cambridge Court, Suite 223
Auburn Hills, MI 48326
(248) 377-1700
(248) 377-0051-Fax
spotter@potterlaw.com
rjpatterson@potterlaw.com

KENNETH F. NEUMAN (P39429)
STEPHEN T. MCKENNEY (P65673)
**NEUMAN ANDERSON GRIECO &
MCKENNEY, P.C.**
Attorney for Defendant Lamar Advertising of
Michigan, Inc.
401 S. Old Woodward Ave., Ste. 460
Birmingham, MI 48009
(248) 594-5252
kneuman@nagmlaw.com
smckenney@nagmlaw.com

CHRISTOPHER E. LEVASSEUR (P35981)
STARK REAGAN, P.C.
Attorney for Defendant SS MITX d/b/a Simply
Self Storage
1111 W. Long Lake Rd., Ste. 202
Troy, MI 48098
(248) 641-9955
clevasseur@starkreagan.com

JUDGMENT

At a session of said Court, held in the City of Pontiac,
County of Oakland, State of Michigan
on: JUN 7 2018

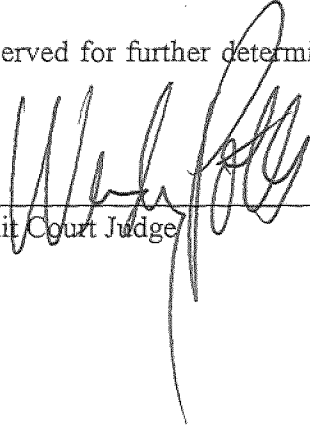
PRESENT: Hon. Wendy Potts
Circuit Court Judge

This action having come before the Court and the Jury, the issues having been tried, and the Jury having rendered its verdict on April 24, 2018, Judgment is entered as follows:

1. This Court, based on the Jury's verdict, finds that INTERNATIONAL OUTDOOR, INC. timely renewed its lease with SS MITX, LLC and that lease continues to be in full force and effect.
2. In favor of INTERNATIONAL OUTDOOR, INC. and against LAMAR ADVERTISING OF MICHIGAN, INC. in the amount of Four Hundred Five Thousand and 00/100 (\$405,000.00) Dollars, with regard to Count II of INTERNATIONAL OUTDOOR INC.'S Complaint in the lead case in this consolidated action.
3. As to LAMAR ADVERTISING OF MICHIGAN, INC. d/b/a The Lamar Companies and SS MITX, LLC d/b/a Simply Self Storage's Complaint in the consolidated, later-filed action against INTERNATIONAL OUTDOOR, INC.: no cause of action.

4. The issue of attorney fees and costs is reserved for further determination by this Court.

Circuit Court Judge



J. C.

JUN 7 2018

Court Explorer

Register of Actions
← Go Back

Case Number
2016-155472-CB

Entitlement
INTERNATIONAL OUTDOOR INC vs. SS MITX

Judge Name
WENDY L. POTTS

Case E-Filed
YES

Case Filed
10/07/2016

Case Disposed
04/24/2018

Date	Code	Desc
09/24/2018	TRN	TRANSCRIPT FILED 09/17/18 MTN HRNG
09/17/2018	DM	DEFENSE MOTION LAMAR'S MTN TO ENFORCE STAY-GRANTED
09/17/2018	DM	DEFENSE MOTION LAMAR'S MTN FOR JNOV-DENIED
09/17/2018	ORD	ORDER FILED GRANT LAMAR ADVERTISING MTN ENFORCE STAY
09/17/2018	ORD	ORDER FILED DENY LAMAR MTN FOR JNOV
09/12/2018	NOH	NOTICE OF HEARING FILED /POS
09/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/12/2018	NOH	NOTICE OF HEARING FILED /POS
09/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/12/2018	NOH	NOTICE OF HEARING FILED /POS
09/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/10/2018	BRF	BRIEF FILED REP SUPPT MTN JGM/POS/LAMAR

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Date	Code	Desc
09/10/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/07/2018	RES	RESPONSE FILED MTN JGM/BRF/POS/INTRNATL OUTDOOR
09/07/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/07/2018	BRF	BRIEF FILED REP/SUPPT MTN ATTY FEES/POS/INTERNATL OUT
09/07/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/04/2018	MPR	MOTION PRAECIPE FILED FOR 09122018 JUDGE 05
09/04/2018	NOH	NOTICE OF HEARING FILED /POS
09/04/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/30/2018	MPR	MOTION PRAECIPE FILED FOR 09122018 JUDGE 05
08/30/2018	NTC	NOTICE FILED /POS
08/30/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/29/2018	RES	RESPONSE FILED MTN AWARD ATTY FEES/SS MITX
08/29/2018	OTH	EXH TO BRF SUPPT MTN ATTY FEES
08/29/2018	BRF	BRIEF FILED SUPPT MTN ATTY FEES/SS MITX
08/29/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/28/2018	RES	RESPONSE FILED PLF/TO CONCUR W/DFT MTN TO ENFORCE/POS
08/28/2018	RES	RESPONSE FILED PLF/TO DFT MTN ENFORCE/BRF/POS
08/28/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/24/2018	RES	RESPONSE FILED /CONCURR TO MTN ENFORCE STAY/POS/DFT
08/24/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/24/2018	NTC	NOTICE FILED ADJ MTN HRG
08/24/2018	NOH	NOTICE OF HEARING FILED /POS
08/24/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/24/2018	MPR	MOTION PRAECIPE FILED FOR 09052018 JUDGE 05
08/22/2018	MTN	MOTION FILED ENFORCE AUTO STAY/BRF/NOH/DFT
08/22/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED

