

# Court of Appeals, State of Michigan

## ORDER

Benjamin B Walther v Rati Walther

Docket No. 334423

LC No. 15-000093-DM

Michael J. Kelly  
Presiding Judge

Peter D. O'Connell

Amy Ronayne Krause  
Judges

The motion to dismiss this appeal for lack of jurisdiction is GRANTED because the August 1, 2016 order appealed from is not a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). That order is not a final order under MCR 7.202(6)(a)(iii) because it constitutes the trial court's disposition of a motion involving only legal custody and parenting time issues, not physical custody. Appellant reads *Ozimek v Rodgers*, \_\_\_ Mich App \_\_\_, \_\_\_ NW 2d \_\_\_ (Docket No. 331726, issued August 25, 2016), too narrowly based on its specific facts rather than its dispositive legal holding that an order affecting only legal custody, not physical custody, in a dispute between two parents is not a final order under MCR 7.202(6)(a)(iii). *Id.*, pp 5-7. Similarly, under *Madson v Jaso*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 331605, issued August 25, 2016), p 8, an order affecting only parenting time, without rising to the level of affecting physical custody, is not a final order under MCR 7.202(6)(a)(iii). We note that our decision is based on the relevant trial court motion in this case involving only legal custody and parenting time matters as opposed to physical custody, not on the fact that the trial court denied the motion with regard to the matters which appellant apparently wishes to challenge on appeal. Appellant may seek to appeal the August 1, 2016 order by filing a delayed application for leave to appeal under MCR 7.205(G).



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

OCT 25 2016

Date

  
Chief Clerk