

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AMERISURE INSURANCE COMPANIES, and  
AUTO-OWNERS INSURANCE COMPANY,

UNPUBLISHED  
May 10, 2005

Petitioners-Appellees and  
Cross-Appellants,

v

MICHIGAN BASIC PROPERTY INSURANCE  
ASSOCIATION,

No. 251304  
Livingston Circuit Court  
LC No. 01-018466-AA

Respondent-Appellant and  
Cross-Appellee.

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Before: Fort Hood, P.J., and Meter and Schuette, JJ

PER CURIAM.

Respondent appeals of right from the circuit court's order reversing a decision of the insurance commissioner. Petitioners cross-appeal. We vacate the circuit court's order.

**I. FACTS**

Petitioners are two insurance companies, and respondent is an association of property insurers created by statute. At a meeting of respondent's board of governors, the board voted to fund an anti-fraud campaign sponsored by the Insurance Information Association of Michigan ("IIAM"). The cost of this campaign was estimated to be approximately \$100,000, and was paid for out of respondent's operating budget for 2000.

Petitioners filed an administrative complaint pursuant to MCL 500.2943. A proceeding was conducted under the Administrative Procedures Act, MCL 24.155, *et seq.* ("APA"), and the hearing referee issued a proposal for a decision in which he determined that the board of governor's decision to fund the anti-fraud campaign was a valid administrative decision. On review, the Commissioner of Financial and Insurance Services ("commissioner"), in a final decision approved the board's decision to fund the anti-fraud campaign on its determination that it fosters key purposes of the respondent "and is an exercise in careful and prudent management of the Respondent."

Petitioners sought judicial review of the final decision in circuit court. The circuit court reversed the decision of the commissioner principally on the ground that it was not based upon

competent, material, and substantial evidence on the whole record under MCL 24.306(d). Respondent filed leave to appeal, and petitioners filed a cross-appeal.

## II. SUBJECT MATTER JURISDICTION

Respondent first argues that petitioners failed to timely perfect their appeal to the circuit court, thus depriving the circuit court of jurisdiction. We agree.

### A. Standard of Review

Whether a trial court has subject matter jurisdiction is a question of law reviewed de novo. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Assoc*, 264 Mich App 523, 527; \_\_\_ NW2d \_\_\_ (2004). Likewise, the interpretation of a court rule is a question of law reviewed de novo. *Id.*

### B. Analysis

Proceedings under chapter 29 of the Insurance Code are subject to the Administrative Procedures Act (APA), MCL 24.201 *et seq.* MCL 500.2943. The APA provides that “a petition for review shall be filed in the circuit court for the county where petitioner resides or has his or her principal place of business in this state,” MCL 24.303(1), and that the “petition shall be filed in the court within 60 days after the date of mailing notice of the final decision or order of the agency,” MCL 24.304(1). The requirements where a petition must be filed under this statute, MCL 24.303(1), is straightforward; the appeal must be “filed in the circuit court.” The statute does not state district court, but circuit court.

Similarly, the court rule governing appeals from administrative agencies provides that “[j]udicial review of an agency decision in a contested case is initiated by filing, within the time required by the applicable statute, a document entitled “Petition for Review.” MCR 7.105(C). The court rule contemplates the filing of a delayed petition for review but only “if the applicable review statute permits a delayed appeal.” MCR 7.105(O). The only appeal authorized by the APA is one filed within 60 days.

A party’s failure to file a timely claim of appeal deprives the circuit court of jurisdiction to hear the appeal under the APA. *Davis v Department of Corrections*, 251 Mich App 372, 374-375; 651 NW2d 486 (2002). The “time restrictions are considered jurisdictional and may not be extended by the circuit court.” 7 Martin Dean Webster, *Michigan Court Rules Practice* (“Time for Filing a Petition for Review”), p 112.

Hence, respondent is correct that petitioners here were required to file their petition for review of the January 22, 2001 Final Decision in circuit court on or before March 23, 2001. Although petitioners captioned their pleadings for circuit court, petitioners delivered and filed the pleadings in district court.<sup>1</sup> Petitioners have not cited and we have not located any authority

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<sup>1</sup> The fact that circuit court and district court windows are adjacent in Livingston County does not excuse petitioners’ filing of the claim of appeal in the wrong court.

for the district court to “transfer” the pleadings to the circuit court once the pleadings were received and time stamped and the check processed.

Despite petitioners’ attempt to shift the blame for their predicament to the district court clerk who allegedly failed to redirect petitioners to the correct court for filing, only a party bears the responsibility of deciding where and when to file paperwork. The employees in a clerk’s office are not authorized to give parties legal advice or answer their substantive legal questions. “Counsel is reminded that ‘filing’ occurs ... when the document is received by the court clerk.” 7 Martin Dean Webster, Michigan Court Rules Practice (“Time for Filing a Petition for Review”), p 112.

Even assuming arguendo that the transfer of the docketed pleadings from district court to circuit court was appropriate, the transfer did not occur until March 29, 2001, well after the statutory 60-day period for filing a petition for review passed. Petitioners have not cited any authority under which the circuit court clerk’s office could accept the pleadings filed in district court as timely filed in circuit court. Similarly we have not located any authority that would permit a clerk’s office to accept pleadings filed in one court as timely filed in another court.

The circuit court gave this threshold issue only brief attention, desiring instead to reach the merits of petitioners’ arguments. However, the jurisdictional power of the circuit court is limited by law, and petitioners’ failure to timely file a petition for review in circuit court deprived the circuit court of subject matter jurisdiction. See MCL 24.304(1); *Davis, supra*.

When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void. *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). The circuit court erred and should have granted respondents’ motion to dismiss as petitioners’ filing error precluded the circuit court from reaching the merits of petitioners’ arguments. The circuit court’s May 2, 2003 order reversing the Commissioner’s decision is therefore void for lack of subject matter jurisdiction.

In light of our decision that the trial court lacked subject matter jurisdiction, we decline to address the parties’ remaining issues.

The circuit court order is vacated and the Commissioner’s decision is reinstated.

/s/ Karen Fort Hood  
/s/ Patrick M. Meter  
/s/ Bill Schuette