

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

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RICK BEAVERS,

Plaintiff-Appellant,

v

BARTON MALOW COMPANY, JOMAR  
BUILDING COMPANY, INC., SPILLIS  
CARDELLA, DMJM, a/k/a DMJA, INC., and  
ROBERT SMITH,

Defendants-Appellees.

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UNPUBLISHED

January 18, 2007

No. 269007

Wayne Circuit Court

LC No. 03-309389-NO

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court order granting summary disposition to defendants under MCR 2.116(C)(10). We dismiss plaintiff's appeal.

Plaintiff filed a negligence claim for injuries suffered following a fall in a vacant building on property where all the old buildings were going to be destroyed, and a new high school was going to be built. Following entry of the January 7, 2005, order for summary disposition in favor of defendants, plaintiff appealed as of right and ordered a transcript of the hearing on the motion for summary disposition. On April 1, 2005, plaintiff's counsel was ordered to pay costs for failure to timely file his appellant brief, in accordance with Administrative Order 2004-5, and was warned that failure to submit the brief within 14 days of the original due date would result in a dismissal. The court reporter untimely filed the transcript, and subsequently, plaintiff filed a motion to extend time within which to file the transcript and brief, requesting 28 days from the actual date the transcript was filed. However, the appeal was dismissed for failure to timely file plaintiff's appellant brief.

Plaintiff filed a motion to reinstate the appeal. This Court denied the motion, concluding that the time for filing the brief was not tolled due to the untimely filing of the transcript because plaintiff did not file a motion to show cause or to extend the time to file within seven days after the transcript was due. Plaintiff failed to file the brief on appeal within 28 days after the transcript was due, and then plaintiff failed to file the brief in accordance with the April 1, 2005, order, so the untimely motion to show cause or extend time was not adequate to prevent the

involuntary dismissal. Plaintiff filed an application for leave to appeal the order to the Michigan Supreme Court, and it was denied.

Plaintiff then sought leave to pursue a delayed appeal on March 13, 2006, claiming that the time period for the application was tolled during the pendency of the earlier appeal. This Court granted the application for leave to appeal and directed the parties to brief whether the limitation period in MCR 7.205(F)(3) should be tolled. We conclude that this Court does not have jurisdiction to consider plaintiff's appeal under MCR 7.205(F)(3).

Interpretation of a court rule is a question of law that is reviewed de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). This Court interprets a court rule in the same manner it construes a statute. *Rinas v Mercer*, 259 Mich App 63, 68; 672 NW2d 542 (2003). The primary objective of statutory interpretation is to carry out the intent of the legislature. *AFSCME v Detroit*, 468 Mich 388, 399; 662 NW2d 695 (2003). This Court must start with the plain language of the court rule, and if that language is unambiguous, "must enforce the meaning expressed, without further judicial construction or interpretation." *Rinas, supra*. This Court "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute." *AFSCME, supra* (citation omitted).

MCR 7.205(F)(3) provides:

[L]eave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

(a) entry of a final judgment or other order that could have been the subject of an appeal of right under MCR 7.203(A), but if a motion described in MCR 7.204(A)(1)(b) was filed within the time prescribed in that rule, then the 12 months are counted from the entry of the order denying that motion; or

(b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period, then the 12 months are counted from the entry of the order denying that motion.

Plaintiff is appealing the January 7, 2005, order granting summary disposition in favor of defendants. Under the plain language of the court rule, plaintiff was required to file the application for leave to appeal within 12 months of that date. There is no language regarding the tolling of the time period for a pending appeal of right. However, the legislature expressly provided for tolling of the 12-month period during the specified motions. This Court cannot assume that the legislature inadvertently omitted that language with respect to some actions where it was expressly provided for others. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993); see, also, *US Fidelity & Guaranty Co v Amerisure Ins Co*, 195 Mich App 1, 6-7; 489 NW2d 115 (1992). "The omission of a provision in one part of a statute that is included in another should be construed as intentional, and provisions not included by the Legislature should not be included by the courts." *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 103; 693 NW2d 170 (2005) (citations omitted). By filing the application on March 13,

2006, plaintiff failed to comply with the time limitation set forth in MCR 7.205(F)(3); therefore, this Court does not have jurisdiction to entertain the appeal.

Dismissed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Bill Schuette