

Court of Appeals, State of Michigan

ORDER

Kevin L Witbeck v Barbara J Witbeck

Docket No. 310464

LC No. 11-012762-DM

Peter D. O'Connell
Presiding Judge

Donald S. Owens

Michael J. Kelly
Judges

The Court orders that the motion to dismiss or for other relief is DENIED. Regardless of whether appellant properly served his brief on appeal on appellee by mail, the interests of justice do not favor dismissing this appeal at this point where both parties' briefs on appeal have now been filed. Further, we conclude that appellee has not affirmatively established that appellant's counsel failed to mail his initially filed brief on appeal to appellee's counsel given that items can be lost in the mail or misplaced. We also decline to consider treating appellee's untimely filed brief on appeal as if it were timely filed where the only sanction provided by the court rules for the late filing of a brief on appeal is forfeiture of the right to oral argument, MCR 7.212(A)(4), and appellee notes on the cover page of her brief on appeal that she does not request oral argument.

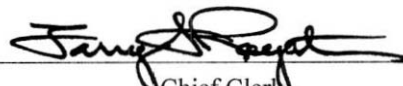
We further note that neither party's request for sanctions against the other has been properly presented in a distinct motion as required by MCR 7.211(C)(8). In this regard, while appellee references that subrule, she did not file the required distinct motion or pay a separate motion fee for such a distinct motion. Moreover, we consider appellee's accusations to the effect that appellant's counsel intentionally filed a false proof of service to be completely unfounded as they amount to mere speculation. Accordingly, we decline to award sanctions in favor of either party.



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

OCT 25 2012

Date


Chief Clerk