

Court of Appeals, State of Michigan

ORDER

Dolores Nagel v City of Lansing

Docket No. 314887

LC No. 10-000474-CZ

Peter D. O'Connell
Presiding Judge

E. Thomas Fitzgerald

Karen Fort Hood
Judges

The Court orders that the motion for reconsideration is DENIED because appellant has not established that the claim of appeal was timely filed. In relevant part, MCR 7.204(A)(1)(b) allows for the time to file a claim of appeal to be extended if a motion for postjudgment relief from the order appealed from is "filed within the initial 21-day appeal period." However, "filing" is defined for purposes of that provision as "delivery of a document to a court clerk and the receipt and acceptance of the document by the clerk with the intent to enter it in the record of the court." MCR 7.202(4). Appellant provides no indication that she filed her relevant motion for postjudgment relief with the circuit court clerk's office within 21 days after entry of the November 14, 2012 order appealed from. Rather, she indicates that her counsel provided that motion directly to the trial judge on December 5, 2012, the 21st day after entry of the order appealed from. Under the plain language of the court rules providing the postjudgment motion directly to the trial judge did not constitute "filing" that motion in the circuit court within the meaning of MCR 7.204(A)(1)(b). We note that the circumstances apparent to us are consistent with the trial judge having forwarded the postjudgment motion to the circuit court clerk's office on December 6, 2012 in which case it was not "filed" in the circuit court for purposes of MCR 7.204(A)(1)(b) until that date and, thus, was not timely filed for present purposes. While this conclusion may seem harsh to appellant it is required by the plain language of the court rules. We reiterate that appellant may seek to appeal the November 14, 2012 order 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

MAY 07 2013

Date


Chief Clerk