

Court of Appeals, State of Michigan

ORDER

County of Berrien v Charter Township of Coloma

Docket No. 315605

LC No. 12-000052-CZ

Stephen L. Borrello
Presiding Judge

Michael J. Kelly

Amy Ronayne Krause
Judges

The Court orders that the motion to dismiss the claim of appeal is GRANTED although not on the grounds actually argued by appellees. Regardless of whether appellee Coloma Charter Township Zoning Board of Appeals acted as a "tribunal" within the meaning of MCR 7.203(A)(1)(a) in the relevant proceedings, the January 28, 2013 circuit court order appealed from is not a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). Specifically, that order is not a final order under MCR 7.202(6)(a)(i) because it does not dispose of all the claims in this case. Rather, that order expressly does not address appellants' "extraneous claims which are clearly not within the scope of the appeal from the decisions of [appellee Coloma Charter Township Zoning Board of Appeals] such as the claims of preemption and exclusionary zoning" and, accordingly, leaves those claims unresolved. We also note that appellants have failed to pay the \$375 entry fee for the filing of the claim of appeal despite the Clerk's Office of this Court sending their counsel a notice of deficiency under MCR 7.201(B)(3) regarding their failure to pay the entry fee.

On the Court's own motion, the claim of cross appeal is also DISMISSED for lack of jurisdiction. In relevant part, MCR 7.207(A)(1) allows for the filing of a cross appeal when "an appeal of right is filed." Because appellants do not have an actual appeal of right in this matter it follows that a cross appeal is not properly taken. We also direct the Clerk's Office to RETURN the \$375 payment provided by appellees with the claim of cross appeal. Because the cross appeal was filed from the same order as the claim of appeal appellees were not required to pay an entry fee for filing the cross appeal. See MCL 600.321(1)(a). Further, we ORDER appellants to pay the \$375 entry fee for the filing of the claim of appeal within 21 days of the date of this order. Appellants remain responsible for paying the entry fee for the filing of the claim of appeal notwithstanding our decision to dismiss the claim of appeal for lack of jurisdiction.



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

MAY 2 4 2013

Date


Chief Clerk