

Court of Appeals, State of Michigan

ORDER

Estate of Diane M Smith v Karsten H Fliegner MD

Kathleen Jansen
Presiding Judge

Docket No. 343667

Elizabeth L. Gleicher

LC No. 17-108694-NH

Jonathan Tukul
Judges

The Court orders that the motion to expand the record on appeal pursuant to MCR 7.216(A)(4) is GRANTED, and the exhibits attached to the motion filed on March 22, 2019 are accepted as additions to the record on appeal. The Clerk of the Court is directed to include the material with the record on appeal.

The motion to strike plaintiff's brief on appeal is DENIED.

Jansen, J., would deny the motion to expand the record and grant the motion to strike plaintiff's brief on appeal. Dr. Kanu Virani's first affidavit was originally submitted with defendants' motion for reconsideration of the trial court's order denying their motion for summary disposition. Because that affidavit was submitted for the first time with defendants' motion for reconsideration, it was not properly before the trial court and it is not properly before this Court. As such it may not be considered on appeal. *Innovative Adult Foster Care, Inc. v Ragin*, 285 Mich App 466, 475 n 6, citing *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000); *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Accordingly, I find it unnecessary and counterintuitive to expand the record to include a second affidavit from Dr. Virani, which is purportedly in direct opposition to his first affidavit, when the first affidavit cannot be considered.



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

APR 08 2019

Date


Chief Clerk