

Court of Appeals, State of Michigan

ORDER

In re Erwin Estate

Docket No. 329264

LC No. 13-130558-DE

Michael F. Gadola
Presiding Judge

Patrick M. Meter

Stephen L. Borrello
Judges

The Court orders that the motion to dismiss with regard to attorney fee sanctions pursuant to MCR 7.211(C)(2) is DENIED. In relevant part, a motion to dismiss an appeal may be predicated on a claim that an appeal is not within this Court's jurisdiction. MCR 7.211(C)(2)(a). However, contrary to the implication of the present motion, this Court's jurisdiction over an appeal is not determined by the arguments made by an appellant on appeal. Rather, this Court was vested with jurisdiction over this appeal of right with the timely filing of the claim of appeal and payment of the entry fee. MCR 7.204(B). Further, the order appealed from is plainly appealable of right to this Court because it includes a provision removing appellant as personal representative in this decedent estate case. MCR 5.801(B)(2)(a). Thus, there is no basis to partially dismiss this appeal for lack of jurisdiction. We also note that an appellant's indication of expected issues to be raised on appeal in a docketing statement is not controlling. Accordingly, if appellant files a brief on appeal that any appellee believes raises issues that are outside the proper scope of this appeal, any appellee is free to either file a motion to strike the brief in whole or in part or to present argument regarding the point in his or her appellee's brief.



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

JAN 19 2016

Date


Chief Clerk