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Date	Code	Desc
08/22/2018	MPR	MOTION PRAECIPE FILED FOR 08292018 JUDGE 05
08/17/2018	MPR	MOTION PRAECIPE FILED FOR 09052018 JUDGE 05
08/16/2018	NOH	NOTICE OF HEARING FILED /POS
08/16/2018	MTN	MOTION FILED ATTY FEES/COSTS/BRF/NOH/INTERNATL OUTDOOR
08/16/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/23/2018	MPR	MOTION PRAECIPE FILED FOR 09122018 JUDGE 05
07/23/2018	OTH	EXH TO DFT MTN JGM NOT W/STAND VERDICT FILED
07/23/2018	OTH	TRIAL TRNSCRPTS EXCERPTS FILED
07/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/23/2018	MTN	MOTION FILED JGM NOT W/STAND VERDICT/BRF/NOH/POS/LAMAR
07/17/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/17/2018	APC	ADJ-COUNSEL 07182018 TO 08292018
07/17/2018	APR	DATE SET FOR SETTL CONF ON 08292018 01 20 PM Y 05
07/17/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/17/2018	ADJ	ORDER OF ADJOURNMENT FILED SETTLEMENT CONFERENCE
07/16/2018	TRN	TRANSCRIPT FILED JURY TRL VOL III 4/23/18
07/16/2018	TRN	TRANSCRIPT FILED JURY TRL VOL IV 4/24/18
07/16/2018	TRN	TRANSCRIPT FILED JURY TRL VOL II 4/20/18
07/16/2018	TRN	TRANSCRIPT FILED JURY TRL VOL I 4/19/18
07/16/2018	NTC	NOTICE FILED FILING TRN
07/16/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/27/2018	ORD	ORDER FILED RE MTN/STLMT CONF DATES
06/27/2018	DM	DEFENSE MOTION TO ENFORCE AUTOMATIC STAY- HEARD
06/27/2018	ORD	ORDER FILED AMD RE MTN ENFORCE AUTOMATIC STAY

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Date	Code	Desc
06/25/2018	RES	RESPONSE FILED DFT/TO LAMAR MTN ENFORCE/BRF/POS
06/25/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/22/2018	RES	RESPONSE FILED MTN EXPEDITE TRNSCRPTS/POS/DFT
06/22/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/21/2018	RES	RESPONSE FILED OPP PLF MTN EXPEDITE/DFT
06/21/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/20/2018	MPR	MOTION PRAECIPE FILED FOR 06272018 JUDGE 05
06/20/2018	MTN	MOTION FILED EXPEDITE TRNSCRPTS/BRF/POS/PLF
06/20/2018	NOH	NOTICE OF HEARING FILED /POS
06/20/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/18/2018	MPR	MOTION PRAECIPE FILED FOR 06272018 JUDGE 05
06/18/2018	MTN	MOTION FILED ENFORCE AUTOMATIC STAY/NOH/BRF/POS/DFT
06/18/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/07/2018	JGM	JUDGMENT FILED AGST DFT
06/06/2018	TRN	TRANSCRIPT FILED MTN HEARING 5/16/18
06/06/2018	POR	PROPOSED ORDER FILED
06/06/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/16/2018	M	MOTION FOR ENTRY OF JUDG -GIP -DIP-
05/16/2018	DM	DEFENSE MOTION LAMARS MOTION TO EXTEND TIME -G-
05/16/2018	ORD	ORDER FILED GRANT/DENY PLF MTN ENTRY JGM/FEES
05/16/2018	ORD	ORDER FILED RE MTN EXTEND TIME FILING MTN JNOV
05/14/2018	RES	RESPONSE FILED INTERNATIONAL OUTDOOR/TO LAMAR MTN/BRF
05/14/2018	BRF	BRIEF FILED REP SUPPT MTN AWD FEES/POS/INTL OUTDOORS
05/14/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/14/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED

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Date	Code	Desc
05/14/2018	BRF	BRIEF FILED REP SUPPT MTN ENTRY JGM/POS/INTL OUTDOOR
05/14/2018	BRF	BRIEF FILED REP SUPPT MTN ENTRY JGM/POS/PLF
05/14/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/11/2018	RES	RESPONSE FILED MTN ATTY FEES/COSTS/POS/SSMITX
05/11/2018	RES	RESPONSE FILED OPP MTN ENTRY JGM/POS/LAMAR
05/11/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/11/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/11/2018	RES	RESPONSE FILED DFT/IN OPP TO PLF MTN/POS
05/11/2018	RES	RESPONSE FILED DFT/TO PLF MTN ENTRY JGM/BRF/POS
05/11/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/11/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/04/2018	MPR	MOTION PRAECIPE FILED FOR 05162018 JUDGE 05
05/04/2018	NOH	NOTICE OF HEARING FILED /POS
05/04/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/03/2018	MPR	MOTION PRAECIPE FILED FOR 05162018 JUDGE 05
05/03/2018	NOH	NOTICE OF HEARING FILED /POS
05/03/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/02/2018	MTN	MOTION FILED ENTRY OF JGM/BRF/PLF
05/02/2018	MTN	MOTION FILED AWARD ATTY FEES/PLF
05/02/2018	NOH	NOTICE OF HEARING FILED
05/02/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/02/2018	MPR	MOTION PRAECIPE FILED FOR 05092018 JUDGE 05
05/02/2018	MPR	MOTION PRAECIPE FILED FOR 05092018 JUDGE 05
05/02/2018	MTN	MOTION FILED EXT TIME FILE MTN/BRF/NOH/POS/LAMAR
05/02/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/30/2018	CCR	CERTIF CT REPORTER FILED

