

STATE OF MICHIGAN
COURT OF APPEALS

JAMES L. KOETJE,

Plaintiff-Appellee,

v

BAILEY & KOETJE, P.C.,

Defendant-Appellee,

and

DONALD R. FRANCE,

Defendant,

and

DONALD BAILEY,

Defendant-Appellant..

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant Donald M. Bailey appeals from a February 16, 1996 order of the circuit court granting plaintiff James L. Koetje's motion for emergency relief. We dismiss this case for want of jurisdiction.

I

This case stems from the dissolution of the law practice of Bailey and Koetje, P.C. ("the corporation"). In February 1995, plaintiff filed a complaint against the corporation in his capacity as director and shareholder, seeking its dissolution pursuant to MCL 450.1823; MSA 21.200(823) and

other equitable relief. Plaintiff filed an amended complaint in April 1995 naming Bailey and Donald R. France, in their individual capacities, as additional defendants. Neither France nor Bailey timely answered the amended complaint.

Counsel for both plaintiff and the corporation agreed to enter into a binding settlement agreement to be determined by the court. Plaintiff's counsel further stated plaintiff's intention to withdraw the amended complaint, thus dismissing Bailey and France as individual defendants. Informal arbitration conferences were held, after which the court entered an order on May 12, 1995, dissolving the corporation, appointing a special master to conduct an accounting and wind up the corporation's affairs, and providing for the distribution of the corporate assets among plaintiff, Bailey, and France. No appeal was filed by any party with regard to the court's order.

Plaintiff subsequently filed a petition to enforce the court's order of dissolution. On September 13, 1995, Bailey filed his appearance in pro per, a response to plaintiff's petition to enforce order, and an answer to plaintiff's April 1995 amended complaint. Bailey claimed for the first time that he was not a party to the arbitration and thus could not be bound by the court's May 12, 1995 order. Bailey further alleged that plaintiff had agreed to dismiss him and France from the case, but had failed to effectuate this promise. Bailey also claimed that the circuit judge went into the case with a preconceived notion of how the case would be resolved. In his amended and supplemental responses to plaintiff's petition to enforce, Bailey alleged that binding arbitration jurisdiction was lacking in this case. A hearing on the matter was scheduled and held, but Bailey refused to attend. The court issued an order appointing a receiver to wind up the affairs of the dissolved corporation, and noting Bailey's refusal to attend the hearing.

In October 1995, Bailey filed an application for default against plaintiff, claiming that plaintiff was in default because he did not file a responsive pleading to Bailey's answer pursuant to MCR 2.110(B)(5) and MCR 2.108(A)(5). The court set aside the default, noting that because the case had been settled before Bailey filed his answer, plaintiff was not required to file a response to Bailey's untimely pleadings. Bailey filed a motion for reconsideration, which was denied by the court.

A motion for reconsideration of the court's order was also filed on behalf of the corporation. The corporation sought clarification from the court that the only matters arbitrated were those issues raised in the original complaint regarding the dissolution of the firm. The corporation further asserted that its submission to arbitration was specifically conditioned on plaintiff's agreement to withdraw his amended complaint naming Bailey and France as defendants in their individual capacities. The corporation further requested that the court clarify that the amended complaint had been withdrawn, leaving the corporation as the sole defendant. On December 21, 1995, the court entered an order dismissing plaintiff's amended complaint effective nunc pro tunc to April 21, 1995. The court also affirmed that the only issues subjected to arbitration were those raised in the initial complaint relating to the dissolution of the corporation.

Approximately 2 ½ months later, plaintiff filed a motion for emergency relief. Plaintiff alleged that the receiver previously appointed by the court was not fulfilling his duties to pay the debts of the corporation. Plaintiff also asserted that Bailey had filed a petition against the corporation for involuntary

bankruptcy in the United States Bankruptcy Court for the Western District of Michigan. Plaintiff asked the circuit court to appoint him as temporary receiver of the dissolved corporation for purposes of serving an answer to the amended bankruptcy petition and to conduct all matters necessary to the winding up of the corporation.

The court granted plaintiff's motion on February 16, 1996, and appointed him temporary receiver. Bailey now brings this appeal.

II

Pursuant to MCR 7.203(A)(1), this Court has jurisdiction of an appeal of right filed by an "aggrieved party" from a final judgment or order of the circuit court. An "aggrieved party" is a party who has an interest in the subject matter of the litigation. *In re matter of Freeman*, 218 Mich App 151, 155; 553 NW2d 664 (1996); *Irish v Treasurer of the State of Michigan*, 158 Mich 337, 344; 404 NW2d 733 (1987). The definition will necessarily vary according to the type of case involved. *Irish, supra* at 344.

In the present case, the order for emergency relief from which Bailey appeals was entered on February 16, 1996. Two months earlier, however, Bailey was dismissed as an individual defendant by the circuit court, which expressly directed that Bailey's name was to be removed from the caption in light of his dismissal from the case. Bailey did not object to or appeal from his dismissal. Although Bailey may be "aggrieved" to the extent that he has an interest as a shareholder of the corporation being dissolved, Bailey is estopped from claiming that he stands in the shoes of the corporation for purposes of appeal. Throughout these proceedings, Bailey has adamantly maintained that he was representing himself separately from the corporation. Indeed, this position was essential to his claim that he was not a party to the arbitration and dissolution order.

Under these circumstances, it is without question that Bailey is not an "aggrieved party" to the circuit court's February 16, 1996 order. MCR 7.203(A)(1). Accordingly, we do not have jurisdiction to hear this appeal.

III

Jurisdiction is also lacking in this case because Bailey failed to timely appeal from the May 12, 1995 order of dissolution, which was a final appealable order. MCR 7.203(A); *Zimmerman v Zimmerman*, 177 Mich App 8, 9; 440 NW2d 906 (1989). This case is dismissed for want of jurisdiction.¹

Appeal dismissed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ Jane E. Markey

¹ Even if we were to determine that this Court had jurisdiction over this appeal, we would hold that each of the issues Bailey attempts to raise on appeal is either unpreserved or has been abandoned by Bailey's failure to comply with the requirements of MCR 7.212(6) and (7). *Dresden v Detroit Macomb Hospital*, 218 Mich App 292, 300; 553 NW2d 387 (1996).