

# Court of Appeals, State of Michigan

## ORDER

Wayne Roberts v Kalkaska County Road Commission

Docket No. 354228

LC No. 19-013121-CH

Amy Ronayne Krause  
Presiding Judge

Stephen L. Borrello

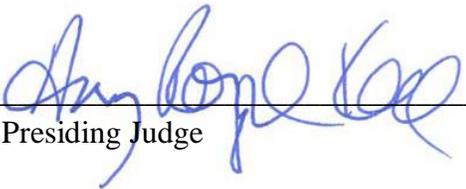
Brock A. Swartzle  
Judges

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The Court orders that the motion for leave to file a reply to the answer to the motion to dismiss is GRANTED.

The motion to dismiss this appeal for lack of jurisdiction is also GRANTED because the June 26, 2020 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)(v) based on its denial of appellant's motion for summary disposition to the extent it was predicated on a claim of immunity from appellees' property law suit under MCL 600.5821(2) because that claim did not constitute a claim of governmental immunity within the meaning of MCR 7.202(6)(a)(v). Because the term "governmental immunity" is a term rooted in the common law with "a peculiar and appropriate meaning" in Michigan law it must be interpreted according to that meaning. See *In re Bradley Estate*, 494 Mich 367, 377; 835 NW2d 545 (2013); *In re McCarrick/Lamoreaux Minors*, 307 Mich App 436, 446; 861 NW2d 303 (2014). Specifically, as used in Michigan law, "governmental immunity" is a term of art referring to the general immunity of governmental actors from tort liability. See *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 155-156; 615 NW2d 702 (2000) (referring to governmental immunity as public policy limiting imposition of tort liability); *Odom v Wayne Co*, 482 Mich 459, 467-468; 760 NW2d 217 (2008) (referring to common-law test for individual governmental immunity from tort liability). Thus, a claim of immunity from non-tort property law claims under MCL 600.5821(2) does not constitute a claim of governmental immunity within the meaning of MCR 7.202(6)(a)(v). We also note that the staff comment to the adoption of MCR 7.202(6)(a)(v) discussed by appellant is not binding as to its proper interpretation. *Natural Resources Defense Council v Dep't of Environmental Quality*, 300 Mich App 79, 85; 832 NW2d 288

(2013). At this time, appellant may seek to appeal the June 26, 2020 order by filing a late application for leave to appeal under MCR 7.205(G)(3).

  
Presiding Judge

Swartzle, J.(dissenting). I would deny the motion to dismiss for lack of jurisdiction without prejudice to a plenary panel reaching the issue after full briefing and oral argument.



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

September 23, 2020  
Date

  
Chief Clerk