RECEIVED by MCOA 10/8/2018 10:19:44 AM

Date	Code	Desc
04/30/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/25/2018	VFF	VERDICT FORM FILED
04/24/2018	JTE	JURY TRIAL ENDED 0.50
04/24/2018	FDJ	FINAL DISPOSITION WITH JURY (VERDICT FOR PLAINTIFF)
04/23/2018	JTC	JURY TRIAL CONTINUED DAY 0.50 (CONTINUE 4/24/18)
04/20/2018	JTC	JURY TRIAL CONTINUED DAY 1.00 (CONTINUE 4/23/18)
04/19/2018	JTB	JURY TRIAL BEGUN 1.00
04/17/2018	OTH	AMD FINAL PRETRIAL ORDER FILED
04/17/2018	REQ	REQUEST FILED TO REVISE FINAL PT ORD/POS/PLF
04/17/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/13/2018	OTH	JOINT FINAL PRETRIAL ORDER FILED
04/13/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/12/2018	OTH	PLF VOIR DIRE/POS FILED
04/12/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/05/2018	OPN	OPINION FILED /ORD DENY PLF MTN LIMINE
04/05/2018	ORD	ORDER FILED FINAL TRIAL
04/03/2018	ORD	ORDER FILED FINAL TRL SEE 16155489CB
04/03/2018	ORD	ORDER FILED FINAL TRIAL
03/22/2018	ORD	ORDER FILED PARTIES APPEAR FOR A JURY TRIAL 4/19 @8:30
03/19/2018	APR	DATE SET FOR SETTL CONF ON 03222018 01 20 PM Y 05
03/19/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
03/19/2018	APC	ADJ-COUNSEL 03222018 TO 03212018
03/19/2018	APR	DATE SET FOR SETTL CONF ON 03212018 01 20 PM Y 05
03/08/2018	ORD	ORDER FILED GRANT PLF MTN ADDTL DISC
03/08/2018	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
03/08/2018	APC	ADJ-COUNSEL 03152018 TO 04192018

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Date	Code	Desc
03/08/2018	APR	DATE SET FOR TRIAL ON 04192018 08 30 AM Y 05
03/07/2018	APR	DATE SET FOR SETTLE CONF ON 03212018 01 20 PM Y 05
02/28/2018	ORD	ORDER FILED REPLF MTN LIMINE HELD IN ABEYANCE
02/28/2018	ADJ	ORDER OF ADJOURNMENT FILED TRAIL
02/28/2018	ORD	ORDER FILED RESULTS OF FACILITATION DISCOVERY ISSUES
02/28/2018	M	MOTION TO ADJ TRIAL PERMIT DIS -GIP-
02/28/2018	M	MOTION IN LIMINE -COURT WILL HOLD RULING IN ABEYANCE
02/26/2018	OTH	DFT CONCUR IN LAMAR RES BRF/POS FILED
02/26/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2018	BRF	BRIEF FILED REPLY IN SUPT OF PLF MTN LIMINE
02/26/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2018	BRF	BRIEF FILED REP SUPPT MTN ADJ TRIAL/PERMIT DISC/POS/DFT
02/23/2018	ORD	ORDER FILED RE DISC MTN
02/23/2018	RES	RESPONSE FILED TO MTN ADJ TRIAL/POS/PLF
02/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/23/2018	RES	RESPONSE FILED TO MTN IN LIMINE/POS/PLF
02/21/2018	MPR	MOTION PRAECIPE FILED FOR 02282018 JUDGE 05
02/21/2018	MPR	MOTION PRAECIPE FILED FOR 02282018 JUDGE 05
02/21/2018	MTN	MOTION FILED ADJ TRIAL ETC/BRF/POS
02/21/2018	NOH	NOTICE OF HEARING FILED POS
02/21/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/21/2018	MTN	MOTION FILED DFT/IN LIMINE/BRF
02/21/2018	NOH	NOTICE OF HEARING FILED /POS
02/21/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED

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Date	Code	Desc
01/10/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/10/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
11/08/2017	ORD	ORDER FILED RE RESULT FACILITATION
11/06/2017	RES	RESPONSE FILED TO MTN COMPEL/BRF/POS/PLF
11/03/2017	ORD	ORDER FILED RE DISC MTN FACILITATOR
10/30/2017	ORD	ORDER FILED PARTIES MEET FACILITATOR
10/26/2017	MPR	MOTION PRAECIPE FILED FOR 11082017 JUDGE 05
10/26/2017	NOH	NOTICE OF HEARING FILED /POS
10/25/2017	MPR	MOTION PRAECIPE FILED FOR 11012017 JUDGE 05
10/25/2017	MTN	MOTION FILED DFT/TO COMPEL/BRF/NOH/POS
07/31/2017	WLT	WITNESS LIST FILED DFT/POS
07/14/2017	WLT	WITNESS LIST FILED /INTERNATL OUTDOOR
07/14/2017	WLT	WITNESS LIST FILED /POS/PLF
07/13/2017	WLT	WITNESS LIST FILED /POS/PLF
05/09/2017	DM	DEFENSE MOTION PARTIAL SD -D-
05/09/2017	DM	DEFENSE MOTION DECLARATORY JUDG AND SD -D-
05/09/2017	OPN	OPINION FILED /ORD LAMAR ADV MTN SUM DISP
04/26/2017	DM	DEFENSE MOTION PARTIAL SUMM DISP -TUA-
04/26/2017	DM	DEFENSE MOTION DECLARE JUDGMENT AND SD -TUA-
04/26/2017	ORD	ORDER FILED MTNS TAKING UNDER ADVISEMENT/ISS OPN/ORD
04/12/2017	BRF	BRIEF FILED REPLY IN SUPT OF LAMAR/SS MITX JOINT MTN
04/12/2017	BRF	BRIEF FILED INTERNATIONAL OUTDOOR/REP/IN SUPT OF MTN
03/31/2017	RES	RESPONSE FILED INTERNATIONAL OUTDOOR/TO LAMAR MTN SUM
03/31/2017	OTH	LAMAR OPP TO INTERNATIONAL MTN DEC JGM/SUM FILED
03/27/2017	STO	STIP/ORD FILED AMD 03/08/17 ORD

