

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **Fred S Findling v J Edward Kloian**  
Docket No. **283397**  
L.C. No. **07-728565-CK**

Brian K. Zahra, Judge, acting under MCR 7.211(E)(2), orders:

The motion to strike appellees' brief is GRANTED. Appellees' brief is STRICKEN because facts stated in the counter-statement of facts and argument portions of the brief are not supported by citations to the record as required under MCR 7.212(D)(3)(b), MCR 7.212(D)(1), and MCR 7.212(C)(7); the counter-statement of facts includes argument in contravention of the requirement under MCR 7.212(D)(1) and MCR 7.212(C)(6) that the facts be stated without argument or bias; and documents appended to the brief impermissibly expand the record on appeal because they were not filed in the trial court. Exhibits that were not filed in the trial court and available to the trial court for its decision are not part of the record and cannot be considered on appeal. See MCR 7.210(A)(1) and *Coburn v Coburn*, 230 Mich App 118, 122-123; 583 NW2d 490 (1998), rev'd on other grounds, 459 Mich 874, 875 (1998). If appellees file a replacement brief within 21 days after the Clerk's certification of this order, the brief shall be considered timely filed. The time for filing appellant's reply brief under MCR 7.212(G) shall be calculated from the date of service of appellees' replacement brief.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 10 2008  
Date

Sandra Schultz Mengel  
Chief Clerk