

Court of Appeals, State of Michigan

ORDER

David Harper v City of Battle Creek

Docket No. **341148**

LC No. **2015-003113-CF**

Michael J. Talbot, Chief Judge, acting under MCR 7.203(F)(1) and MCR 7.211(E)(2), orders:

The affidavit concerning financial status is treated as a motion to waive fees and is GRANTED for this case only.

The motion for reconsideration is GRANTED. The order dated January 3, 2018, is VACATED.

Nevertheless, the claim of appeal is now DISMISSED for lack of jurisdiction. The order dated October 30, 2017, which was signed and entered by the trial court on November 9, 2017, is not appealable by right. MCR 7.203(A)(1); MCR 7.202(6)(a). See *Allied Electric Supply Company, Inc v Tenaglia*, 461 Mich 285, 288-289; 602 NW2d 572 (1999) (“[A]n order denying a motion to set aside a default judgment is no longer deemed a final judgment;” and in order to claim an appeal of right from an adverse decision on a motion to set aside a default judgment, “a party needs to file a motion to set aside within twenty-one days,” after entry of the default judgment.) According to the register of actions and the November 9, 2017 order denying appellant’s motion to set aside the default judgment, the default judgment was entered on February 17, 2016. The motion to set aside the default judgment, however, was not filed until March 17, 2016, which was more than 21 days after entry of the default judgment. The fact that the November 9, 2017 order states that it “is the final order” and “closes the file” is not controlling for jurisdictional purposes. *Faircloth v Family Independence Agency*, 232 Mich App 391, 400; 591 NW2d 314 (1998). At this time appellant may seek to appeal only 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

FEB - 6 2018

Date


Chief Clerk