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Date	Code	Desc
03/09/2017	ORD	ORDER FILED RE LAMAR MTN SUM DISP/INTERNATIONAL
03/01/2017	MPR	MOTION PRAECIPE FILED FOR 04262017 JUDGE 05
03/01/2017	MPR	MOTION PRAECIPE FILED FOR 04262017 JUDGE 05
03/01/2017	MTN	MOTION FILED PRTL SD/BRF/NOH/POS/LAMAR
03/01/2017	MTN	MOTION FILED DECL JGM & SD/BRF/NOH/POS/INTL OUTDOOR
02/21/2017	RES	RESPONSE FILED REQ ADMIT/INT/REQ PROD/POS/LAMAR
02/09/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/08/2017	ORD	ORDER FILED CANCEL CASE MGMT CONF SCH
02/02/2017	RES	RESPONSE FILED TO REQ FOR ADMISS/POS/PLF
01/24/2017	REQ	REQUEST FILED TO ADMIT/INT/PROD/PLF
01/18/2017	APR	DATE SET FOR SETTLE CONF ON 03072018 01 20 PM Y 05
01/18/2017	APR	DATE SET FOR TRIAL ON 03152018 08 30 AM Y 05
01/18/2017	SO	SCHEDULING ORDER FILED
01/17/2017	CON	CONSOLIDATED CASES W/2016-155489-CB
01/13/2017	OCC	ORDER CONSOLIDATING CASES FILED STIP SEE 16- 155489-CB
01/13/2017	OCC	ORDER CONSOLIDATING CASES FILED W/16-155489-CB
01/13/2017	OTH	JOINT CASE MANAGEMENT PLAN FILED
12/29/2016	NTC	NOTICE FILED ADJOURN MOTION
12/21/2016	MPR	MOTION PRAECIPE FILED FOR 01042017 JUDGE 05
12/21/2016	MTN	MOTION FILED PLF CONSOLIDATE ACTIONS/BRF/NOH/POS
12/16/2016	ORD	ORDER FILED TO APPEAR/NTC
12/15/2016	APR	DATE SET FOR STAT CONF ON 02152017 01 20 PM Y
12/05/2016	RES	RESPONSE FILED TO SS MITX AFM/POS/PLF
11/29/2016	RES	RESPONSE FILED PLF/TO LAMAR ADV AFM/POS

RECEIVED by MCOA 10/8/2018 10:19:44 AM

Date	Code	Desc
11/14/2016	ATC	ANSWER TO COMPLAINT FILED /POS/SS MITX
11/09/2016	ATC	ANSWER TO COMPLAINT FILED /AFM/POS/LAMAR
11/02/2016	SUM	P/S ON SUMMONS FILED 10/19/16
11/02/2016	SUM	P/S ON SUMMONS FILED 10/20/16
10/07/2016	C	COMPLAINT FILED /JD NTC ASSIGN BUS CT
10/07/2016	SI	SUMMONS ISSUED
10/07/2016	SI	SUMMONS ISSUED
10/07/2016	SI	SUMMONS ISSUED

EXHIBIT B

2002 WL 31376755

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Gary M. NORTHINGTON, Plaintiff-Appellant,

v.

MICHIGAN DEPARTMENT OF CORRECTIONS,

Rum Deforest, Frank Elo, Allen Haigh, Karen Heard, and Sherm Williams, Defendants-Appellees.

No. 231449.

Oct. 22, 2002.

Before: SAAD, P.J., and SMOLENSKI and OWENS, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiff appeals as of right from the trial court's order dismissing his lawsuit. We affirm.

Plaintiff challenges the dismissal of his lawsuit. We review a trial court's decision to dismiss a lawsuit for an abuse of discretion. *Nippa v. Botsford Gen Hosp*, 251 Mich.App 664, 667; ___ NW2d ___ (2002). However, we review de novo issues of law. *Walters v. Snyder*, 239 Mich.App 453, 456; 608 NW2d 97 (2000).

On September 27, 2000, the Ingham Circuit Court granted a defense motion for a change of venue, MCR 2.223, and ordered plaintiff's lawsuit transferred to Lenawee Circuit Court. MCR 2.223(B)(1) states that a plaintiff must pay the statutory filing fee to the court in which the action is transferred. More importantly, MCR 2.223(B)(2) states as follows:

After transfer, no further proceedings may be had in the action until the costs and expenses allowed under this rule have been paid. If they are not paid

within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred.

