

Court of Appeals, State of Michigan

ORDER

Timothy Paul Bay v Clinton Canady III

Peter D. O'Connell
Presiding Judge

Docket No. 301183

Patrick M. Meter

LC No. 09-001517-NM

Amy Krause
Judges

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED. Read in isolation, MCR 7.204(B) might appear to deprive this Court of jurisdiction over a claim of appeal if an entry fee is not paid or a motion to waive fees is not filed within the time for filing a claim of appeal. However, MCR 7.201(B)(3) allows the Clerk of this Court to send a notice of deficiency with regard to the lack of an entry fee when a new appeal is filed and allows an appellant to supply the missing entry fee, which is defined to include filing a motion to waive fees, MCR 7.202(3), within 21 days of the date of such notice. Accordingly, MCR 7.201(B)(3) operates as a proviso limiting the effect of MCR 7.204(B) and providing this Court with jurisdiction over a claim of appeal where a lacking entry fee is paid within 21 days of the notice of deficiency provided by the Clerk of this Court. See *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 529; 672 NW2d 181 (2003). In this case, the Clerk of this Court provided notice to appellant regarding the lack of an entry fee and appellant filed a motion to waive fees within 21 days thereafter. Thus, this Court has jurisdiction over the claim of appeal. We note that any other interpretation of the relevant court rule provisions would improperly render nugatory the language of MCR 7.201(B)(3) allowing the Clerk of this Court to provide notice to an appellant regarding a missing entry fee and an opportunity for the appellant to cure that defect. See, e.g., *Johnson v White*, 261 Mich App 332, 348; 682 NW2d 505 (2004) (construction of a court rule that would render it nugatory is to be avoided).



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 22 2011

Date


Chief Clerk