

Court of Appeals, State of Michigan

ORDER

CJ's Excavating Inc v City of Frankfort

Docket No. 309849

LC No. 08-008337-CK

Donald S. Owens
Presiding Judge

Peter D. O'Connell

Amy Ronayne Krause
Judges

The motion for leave to file a reply to the answer to the motion to dismiss is GRANTED.

The motion to dismiss the claim of appeal is also GRANTED. Because the April 3, 2012 judgment appealed from was entered pursuant to the mutual acceptance of a case evaluation award by appellant and appellee, appellant is not an aggrieved party under MCR 7.203(A) that may claim an appeal from that judgment. Particularly, the entry of the judgment pursuant to the case evaluation award amounts to a consent judgment disposing of all the claims involving appellant and appellee from which neither party may take an appeal. MCR 2.403(M)(1); *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549; 640 NW2d 256 (2002). Nothing in MCR 2.403(M) nor *CAM Constr* provides a basis for distinguishing the present case because it involves a counterclaim that was not the subject of a summary disposition order as opposed to the count of the plaintiff's complaint in *CAM Constr* that was not the subject of a summary disposition order. Notably, *Steward v Poole*, 196 Mich App 25; 492 NW2d 475 (1992), rev'd on other grounds 443 Mich 863 (1993), and *Kattula v D.G. Standhardt Assoc, Inc*, 132 Mich App 49; 347 NW2d 3 (1984), are inapposite because neither involved a judgment entered pursuant to the parties' mutual acceptance of a mediation or case evaluation award. Further, there is no jurisdictional analysis in *v Castillo v Alexander*, 171 Mich App 679; 430 NW2d 751 (1988), as to this Court undertaking a review of the merits of the appeal as of right in that case. If this Court in *Castillo* incorrectly assumed that it had jurisdiction over the appeal in that case, that is immaterial to the applicability of *CAM Constr* to the present case.

The claim of cross appeal is also DISMISSED for lack of jurisdiction. Because appellant had no actual appeal of right in this matter, it follows that the claim of cross appeal was also not properly taken. MCR 7.207(A)(1).



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

SEP 19 2012

Date


Chief Clerk