Thus, plaintiff had until November 22, 2000, to pay the statutory filing fee to the Lenawee Circuit Court. As of November 28, 2000, plaintiff had not paid the statutory filing fee, nor had he moved in that court to have the filing fee waived-as he had done in the Ingham Circuit Court. Further, plaintiff failed to take action regarding the filing fee even though the Ingham Circuit Court specifically advised plaintiff "to abide by all applicable statutes and court rules, including MCR 2.223(B) regarding the statutory filing fee for the Court in Lenawee County." Accordingly, the Lenawee Circuit Court was required by MCR 2.223(B)(2) to dismiss plaintiff's lawsuit on November 28, 2000. Consequently, the trial court's decision was not an abuse of discretion. *Nippa, supra*.

Plaintiff challenges this ruling on several grounds. For example, plaintiff contends that dismissal was improper while there was a timely motion for reconsideration pending. However, a motion for reconsideration must be filed within fourteen days of the underlying order. MCR 2.119(F)(1). Thus, plaintiff had to submit his motion for reconsideration within fourteen days of September 27, 2000. Plaintiff did not file his motion for reconsideration until October 27, 2000.¹ The "court rules do not provide for 'delayed' motions for rehearing." See *Ramsey v. City of Pontiac*, 164 Mich.App 527, 538; 417 NW2d 489 (1987). Because motions for reconsideration "must" be filed within fourteen days of the entry of the order, MCR 2.119(F)(1), plaintiff's motion for reconsideration was not timely, nor was it ever pending. Accordingly, plaintiff's contention is without merit.

Plaintiff also contends that the trial court improperly dismissed the case because it had not yet ruled on plaintiff's motion to waive fees and costs. However, plaintiff did not file a motion to waive fees and costs in Lenawee Circuit Court before the trial court entered the order dismissing the case. Therefore, this contention is also without merit.

*2 Next, plaintiff contends that the trial court erred in dismissing the case because it failed to notify him of the case number, the presiding judge, or how to pay the fees. Plaintiff cites no authority establishing that the Ingham Circuit Court was required to provide plaintiff this information. "Insufficiently briefed issues are deemed abandoned on

appeal.” *Etefia v. Credit Technologies, Inc.*, 245 Mich.App 466; 471; 628 NW2d 577 (2001). Regardless, we note that the Ingham Circuit Court order changing venue indicates the new case number in Lenawee Circuit Court and the name of the new presiding judge, and expressly advises plaintiff to comply with MCR 2.223(B). Accordingly, we reject plaintiff’s assertion that the trial court lacked jurisdiction to dismiss his lawsuit on this basis.

Plaintiff also raises a contractual issue, asserting that the United States and Michigan Constitutions are contracts between judges and citizens. However, the principles cited by plaintiff are not relevant to either his case or the trial courts’ conduct, and fall well short of establishing a contractual relationship between judges and citizens. Similarly, plaintiff’s reference to governmental immunity is misplaced. As noted above, the trial court dismissed this case because of plaintiff’s failure to comply with MCR 2.223(B)(2), not because of governmental immunity. Along the same lines, plaintiff contends that his complaint states a claim on which relief can be granted. Plaintiff confuses the dismissal of the case under MCR 2.223(B)(2) with the dismissal of a claim under MCR 2.116(C)(8). Again, the trial court dismissed the case under MCR 2.223(B)(2) because plaintiff failed to pay the statutory filing fee. Even if plaintiff’s complaint stated a claim on which relief can be granted, the trial court was required by MCR 2.223(B)(2) to dismiss the case.

Next, plaintiff contends that the trial court abused its discretion in dismissing the case because he was in imminent physical danger. MCR 2.223(B)(2) specifically provides that dismissal is a mandatory sanction for failure to pay the statutory filing fee after the case has been transferred. Thus, plaintiff’s allegation that he was in imminent physical danger does not change the propriety of this dismissal.

Plaintiff also argues that the order dismissing his case is null and void because the trial courts committed fraud. Plaintiff cites no relevant law in support of these arguments. Therefore, plaintiff has abandoned this issue. *Etefia, supra* at 471.

Footnotes

- 1 Plaintiff notes that he submitted his motion for reconsideration to prison officials on October 3, 2000. However, in *Walker-Bey v. Dep’t of Corrections*, 222 Mich.App 605, 608-610; 564 NW2d 171 (1997), we declined to adopt the federal “prison mailbox rule,” which allows a filing to occur where a pro se prisoner merely submits his or her documents to a prison official for forwarding to the court clerk. Accordingly, plaintiff’s submission of his materials to prison officials is not sufficient to render his motion for reconsideration timely.

Next, plaintiff challenges the dismissal by contending that MCR 2.223(B)(2) is unconstitutional because it allows an indigent plaintiff’s case to be dismissed for failure to pay filing fees. Although plaintiff cites several constitutional amendments, he does not argue why or how MCR 2.223(B)(2) violates these constitutional provisions. Therefore, we find this issue abandoned. *Etefia, supra* at 471. Regardless, we note that both M.C.L. § 600.2963 and MCR 2.002 provide an exception to MCR 2.223(B)(2) by allowing indigent prisoners to have court fees waived. However, the prisoner must establish that he or she is indigent. Here, plaintiff—despite being advised to do so by the Ingham Circuit Court—simply neglected to establish to the Lenawee Circuit Court that he was indigent. In other words, it was plaintiff’s neglect that led to the dismissal. Therefore, we are not persuaded that, as applied to plaintiff’s circumstances, MCR 2.223(B)(2) is unconstitutional.

