

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES F. FAWCETT,

Plaintiff-Appellee,

and

LINDA S. FAWCETT, MICHAEL P.
REINERTSEN, CHERYL L. REINERTSEN, and
NORTHWESTERN SAVINGS BANK & TRUST,

Plaintiffs/Counter-Defendants-
Appellees,

v

KATHERINE T. HANNAH, Personal
Representative for the Estate of ANNETTE C.
MEYER, JOSEPH ELFELT, JOAN F. ELFELT,
and STEPHEN M. ELFELT,

Defendants/Counter-Plaintiffs-
Appellants,

and

CLARENCE J. MEYER and CLEMENT B.
MEYER,

Defendants/Counter-Plaintiffs.

UNPUBLISHED

October 4, 2007

No. 268094

Kalkaska Circuit Court

LC No. 98-006213-PZ

Before: Bandstra, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendants/counter-plaintiffs Katherine T. Hannah, as personal representative of the Estate of Annette C. Meyer, Joseph Elfelt, Joan F. Elfelt, and Stephen M. Elfelt (hereafter,

“defendants”)¹ appeal as of right the trial court’s December 19, 2005 post-judgment order granting a motion by plaintiff Charles F. Fawcett, and plaintiffs/counter-defendants Linda S. Fawcett, Michael P. Reinertsen, Cheryl L. Reinertsen, and Northwestern Savings Bank & Trust (hereafter “plaintiffs”) to enforce the November 19, 2003 judgment and judicial lien. We reverse and remand for further proceedings consistent with this opinion.

These parties have been before this Court on several prior occasions during the course of this dispute over six parcels of former farmland, totaling approximately 436 acres, in Kalkaska County (hereafter “the property”). On January 21, 2004, this Court dismissed as premature an initial appeal of the trial court’s award of a money judgment and judicial lien on defendants’ interest in the property “because an order was not entered when this claim of appeal was filed that had set forth the revised amount in damages.” *Fawcett v Meyer*, unpublished order of the Court of Appeals, entered January 21, 2004 (Docket No. 253087). The trial court amended the November 19, 2003 judgment accordingly, and a timely claim of appeal of the judgment and judicial lien was then filed (Docket No. 253819). A separate claim of appeal was filed with respect to the trial court’s denial of sanctions (Docket No. 259595). These two matters were consolidated, and this Court affirmed the lower court’s judgment and order in an unpublished opinion dated September 15, 2005. *Fawcett v Estate of Meyer*, unpublished opinion per curiam of the Court of Appeals, issued September 15, 2005 (Docket Nos. 253819; 259595). This Court denied a motion for reconsideration on November 22, 2005, *Fawcett v Meyer*, unpublished order of the Court of Appeals (Docket Nos. 253819; 259595). Our Supreme Court then denied defendants leave to appeal this Court’s decision on April 28, 2006, *Fawcett v Estate of Meyer*, 474 Mich 1128; 712 NW2d 478 (2006), and denied defendants’ motion for reconsideration of that decision on June 26, 2006. *Fawcett v Estate of Meyer*, 475 Mich 890; 715 NW2d 885 (2006).

While the matter was pending on appeal, the trial court granted plaintiffs’ motion to enforce the judgment and entered its December 19, 2005 order directing that an execution sale of defendants’ interest in the property be conducted in a manner other than that specified by MCL 600.6001 *et seq.*² Defendants now argue on appeal, as they did below, that the trial court lacked jurisdiction to issue its December 19, 2005 order because that order, which defendant assert

¹ Defendants/counter-plaintiffs Clarence J. Meyer and Clement B. Meyer are not party to this appeal.

² On November 24, 2004, the trial court issued an order holding a decision on plaintiffs’ motion to enforce in abeyance pending resolution of defendants’ appeal. In so doing, the trial court advised the parties that “[n]othing in [that] [o]rder shall prohibit [p]laintiffs from exercising their right to enforce the Judgment or Lien entered in this case by execution pursuant to the procedures set forth in MCL 600.6001 *et seq.*” Plaintiffs filed a renewed motion to enforce the lien in October 2005, following this Court’s decision in *Fawcett I*, *supra*, but before this Court’s denial of defendants’ motion for reconsideration and before the Supreme Court’s denial of defendants’ application for leave to appeal. In their renewed motion, plaintiffs requested that the trial court adopt certain procedures for the execution sale of defendants’ interests in the property. The trial court granted this motion, adopting plaintiffs’ proposed manner of execution sale, in its December 19, 2005 order.

amended the judgment, was issued while defendants' appeal of the judgment remained pending. We agree.

