

Court of Appeals, State of Michigan

ORDER

John J Banacki v David W Howe

Docket No. 302778

LC No. 07-056592-CH

David H. Sawyer
Presiding Judge

William B. Murphy, C.J.

Joel P. Hoekstra
Judges

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED. Initially, appellee's arguments that the February 11, 2011, order was improperly entered due to lack of notice of the motion for its entry are immaterial to this Court's jurisdiction over the claim of appeal because whether the trial court erred in entering the February 11, 2011, order is not determinative of whether that order is a final order appealable of right as defined by MCR 7.203(A). Moreover, the apparent existence of a pending motion to set aside the February 11, 2011, order in the circuit court does not preclude this Court from having jurisdiction over the claim of appeal. *Nordstrom v Auto-Owners Ins Co*, 486 Mich 962; 782 NW2d 779 (2010). Further, the December 3, 2008, order was not a final order under MCR 7.202(6)(a)(i) because, reasonably considered in its entirety, it did not dispose of appellee's quiet title claim. Rather, the February 11, 2011, order appealed from is the final order under MCR 7.202(6)(a)(i) because it disposed of the last remaining claim by dismissing appellee's quiet title claim with prejudice.


We note that appellee is free to file a delayed application for leave to appeal under MCR 7.205(F) from the February 11, 2011, order with regard to his arguments that order was improperly entered due to lack of proper notice of the underlying motion.



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

JUN 28 2011

Date


Chief Clerk