

# Court of Appeals, State of Michigan

## ORDER

In re Erwin Estate

Docket No. 331846

LC No. 13-130558-DE

Michael J. Kelly  
Presiding Judge

Mark J. Cavanagh

Deborah A. Servitto  
Judges

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The Court orders that the motion for reconsideration is DENIED. Initially, appellants cite no legal authority for recognizing an appeal of right from a lower court order merely because another lower court order in the same case is the subject of a pending appeal. Further, contrary to appellants' argument, MCR 5.801(B)(3) cannot provide an appeal of right from the March 3, 2016 probate court order based on MCL 600.861(a) because that statutory provision was enacted before, not after, the adoption of MCR 5.801(B)(3). Rather, reading MCL 600.861 and MCR 5.801(B)(2) together, the definition of final orders for purposes of an appeal of right to this Court under MCL 600.861(a) is provided by MCR 5.801(B)(2). Accordingly, case law from the 1980's predating the adoption of MCR 5.801(B)(2) regarding what should be considered a final order is also inapposite in this context. Because appellants make no argument that the March 3, 2016 order is a final order under MCR 5.801(B)(2) they have not shown that it is a final order. Moreover, this Court should not transfer this appeal to the circuit court under MCR 5.801(E) because, if the March 3, 2016 order were a final order, the appeal of right in this estate case would be to this Court, not to the circuit court under MCR 5.801(C). But, because appellants have not shown that order to be a final order, they have not shown that they have an appeal of right from that order to either this Court or the circuit court.



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

JUL 21 2016

Date

  
Chief Clerk