This Court reviews de novo whether the trial court had subject matter jurisdiction over a claim. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000). We first note that a challenge to a court's subject matter jurisdiction may be raised at any time. *McFerren v B&B Investment Group*, 233 Mich App 505, 511; 592 NW2d 782 (1999). Thus, the trial court erred in "overruling" defendant's objection to its subject matter jurisdiction on the basis that defendant's objection was untimely. Turning to the substance of the question presented, the filing of a claim of appeal divests the trial court of jurisdiction to amend its final orders and judgments. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 542; 730 NW2d 481 (2007); *Wilson v Gen Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990). Thus, once a claim of appeal is filed with this Court, the trial court may not amend the judgment appealed from except pursuant to an order of this Court, by stipulation of the parties, or as otherwise provided by law. MCR 7.208(A); *Ypsilanti Fire Marshal, supra*; *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 314; 486 NW2d 351 (1992). However, unless stayed pending appeal, a trial court may act to enforce its appealed judgment or order while the appeal is pending. MCR 7.209(A)(1); *Bass v Combs*, 238 Mich App 16, 24; 604 NW2d 727 (1999).

No stay of the trial court's judgment was requested in the instant case. Consequently, as defendants acknowledge, the trial court was permitted to enter an order enforcing its earlier judgment. MCR 7.209(A)(1). However, defendants assert, and we conclude, that the trial court's December 19, 2005 order went beyond merely enforcing the judgment. Instead, the order impermissibly amended the judgment to provide for an execution sale of defendant's interest in the property pursuant to specific procedures set forth in the order that differed substantially from the statutory process governing execution sales of real property set forth in MCL 600.6001 *et seq.* referenced in the judgment.

More specifically, the 2003 judgment stated that the trial court "shall enter judicial liens to be attached to each [d]efendant[s] fractional interest[s] in the subject property" and that "[p]laintiffs' initial efforts to enforce this judgment shall be restricted to *execution sale* upon [those] judicial liens . . ." (emphasis added). An "execution sale" is "[a] forced sale of a debtor's property by a government official carrying out a writ of execution." Black's Law Dictionary (7th Ed). Execution sales of real property are governed by Chapter 60 of the Revised Judicature Act (RJA), MCL 600.6001 *et seq.* *Hinkle v Wayne County Clerk*, 467 Mich 337, 342 n 7; 654 NW2d 315 (2002) ("Execution refers to the coercive process for the collection of judgments. Regulations on coercive collection are imposed because direct attachment of a debtor's property is disfavored. Chapter 60 of the Revised Judicature Act, MCL 600.6001 *et seq.*, regulates that involuntary payment of judgments." (Citations omitted.); *Ypsilanti Fire Marshal, supra* at 539 ("The procedure for collecting debts on execution is described in Chapter 60 of the Revised Judicature Act, MCL 600.6001 *et seq.*") Thus, by specifying an "execution sale," the judgment provided that any sale of defendant's interest in the property would be conducted in accordance with the procedures set forth in Chapter 60 of the RJA.

However, the trial court's December 19, 2005 did not order enforcement of the judgment in a manner comporting with that statutory scheme. Instead, the order set forth a process for conducting the execution sale in a manner that substantially differed from that provided in Chapter 60 of the RJA. Therefore, the trial court's December 19, 2005 order constituted an

amendment of the judgment, and was thus improper given that the case remained pending on appeal at the time. MCR 7.208(A); *Admiral Ins Co, supra*. Because the resulting sale did not comport with the requirements set forth in Chapter 60 of the RJA in significant respects, the resulting sale must be set aside. *Ypsilanti Fire Marshall, supra* at 535.

Having concluded that the trial court was without jurisdiction to order the execution sale of defendants' property in the manner that it did, we need not address the remaining issues raised on appeal. We specifically note, however, for the benefit of the trial court on remand, that the statutory requirements set forth in Chapter 60 of the RJA govern the manner in which an execution sale to enforce a judgment lien on real property may be conducted, *Hinkle, supra*; *Ypsilanti Fire Marshal, supra*, and include provisions specifying notice requirements, MCL 600.6052, permitting the judgment debtor to designate the order in which multiple lots, tracts, or parcels of land are exposed for sale, MCL 600.6056, and requiring that the judgment debtor be afforded a one-year redemption period. MCL 600.6062.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Donald S. Owens