

**Court of Appeals, State of Michigan**

**ORDER**

Samuel C Foerster v Carrice C McKinstry

William C. Whitbeck  
Presiding Judge

Docket No. 321529

Donald S. Owens

LC No. 2013-015581-DC

Amy Ronayne Krause  
Judges

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The Court orders that the motion for immediate consideration of the motion to dismiss is GRANTED.

In lieu of deciding the merits of the motion to dismiss, on our own motion, we treat the claim of appeal as an application for leave to appeal and grant the application because we conclude that it is manifestly in the best interest of the children at issue for this appeal to proceed to a resolution on its merits. See, e.g., *Botsford Continuing Care Corp v Intelistaf Healthcare, Inc*, 292 Mich App 51, 61; 807 NW2d 354 (2011) (this Court has discretion to treat claim of appeal as granted application for leave to appeal). Accordingly, the motion to dismiss this appeal is DENIED.

Appellee's motion to remand is DENIED because MCR 7.211(C)(1)(a) only allows an appellant to file a motion to remand.

The motion to extend time to file appellee's brief is GRANTED until September 15, 2014.

Ronayne Krause, J., would deny the motion to extend time as moot and grant the motion to dismiss. Because the March 18, 2014 order cannot reasonably be considered to have disposed of the parenting time issues in these circumstances, it is not appealable of right. MCR 7.203(A) Particularly, it is not a true disposition of a disputed matter for a trial court to, in effect, tell the parties to attempt to reach an agreement as to that matter and that, if they do not, the trial court will decide the matter at a future point. Rather, such a direction leaves the matter unresolved. Thus, the March 18, 2014 order is not a final

order under MCR 7.202(6)(a)(i) because it does not dispose of all claims in this case as it did not truly dispose of the matter of parenting time. Further, although that order decides the matter of child custody, that order cannot be a final order under MCR 7.202(6)(a)(iii) because it is not a postjudgment order. Accordingly, the March 18, 2014 order is not appealable of right. MCR 7.203(A).



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

SEP 18 2014

Date

  
Chief Clerk