

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Russell Roy Hale v April Lynne Rodenbaugh-Hale**
Docket No. **310072**
L.C. No. **08-039809-DM**

William B. Murphy, Chief Judge, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the April 17, 2012 order granting appellant's motion to change the domicile of the parties' children from Michigan to Texas is not a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). That order is not a final order under MCR 7.202(6)(a)(iii) because it does not affect the custody of the children since they were already in appellee's sole physical custody. Notably, the holding in *Thurston v Escamilla*, 469 Mich 1009; 677 NW2d 28 (2004), that the postjudgment order granting a motion to change domicile in that case affected the custody of a minor is inapposite because, in *Thurston*, the parties had joint physical custody of the children with the appellant having nearly daily contact with them when the motion to change domicile was granted, but, in the present case, the children were already in appellee's sole physical custody when the April 17, 2012 order granting her motion to change domicile was entered. At this time, appellant may seek to appeal the April 17, 2012 order only by filing a delayed application for leave to appeal under MCR 7.205(F).



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

JUN 06 2012

Date


Chief Clerk