*3 Finally, plaintiff contends that the trial court abused its discretion in failing to grant his motion for relief from the order dismissing the case. MCR 7.208(A) states as follows: “After a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except by order of the Court of Appeals, by stipulation of the parties, or as otherwise provided by law.” In fact, “[f]iling of a claim of appeal divests the circuit court of its jurisdiction to amend its final orders.” *Wilson v. General Motors Corp.*, 183 Mich.App 21, 41; 454 NW2d 405 (1990). Here, because plaintiff filed his claim of appeal before he filed his motion for relief from the order dismissing the case, the trial court lacked jurisdiction to grant relief from the order. MCR 7.208(A). Therefore, the trial court did not err in failing to rule on plaintiff’s motion for relief from judgment.

Affirmed.

All Citations

Not Reported in N.W.2d, 2002 WL 31376755

End of Document

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EXHIBIT C

2009 WL 3401052

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED Court of Appeals of Michigan.

Donald PICHE, Plaintiff-Appellant,

v.

Carrie PICHE, Defendant-Appellee.

Docket No. 287835.

| Oct. 22, 2009.

West KeySummary

1 Divorce

•• Verdict, Findings, or Determination

In divorce proceedings, the trial court did not fail to make sufficient findings of fact concerning the factors relevant to an equitable division of property. The ex-husband failed to identify any factual disputes that needed to be resolved by the trial court with respect to any of the relevant factors. Further, the ex-husband did not argue that the trial court's "even" division of property was inequitable in light of the relevant factors.

Cases that cite this headnote

Keweenaw Circuit Court; LC No. 07-000592-DO.

Before: HOEKSTRA, P.J., and BANDSTRA and SERVITTO, JJ.

Opinion

PER CURIAM.

*1 Plaintiff appeals as of right the judgment of divorce, asserting that the trial court erred in its division of the marital estate and by including in the marital estate assets owned by the Piche Family Trust (the family trust). We affirm in part, reverse in part, and remand for further proceedings.

I. Standard of Review

In divorce cases, an "appellate court must first review the trial court's findings of fact under the clearly erroneous standard." *Sparks v. Sparks*, 440 Mich. 141, 151, 485 N.W.2d 893 (1992). "A finding is clearly erroneous if the appellate court, on all the evidence, is left with a definite and firm conviction that a mistake has been committed." *Beason v. Beason*, 435 Mich. 791, 805, 460 N.W.2d 207 (1990). Due " 'regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.' " *Sparks, supra* at 148, 485 N.W.2d 893 n .5, quoting MCR 2.613(C). The reviewing court may not "substitute its judgment for that of the trial court; if the trial court's view of the evidence is plausible, the reviewing court may not reverse." *Beason, supra* at 805, 460 N.W.2d 207. However, questions of law are reviewed de novo. *Cardinal Mooney High School v. Michigan High School Athletic Ass'n*, 437 Mich. 75, 80, 467 N.W.2d 21 (1991). "Where a finding is derived from an erroneous application of law to facts," or "where the trial judge's factual findings may have been influenced by an incorrect view of the law," "the appellate court is not limited to review for clear error." *Beason, supra* at 804-805, 460 N.W.2d 207. "If the findings of fact are upheld, the appellate court must [then] decide whether the dispositive ruling was fair and equitable in light of those facts." *Sparks, supra* at 151-152, 485 N.W.2d 893.

Such rulings are "an exercise of discretion" which "should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable." *Id.* at 152, 485 N.W.2d 893.

II. The Disputed Properties

Plaintiff argues that the trial court lacked subject-matter jurisdiction to dispose of property owned by a third party, the family trust. He also contends that certificates of deposit (CDs) purchased by plaintiff's father, but titled in the parties' names, were intended to pay for plaintiff's father's care and, therefore, were not subject to distribution as marital property.

A. The Family Trust

Plaintiff correctly observes that in a divorce action, a trial court may not divide property owned by a third party, absent allegations that the third party conspired with one of the spouses to deprive the other spouse of marital property or spousal support. *Przeklas v. Przeklas*, 240 Mich. 209, 212, 215 N.W. 306 (1927); see also *Brown v. Brown*, 335 Mich. 511, 517-518, 56 N.W.2d 367 (1953); *Thames v. Thames*, 191 Mich.App. 299, 302, 477 N.W.2d 496 (1991).

Plaintiff was the settlor of the family trust. Defendant, however, did not allege that plaintiff transferred any marital properties to the family trust with the intent to defraud her. Thus, the property rights of the family trust could not be adjudicated and were not subject to distribution. Thus, the trial court erred to the extent that it awarded defendant a property interest in property owned by the family trust.

*2 As further discussed below, however, although the Montgomery Point property is owned by the family trust, the CDs were not, and there is an unresolved question of fact whether the Mendota property is partially owned by the family trust.

A. Separate Property

“Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party’s own separate estate with no invasion by the other party.” *Reeves v. Reeves*, 226 Mich.App. 490, 494, 575 N.W.2d 1 (1997); see also MCL 552.19. However, MCL 552.401 provides:

The circuit court of this state *may include in any decree of divorce or of separate maintenance entered in the circuit court appropriate provisions awarding to a party all or a portion of the property, either real or personal, owned by his or her spouse, as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.* The decree, upon becoming final, shall have the same force and effect as a quitclaim deed of the real estate, if any, or a bill of sale of the

personal property, if any, given by the party’s spouse to the party. [Emphasis added.]

See also *Reeves, supra* at 494-495, 575 N.W.2d 1. Under MCL 552.23(1), a trial court may also invade a spouse’s separate property if, after division of the marital assets, “the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party.”

