

Court of Appeals, State of Michigan

ORDER

John Does 1-18 v Department of Corrections

Docket No. 332260

LC No. 13-001196-CZ

David H. Sawyer
Presiding Judge

Joel P. Hoekstra

Jane E. Markey
Judges

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

The motion to dismiss claim of appeal or, in the alternative, to remove the automatic stay pending appeal per MCR 7.209(E)(6) is DENIED. In light of appellants' answer to the present motion it is not manifest that this appeal will involve only frivolous arguments or that it was improperly taken only for the purpose of hindrance or delay. Indeed, such a claim seems premature before appellants have even filed their brief on appeal. In addition, we do not believe a motion to dismiss an appeal as frivolous should be countenanced in light of MCR 7.211(C)(3) which allows for the filing of a motion to affirm (after appellants have filed their brief on appeal) based on a claim that the questions sought to be reviewed are unsubstantial. In this regard, unlike with a motion to dismiss, a motion to affirm may only be granted by a unanimous vote of a panel of this Court, so allowing a motion to dismiss an appeal on the ground that it is frivolous would allow an appellee to evade that unanimity requirement with regard to a claim that the arguments to be presented on appeal are meritless. We further conclude that the highly generalized grounds asserted by appellees do not establish an appropriate basis to lift the stay of trial court proceedings provided for by MCR 7.209(E)(6).



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

APR 25 2016

Date


Chief Clerk