

STATE OF MICHIGAN
COURT OF APPEALS

RANDY RAE,

Plaintiff-Appellee,

v

SPORTSMAN'S PLUS LLC, TIMOTHY
HALONEN, STEVE RICE, GEORGE
HALONEN, TERRY HALONEN,

Defendants-Appellants,

and

JEFF SHERMAN,

Defendant.

UNPUBLISHED
December 27, 2007

No. 274404
Macomb Circuit Court
LC No. 2004-004680-CL

Before: Jansen, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendants-appellants claim an appeal as of right, but that claim of appeal was not filed in a timely fashion. Therefore, we deny appellants' claim of appeal as of right and dismiss this appeal. MCR 7.204(A)(1). This case arose when appellants, who are from Minnesota, persuaded plaintiff to operate their company, defendant Sportsman's Plus, from plaintiff's home in Michigan. When appellants failed to pay plaintiff his agreed-upon salary, plaintiff brought several claims in Michigan, including breach of contract, fraud, and defamation.

After appellants repeatedly spurned, delayed, and generally eluded the authority of the trial court by avoiding process and refusing to appear before it, the trial court granted plaintiff's uncontested motion for summary disposition and heard plaintiff's uncontroverted testimony on his damages. The original judgment against appellants was entered, without opposition, on July 15, 2005. It was designated as the order that finally disposed of all the issues and closed the case. Appellants' post-judgment jurisdictional challenge to that order was denied on the record

on August 29, 2005, and entered in the register of actions.¹ MCR 7.204(A). According to MCR 7.204(A)(1)(b), this provided appellants with twenty-one days to appeal, and their counsel began ordering transcripts accordingly. Counsel did not claim an appeal, however, and months later, on April 25, 2006, plaintiff stipulated to the release of defendant Sherman. On June 6, 2006, appellants renewed their post-judgment motion to vacate the judgment, this time challenging the trial court's factual basis for the damages award. Appellants acknowledged that their initial motion to vacate the judgment had been denied more than ten months earlier, and they failed to provide any legitimate explanation for waiting so long to challenge plaintiff's damages.

In a written opinion dated July 25, 2006, the trial court noted the tardiness of the challenge, denied it, awarded costs and attorney fees, and left the case closed. Nevertheless, appellants waited until November 14, 2006, to claim an appeal from the second denial of their second post-judgment motion, excusing their tardiness with plaintiff's failure to serve the order that dismissed defendant Sherman. Appellants claim, and plaintiff concedes, that they were not served with the earlier order that dismissed defendant Sherman, but that order is not the order being appealed and has no legitimate relationship to the appeal. MCR 7.204(A)(3). Appellants make no claim that defendant Sherman should remain a defendant and they raise no challenge to that stipulated order at all. Instead, they try to use the minor procedural mishap in the order's service of process to pry open this Court's jurisdictional time limits and justify their extraordinarily tardy appeal. Appellants filed their claim of a right to appeal sixteen months after the judgment that they are challenging. We reject their efforts and dismiss their appeal.

The court rule establishing the time limits that govern claims of appeal, MCR 7.204(A), states, "The time limit for an appeal of right is jurisdictional." The rule clearly states that a claim of appeal as of right "must be taken within . . . 21 days after entry of the judgment or order appealed from." The rule upon which appellants rely, MCR 7.204(A)(3), only extends the time allotted when "service of the judgment or order on appellant was delayed beyond the time stated in MCR 2.602," which provides that orders should be served within seven days. If we find that "the claim of appeal was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely." MCR 7.204(A)(3). In this case, the original judgment was timely served more than sixteen months before appellants filed their claim of appeal, and the most recent post-judgment opinion and order denying appellants' motion to vacate the judgment was timely served almost three months before appellants filed their claim of appeal. Because we

¹ We should note that we are not persuaded by appellants' challenges to the trial court's personal jurisdiction. It was generally conceded below that plaintiff's contacts with appellants and the original contract were consummated to obtain plaintiff's services in Michigan for the purpose of furthering their business from this state. See MCL 600.715(1); *W H Froh, Inc v Domanski*, 252 Mich App 220, 229-230, 237-238; 651 NW2d 470 (2002). Similarly, the fraud claims arose out of actions that induced a Michigan resident to rely to his detriment on various misrepresentations and otherwise damaged a Michigan resident's business reputation. See MCL 600.715(2); *W H Froh, supra* at 233; see also *Calder v Jones*, 465 US 783, 789-790; 104 S Ct 1482; 79 L Ed 2d 804 (1984). Under the circumstances, appellants' arguments fall well short of presenting a compelling case that the trial court's exercise of personal jurisdiction over them was unreasonable. *W H Froh, supra*.

do not find that “the judgment or order” was tardily served, we are bound by the twenty-one day limitations set forth in MCR 7.204(A)(1), with which appellants failed to comply. We will not allow appellants to rely on procedural anomalies in an irrelevant post-judgment order to revive and prolong an already-expired time limit for claiming an appeal. Doing so would contravene the purpose of the court rule and artificially expand our jurisdiction. Therefore, we reject appellants’ claim of appeal and dismiss the appeal in its entirety.

Appeal dismissed.

/s/ Kathleen Jansen

/s/ Peter D. O’Connell

/s/ Karen M. Fort Hood