In the present case, it is possible that upon appropriate proof, the trial court may have been justified in invading any separate interest by plaintiff in property that is part of the family trust. Plaintiff argues, however, that his interest in the family trust is inchoate, not vested, and may never come to fruition (if he predeceases his father). At trial, defendant did not ask for a share of plaintiff’s separate trust property. Rather, she argued that the CDs and the Mendota property were part of the marital estate. Alternatively, defendant asked to be awarded credit for the appreciation of the Mendota property, and to be awarded credit for the marital funds expended in improving the Montgomery Point and Mendota properties. Under the circumstances, we find it unnecessary to address plaintiff’s argument that his interest in the family trust is contingent and inchoate and, therefore, cannot be divided as part of the marital estate. Instead, we shall determine whether the CDs and the Mendota property were part of the marital estate, and whether, in light of the facts and circumstances of the case, it was fair and equitable to award defendant credit for various amounts invested by the parties in these properties.

1. The Mendota Property

Plaintiff and his mother inherited the cottage on the Mendota Property during the parties’ marriage. They later transferred the property to the family trust by bill of sale. The land was separately purchased by the family trust. In October 2000, the family trust transferred all or part of the property back to plaintiff.

*3 Normally, inherited property that is kept separate from marital property is deemed to be the spouse’s separate property, not subject to distribution. *Dart v. Dart*, 460 Mich. 573, 584-585, 597 N.W.2d 82 (1999). In this case, however, there was substantial evidence that defendant contributed toward the purchase, improvement, upkeep, maintenance, and management of the property as a whole, including its use

as a rental property for the parties' benefit, which caused it to appreciate significantly in value. In particular, defendant cashed in two of her pensions, and the parties mortgaged the marital home, to pay for the Mendota land. Therefore, the trial court correctly decided that it was fair and equitable to compensate defendant for her share of the money and effort spent on the Mendota property (as a whole).

The October 2000 bill of sale shows that plaintiff acquired the Mendota *structure*, as his separate property. But because defendant significantly contributed to its improvement and appreciation, the structure can be included in the marital estate under MCL 552.401, and divided accordingly. But it is unclear from the record whether the Mendota land was acquired by plaintiff individually. Although the bill of sale does not reference the land, we note that concurrently with the October 2000 bill of sale, the family trust amended its schedule of properties to omit the Mendota property (both the land and the house). Thus, we believe that there is a question of fact concerning whether the family trust continues to own the Mendota land. Because it is unclear from the record whether the Mendota land was owned by plaintiff, and the trial court did not resolve this issue, we remand for further proceedings to determine plaintiff's interest, if any, in the Mendota land. If the court determines that plaintiff owned both the home and the land, then the Mendota property (as a whole) was properly subject to distribution under MCL 552.401, and, under the circumstances, we affirm the trial court's decision to award defendant a one-half interest in the Mendota property (as a whole). Conversely, if the trial court determines that the Mendota land was not owned by plaintiff individually, but rather belongs to the family trust, then the trial court would have lacked jurisdiction to divide it in the context of this divorce action. Nonetheless, we conclude that defendant would still be entitled to credit for half of the marital funds used to finance the purchase of the land.

2. The Montgomery Point Property

The parties do not dispute that the Montgomery Point property is owned by the family trust. Therefore, the trial court lacked jurisdiction to distribute this third-party property. Thus, the trial court erred in awarding a one-half interest in the Montgomery Point property to defendant. However, the parties spent approximately \$27,000 building an addition to the property, so they could stay on the premises and help care for plaintiff's father. Under the circumstances, the trial court properly decided that it was fair and equitable to award

defendant credit for half of the marital funds used to improve the property. On remand, the divorce judgment should be amended to award defendant a credit for half the value of marital funds used to improve the property.

3. The CDs

*4 It is undisputed that, although the CDs were placed in the parties' names, the CDs were purchased with money belonging to plaintiff's father. Although there was a factual dispute concerning the CDs' intended use, there was no evidence that the parties had any binding obligation to use the money in any particular manner. Thus, the trial court did not err in finding that because the CDs were titled in the parties' names, they were part of the marital estate and were subject to distribution between the parties. Plaintiff's subsequent disposition of the CDs presents a judgment enforcement issue that is beyond the scope of this appeal.

III. Personal Property

Plaintiff argues that the trial court erred in failing to specifically divide the parties' personal property and by instructing them to take turns choosing from a list of items. We agree.

Plaintiff testified at trial that he wanted the "old snowmobile in the basement," "three old cars in the garage," and his tools. He stated that these were "all" the items he wanted and that defendant could keep the rest. Defendant agreed that the snowmobile and two of the three antique cars were plaintiff's separate property before the marriage, and he could have them. Defendant agreed that plaintiff could also have a 1966 Cornet and his tools, but she wanted credit for half the value of these items (\$1,300 for the car and \$1,500 for the tools) because they were purchased during the marriage.

Defendant made a list of items she wanted from the Mendota property and the Montgomery Point property. The trial court declined to hear testimony about the individual items. However, plaintiff's counsel stated that plaintiff had "no issue with regards to the personal property items that [defendant] requested."

In light of the parties' testimony, there were no facts in dispute concerning the parties' personal property. The division

ordered by the trial court was inequitable in light of the parties' testimony.

IV. Valuation of Assets

Plaintiff argues that defendant did not present evidence concerning the value of various properties held by the family trust and, therefore, the trial court should not have divided them as part of the marital estate.

