

## Court of Appeals, State of Michigan

### ORDER

**Department of Environmental Quality v Estate of Emil J Adams**

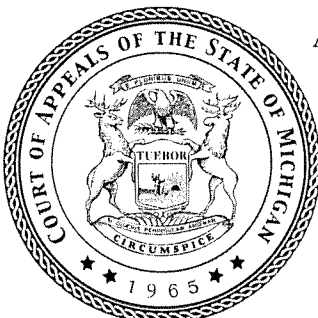
Docket No.    **338448**

LC No.         **11-000638-CE**

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Michael J. Talbot, Chief Judge, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the May 3, 2017 order 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)(iv) because it is not a postjudgment order where the claims by the principal plaintiff against the principal defendant remain undisposed. As discussed in this Court's September 17, 2015 order in Docket Number 328026, the grant of summary disposition as to the claims against appellees cannot reasonably be considered a "judgment" as to those claims, since by operation of MCR 2.604(A), the grant of summary disposition did not actually terminate those claims. Indeed, to accept the May 3, 2017 order as a final order under MCR 7.202(6)(a)(iv) would be squarely inconsistent with the rationale of this Court's September 17, 2015 order dismissing the prior claim of appeal in this case which would be contrary to the law of the case doctrine under which a ruling by an appellate court on a particular issue in a case binds the appellate court in a subsequent appeal in the same case. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). Further, the trial court's certification of the May 3, 2017 order as a final order is not controlling. *Faircloth v Family Independence Agency*, 232 Mich App 391, 400-401; 591 NW2d 314 (1998). At this time, appellant may seek to appeal the May 3, 2017 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

**MAY 31 2017**

Date

  
Chief Clerk