

Court of Appeals, State of Michigan

ORDER

In re Mascho Estate

Docket No. 324848

LC No. 14-060763-CZ

David H. Sawyer
Presiding Judge

Joel P. Hoekstra

Douglas B. Shapiro
Judges

The Court orders that the motion to dismiss this appeal is GRANTED, and the claim of appeal is DISMISSED for lack of jurisdiction, because the October 14, 2014 order appealed from is not a final order appealable of right. Because the probate court case is a "civil action" under MCR 5.101(C) since it was initiated by the filing of a complaint, rather than a "proceeding" initiated in the probate court by the filing of an application or petition under MCR 5.101(B), the special final order definitions as to certain types of probate court proceedings provided by MCR 5.801(B)(2) do not apply in this context. Rather, MCR 5.801(B)(1) provides for an appeal of right from a "final order" in a probate court civil action without providing a special definition of a final order. Thus, the ordinary definitions of a final order in a civil case provided by MCR 7.202(6)(a) apply. The October 14, 2014 order is plainly not a final order under any of those definitions and, thus, is not appealable of right. We note that, despite the general six-month time limit on filing a delayed application for leave to appeal under MCR 7.205(G)(3), appellants may file a delayed application for leave to appeal the October 14, 2014 order within 21 days after the date of this order under MCR 7.205(G)(5). Alternatively, if the probate court has not yet entered a final order under MCR 7.202(6)(a)(i) in this case or if the time for filing an appeal of right from such a final order has not yet passed, appellants may file a claim of appeal from the final order within the timeframes allowed by MCR 7.204(A)(1). Appellants would be able to challenge the October 14, 2014 order as a prior order in such a timely appeal of right from the actual final order. *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009).



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

JUL 16 2015

Date


Chief Clerk