Court of Appeals, State of Michigan

ORDER

Estate of Gary Joe Vaughn v Dental Health Group of Michigan

Docket No. 295817

LC No. 06-603845-NH

Cynthia Diane Stephens
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders that the motion to dismiss is DENIED. Although the Court lacks jurisdiction of an appeal of right from the final judgment of no cause of action entered on June 5, 2009, and the November 23, 2009, order denying plaintiff-appellants' motion for postjudgment relief because the claim of appeal was not filed within 21 days after entry of the November 23, 2009, order, see MCR 7.204(A)(1)(b) and *Baitinger v Brisson,* 230 Mich App 112; 583 NW2d 481 (1998), the Court treats the untimely claim of appeal as an application for delayed appeal and it is GRANTED—contingent on the payment of the entry fee that would have been required for a timely claim of appeal or an application for delayed appeal from the June 5, 2009, judgment. The appeal may proceed as an appeal from both the judgment entered on June 5, 2009, and the November 23, 2009, order awarding attorney fees and costs, if plaintiff-appellants pay to the Clerk of this Court the required entry fee in the amount of $375 within 14 days after the Clerk's certification of this order. If the entry fee is not paid, the Clerk shall submit the appeal for partial dismissal pursuant to MCR 7.201(B)(3) and the appeal will proceed only with respect to the order awarding attorney fees and costs.

The Court further orders that the motion to compel plaintiff-appellants to file the complete transcript is GRANTED. Plaintiff-appellants are ordered to secure the filing of the complete transcript of the trial and any other proceedings in the case. Within 14 days after the Clerk's certification of this order, plaintiff-appellants shall secure the filing of stenographer's certificates in accordance with MCR 7.210(B)(3)(a). The time for filing appellants' brief will be calculated under MCR 7.212(A)(1)(a)(iii) starting from the date the transcript is filed with the trial court clerk.

The Court further orders that the motion to file a reply to the answer to the motion to dismiss is GRANTED.

Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 18 2010
Date

Sandra Schultz Mengel
Chief Clerk