

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER LYNN DALY, a/k/a JENNIFER
LYNN WARD,

Plaintiff-Appellant,

v

MATTHEW HUBERT WARD,

Defendant-Appellee.

UNPUBLISHED
January 21, 2016

No. 328821
Jackson Circuit Court
Family Division
LC No. 14-000401-DM

Before: SHAPIRO, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Plaintiff, Jennifer Lynn Daly, appealed as of right the trial court's August 10, 2015 ex parte order granting defendant, Matthew Hubert Ward, sole physical custody of the minor child. The trial court subsequently vacated its August 10, 2015 order on August 21, 2015, in an order that also set the case for further proceedings. Daly's arguments on appeal relate solely to parenting time provisions set forth in the trial court's August 21, 2015 order. We dismiss this appeal for lack of jurisdiction.

Following their March 5, 2015 divorce, the parties had joint legal custody of the minor child; Daly had sole physical custody of the minor child, and Ward had parenting time. On August 10, 2015, Ward moved the trial court for an ex parte change of custody. That same day, the trial court entered an order granting Ward sole legal and physical custody of the minor child.

On August 14, 2015, Daly appealed that order. This Court granted Daly's motion for immediate consideration of the August 10, 2015 order. *Daly v Ward*, unpublished order of the Court of Appeals, dated August 27, 2015 (Docket No. 328821). However, on August 18, 2015, after filing her claim of appeal, Daly moved the trial court to set aside its ex parte order.¹ The

¹ We note that this motion was improper. A party may not simultaneously pursue relief from both this Court and the trial court. See MCR 7.208(A); *Wiand v Wiand*, 205 Mich App 360, 370; 522 NW2d 132 (1994).

record indicates that on August 21, 2015, the trial court vacated its August 10, 2015 order changing the child's custody and set the case for further proceedings.

In her brief on appeal, Daly acknowledged that the trial court set aside its August 10, 2015 ex parte order on her motion. She raises only arguments concerning the trial court's August 21, 2015 order.

An appeal from a final order does not bring any subsequent orders before this Court. *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989). When a party raises an issue regarding an order not considered by the party's claim of appeal, this Court does not have jurisdiction to review the issue. *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991). In this case, the trial court entered its August 21, 2015 order after Daly filed her appeal on August 14, 2015. The trial court's subsequent order vacating its decision to change custody is not part of Daly's original claim of appeal.

We conclude that we do not have jurisdiction to consider the August 21, 2015 order uninvolved in Daly's claim of appeal in this case. Even when this Court does not have subject matter jurisdiction to hear an appeal as of right, we may exercise jurisdiction to treat a party's appeal as an application for leave to appeal, grant leave, and address the issues presented on their merits. See, e.g., *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012). We decline to do so in this case, as these issues are the subject of continued litigation before the trial court. Our opinion should not be considered dispositive of any issues involving the propriety of the procedures in this case, which either party may address in a proper appeal of right.

Dismissed.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Stephen L. Borrello