

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

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BENDURE & THOMAS,

Plaintiff/Counter-  
Defendant/Appellant,

v

ROBERT H. GOLDEN and GOLDEN & KUNZ,  
P.C.,

Defendants-Appellees

and

MARY STANN, f/k/a MARY CASWELL,

Defendant/Counter-Plaintiff,

and

INSITE INFORMATION SYSTEMS, INC.,

Defendant.

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UNPUBLISHED

July 29, 2010

No. 291901

Oakland Circuit Court

LC No. 2008-008858-AV

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order dismissing for lack of jurisdiction plaintiff's claim of appeal of a district court order closing the case. Because the sanctions order, by operation of law, and the final order, as a matter of fact, were district court orders, the circuit court erred in failing to exercise jurisdiction over the claim of appeal that followed. We thus reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed an action to collect legal fees from defendant Stann, who in turn, through counsel, defendants-appellees, counterclaimed alleging malpractice. The case was transferred from the district court to the circuit court when the counterclaim caused the amount in controversy to exceed the former's jurisdictional limit. The counterclaim was dismissed in the

circuit court on a motion for summary disposition and the circuit court also denied plaintiff's motion for sanctions in the matter. Because the dismissal of the countercomplaint returned the case to within the district court's jurisdictional limit, the case was transferred back to the district court. The claim for legal fees was then settled, and an order reflecting that settlement, which expressly recognized plaintiff's intention to appeal the sanctions order and making provision for any success plaintiff might have in that regard, concluded the proceedings in the district court.

Apparently feeling some apprehension over the proper avenues for appellate relief, plaintiff filed claims of appeal in both the circuit court and in this Court. This Court rejected the claim for want of jurisdiction, on the ground that the order appealed from originated with the district court, not the circuit court or court of claims. Unpublished order issued October 22, 2008 (Docket No. 287164), citing MCR 7.203(A)(1) and MCR 7.101(A)(1). This Court additionally declined to review the circuit court's order denying sanctions on the ground that the order "was transformed by law into a district court order when the circuit court sent the case back to the lower court," citing *Brooks v Mamo*, 254 Mich App 486, 498; 657 NW2d 793 (2002); MCR 7.203(A)(1).

Defendants-appellees challenged the jurisdiction of the circuit court to entertain the claim of appeal. The circuit court initially rejected that challenge, then reconsidered the matter on its own motion and dismissed the appeal. Defendant now appeals that decision.

The existence of jurisdiction is a question of law that this Court reviews de novo. *Adams v Adams*, 276 Mich App 704, 709; 742 NW2d 399 (2007).

Final orders of the district court are appealable by right to the circuit court. MCR 7.101(A). "[A] party claiming an appeal of right from a final order is free to raise issues on appeal related to prior orders." *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009) (internal quotation marks and citation omitted). This Court's unchallenged determination that the sanctions order at issue was transformed by operation of law into an order of the district court stands as law of the case.<sup>1</sup> Accordingly, the sanctions order was appealable by right in the circuit court, once the underlying district court action was resolved in a final order.

In a footnote, the circuit court stated, "No order exists to reflect the end of the Insite, Inc. fee claim." The circuit court thus seems to suggest that the order reflecting the parties' settlement and purporting to close the case was not a final one for that reason, and thus that no claim of appeal was available. However, not in dispute is that Insite is wholly owned by defendant Stann, and was brought into the case only because that business entity provided some of the money to pay Stann's legal fees. The substantial identity between Stann and Insite, coupled with the order's announcement that it closes the case, indicates that the failure to make separate mention of Insite was, at worst, a minor oversight, not that plaintiff is in fact still

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<sup>1</sup> The law of the case doctrine "holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Sinicropi v Mazurek*, 279 Mich App 455, 465; 760 NW2d 520 (2008).

pursuing a claim against Insite. To the extent that the circuit court deemed the district court's July 31, 2008, order as something less than a final one for that reason, it erred.

The circuit court stated the following about the attempt to claim an appeal both in that court and in this Court:

The legal purview of this court, a district court appellate reviewing court, does not capture the court of appeal's *[sic]* orders in this case, however, Judge O'Brien has read them. This court recognizes that if both this court is and the court of appeals was possessed of all relevant information and both courts are correct in their conclusions, [the] order denying sanctions necessarily would escape "appeal of right" review. Such a consequence, of course, would betray Michigan law and jurisprudence. Such a betrayal, however, has not occurred. This seeming anomaly arose after B & T appealed to two courts rather than taking a jurisdictional position and appealing only to one. The seeming contradiction between the October 22, 2008 court of appeal's *[sic]* order and this order does not exist if one or both courts were not possessed of all relevant information and certainly if B & T had posited its own legal theory of jurisdiction rather than throw its hands up and try to dump the question on two courts. Had it filed in the singular court that its legal research dictated and been ruled against, recourse would have been available in accordance with Michigan law. If that recourse does not exist anymore, it did *once upon a time*. [Italics in the original.]

The circuit court thus expressed disapproval for plaintiff having claimed an appeal in two tribunals, and apparently deemed that tactic as having failed to invoke the jurisdiction of either. If so, the court erred. Plaintiff might well have claimed an appeal in just one court, and expected that doing so would ultimately lead to the proper forum. But we know of no rule of law according to which one waives access to a court of competent jurisdiction if one simultaneously seeks redress in a court lacking jurisdiction.

Because both the sanctions order, by operation of law, and the final order, as a matter of fact, were district court matters, the circuit court erred in failing to exercise jurisdiction over the claim of appeal that followed. MCR 7.101(A)(1). Accordingly, we reverse the circuit court's order dismissing the claim of appeal for lack of jurisdiction and remand this case to the circuit court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Henry William Saad  
/s/ Deborah A. Servitto