

Court of Appeals, State of Michigan

ORDER

Roy Rusha v Department of Corrections

Docket No. 317693

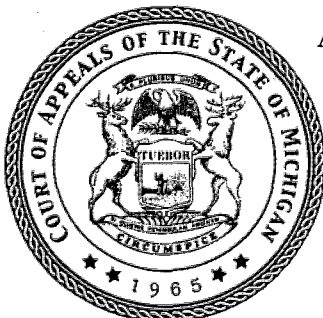
LC No. 13-000023-MM

Patrick M. Meter
Presiding Judge

Stephen L. Borrello

Michael J. Kelly
Judges

The Court orders that the motion to dismiss is DENIED. In denying a motion for summary disposition based on appellee's alleged failure to comply with MCL 600.6431 the July 23, 2013 order appealed from necessarily constitutes an order denying governmental immunity to a governmental party. See *McCahan v Brennan*, 492 Mich 730, 737; 822 NW2d 747 (2012) (stating MCL 600.6431 sets forth several requirements "that must be met in order to bring suit against a governmental entity in derogation of governmental immunity"). Thus, the July 23, 2013 order constitutes a final order under MCR 7.202(6)(a)(v) and is appealable of right under MCR 7.203(A)(1). We note that plaintiff's argument that governmental immunity is inapplicable to his complaint based on the Michigan Constitution goes to the merits of the appeal, not to whether the July 23, 2013 order appealed from is a final order under MCR 7.202(6)(a)(v) as an order denying a motion for summary disposition based on a *claim* of governmental immunity.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 29 2014

Date


Chief Clerk