In light of our decision in section II, *supra*, it is unnecessary to directly address plaintiff's argument. We note that, at trial, defendant did not ask for half of the Montgomery Point property, so there was no reason for her to introduce evidence of its fair market value. Rather, defendant sought to be reimbursed for half of the marital funds expended in improving the Montgomery Point property, and she introduced receipts in support of the amounts she claimed. Defendant asked for half of the Mendota property, which she argued was a marital asset, and introduced two appraisals. She also introduced receipts for the marital funds used to improve the Mendota property, and evidence of the source and amount of funds used to purchase the land. The CDs had readily ascertainable face values. Moreover, because the trial court divided everything equally, the parties' awards had equal value. We therefore reject plaintiff's claim of error.

V. The Trial Court's Findings

*5 Plaintiff argues that the trial court failed to make sufficient findings of fact concerning the factors relevant to an equitable division of property during a divorce. We disagree.

"In actions tried on the facts without a jury ... the court shall find the facts specially, [and] state separately its conclusions of law..." MCR 2.517(A)(1). "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2); see also *Fletcher v. Fletcher*, 447 Mich. 871, 883, 526 N.W.2d 889 (1994). Where the trial court's findings "minimally satisfy the requirements of the court rules and case law," remand for specific findings of fact is unwarranted. *Fletcher, supra* at 883, 526 N.W.2d 889.

The division of property in a divorce action is not governed by "strict mathematical formulations"; rather, "while the division

need not be equal, it must be equitable" in light of all the facts. *Sparks, supra* at 158-159, 485 N.W.2d 893. "[T]he following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Id.* at 159-160, 485 N.W.2d 893. The trial court shall make specific findings of fact regarding the factors it finds to be relevant, even if not on this list, but it may not assign disproportionate weight to any one circumstance. *Id.* at 158-160, 162-163, 485 N.W.2d 893.

In this case, plaintiff fails to identify any factual disputes that needed to be resolved by the trial court with respect to any of the relevant factors. Further, plaintiff does not argue that the trial court's "even" division of property was inequitable in light of the relevant factors. Under the circumstances, we find no merit to this issue.

V. Post-Judgment Proceedings

For his last claim of error, plaintiff argues that the trial court erred in finding that it lacked jurisdiction to decide his motion for relief from judgment or for a new trial and his motion for a stay, although he claims that it correctly found that it lacked jurisdiction to decide defendant's motion to enforce the judgment and her request for a writ of garnishment.

The construction and application of the court rules is a question of law that is reviewed de novo. *Wickings v. Arctic Enterprises, Inc.*, 244 Mich.App. 125, 133, 624 N.W.2d 197 (2000).

A. Motion for Relief from Judgment

Plaintiff filed a claim of appeal in Docket No. 287461 before the trial court decided his motion for relief from judgment or a new trial. As the trial court correctly observed, MCR 7.208(A) (4) provides that "[a]fter a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except ... as otherwise provided by law." Therefore, although plaintiff's claim of appeal was premature, and was later dismissed for lack of jurisdiction, the act of filing the claim of appeal

deprived the trial court of jurisdiction to decide plaintiff's motion for relief from judgment or for a new trial, in which he sought to have the judgment set aside or amended. Thus, the trial court did not err in finding that it lacked jurisdiction to grant plaintiff's motion.

B. Motion for a Stay

*6 MCR 7.208(F) provides that after an appeal is filed, "[t]he trial court retains authority over stay and bond matters, except as the Court of Appeals otherwise orders." In fact, MCR 7.209(A)(2) provides that "[a] motion for bond or for a stay pending appeal may not be filed in the Court of Appeals unless such a motion was decided by the trial court." Moreover, MCR 7.209(E)(1) provides that, "[e]xcept as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires." Lastly, MCR 2.614(B) provides that a trial court may temporarily stay enforcement of a judgment while it decides a motion for relief from judgment.

Contrary to plaintiff's argument on appeal, the trial court recognized that it had "dual authority" with this Court to grant plaintiff's motion for a stay without bond. Thus, there was no error.

C. Defendant's Motions to Enforce the Judgment

MCR 2.614(A)(1) provides that enforcement of a judgment is automatically stayed for 21 days after the judgment is entered. Further, if a timely motion for a new trial or for relief from judgment is filed, execution on the judgment may not issue until 21 days after the motion is decided. *Id.* However, "[n]othing in th[e] rule prohibits the court from enjoining the transfer or disposition of property during the

21-day period." *Id.* Several other court rules govern post-judgment enforcement and execution proceedings, including MCR 2.621(A) (separate proceeding to enforce a judgment), and subchapter 3.100, governing debtor-creditor proceedings such as garnishments, attachments, installment payments, and claim and delivery. Moreover, MCR 7.209(A)(1) provides that "[e]xcept for an automatic stay pursuant to MCR 2.614(D) [governmental immunity], an appeal *does not stay* the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders" (emphasis added). Thus, after the automatic stay periods, a trial court has continuing jurisdiction to enforce a judgment, even after a claim of appeal has been filed, unless proceedings have been stayed.

In the present case, the *second* automatic stay period (due to plaintiff's still-pending motion for relief from judgment) was in effect on September 3, 2008, when the trial court heard and denied defendant's motion to enforce the judgment. Thus, the motion was premature, although the court could have enjoined plaintiff from disposing of any marital property.

The automatic stay thereafter expired on September 24, 2008, 21 days after the court denied plaintiff's motion for relief from judgment and for a new trial. Defendant's remaining motions were filed after that date. Thus, the trial court erred in finding on December 31, 2008, that it did not have jurisdiction to entertain defendant's motion to enforce the judgment's alimony provisions or her request for a writ of garnishment.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

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