

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **William Gray Basner II v Auto-Owners Insurance Company**

Docket No. **306520**

L.C. No. **08-024754-CK**

David H. Sawyer, Chief Judge Pro Tem, acting under MCR 7.203(F)(1), orders:

The claim of appeal is DISMISSED for lack of jurisdiction. Neither the August 19, 2011, order nor the September 22, 2011, order denying reconsideration of that order is a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). The August 19, 2011, order is not a final order under MCR 7.202(6)(a)(i) because it does not dispose of any *claim* in this case, but rather merely denies a motion for summary disposition. Instead, it is manifest that the July 15, 2011, judgment disposed of the claims in this case as to appellant Auto-Owners Insurance Company by entering judgment against that party. This is true regardless of whether this is viewed as involving the trial court implicitly denying the relevant motion for summary disposition or simply overlooking that motion. The August 19, 2011, order did nothing to alter the disposition of the claims in this case in the July 15, 2011, judgment. Notably, because *Frye v Consolidated Rail Corp*, 480 Mich 897; 738 NW2d 763 (2007), involved an order granting summary disposition, it does not establish that an order denying summary disposition can be a final order under MCR 7.202(6)(a)(i). See *Frye v Consolidated Rail Corp*, unpublished order of the Court of Appeals, entered March 29, 2007 (Docket No. 276834), rev'd *Frye, supra*, 480 Mich 897. Further, the claim of appeal cannot be saved by treating it as being taken from the July 15, 2011, judgment because it was not timely filed as to that judgment. MCR 7.204(A)(1)(a)-(b). At this time, appellants may seek to appeal only by filing a delayed application for leave to appeal under MCR 7.205(F).



Chief Judge Pro Tem



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 01 2011

Date



Chief Clerk