STATE OF MICHIGAN

COURT OF APPEALS

DIANNA R. FRANKFURTH, as Personal Representative of the Estate of MATTHEW FRANKFURTH, Deceased,	FOR PUBLICATION August 23, 2012 9:00 a.m.
Plaintiff-Appellee,	
v	No. 305500 Wayne Circuit Court LC No. 11-003686-NH
DETROIT MEDICAL CENTER, HARPER-HUTZEL HOSPITAL, RANDY ALAN LIEBERMAN, M.D., and HEART CARE, P.C.,	
Defendants-Appellants,	
and	
KEITH ATKINSON, D.O.,	
Defendant.	

Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

RONAYNE KRAUSE, P.J.

Defendants[1] appeal by leave granted the trial court's order granting plaintiff's motion for reconsideration of the trial court's order granting defendants' motion to change venue to Oakland County. Defendants contend that because the trial court had entered an order changing the venue, it lost jurisdiction to entertain any further proceedings, including a motion for reconsideration. We agree and reverse.

We review de novo whether a court has jurisdiction. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). A jurisdictional challenge may be raised at any time. *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996). We also review de novo questions of statutory interpretation. *Grimes v Mich Dept of Transp*, 475 Mich

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[1] Because Keith Atkinson is not participating in this appeal, by "defendants" we refer only to Detroit Medical Center, Harper-Hutzel Hospital, Randy Alan Lieberman, and Heart Care P.C.

72, 76; 715 NW2d 275 (2006). "The main goal of judicial construction of a statute is to ascertain and to give effect to the intent of the Legislature." *Alvan Motor Freight*, *Inc v Dept of Treasury*, 281 Mich App 35, 39; 761 NW2d 269 (2008) (citations omitted). We apply the same principles of interpretation to Court Rules as we do to statutes. *Haliw v City of Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005). Accordingly, we begin by examining the language of either. See *id*. at 705.

We initially note that the leading case on point, and upon which defendants rely, was decided prior to the "first-out rule," MCL 7.215(J)(1), and cited a subsequently-amended statute. We therefore take heed of plaintiff's argument that it is not necessarily binding on us per se. However, we conclude that, as defendants argue, it is correct and the law would obligate us to follow its result in any event.

In *Saba v Gray*, 111 Mich App 304, 306-307; 314 NW2d 597 (1981), the defendant filed a motion to change venue from Wayne County to Monroe County; the trial court granted that motion and then entered an order over the plaintiff's objections. The plaintiff then moved for rehearing, which the trial court ultimately granted, concluding that venue was proper in Wayne County. *Id*. This Court observed that although the circuit court had subject-matter jurisdiction over the kind of action at issue, the circuit court did not have jurisdiction to exercise authority over a case pending in another circuit court. *Id*. at 308. This Court relied in part on MCL 600.1651, which, as it was then written, provided:

> An action brought in a county not designated as a proper county may nevertheless be tried therein, unless a defendant moves for a change of venue within the time and in the manner provided by court rule, in which case the court shall transfer the action to a proper county on such conditions relative to expense and costs as may be provided by court rule. The court of the county to which the transfer is made shall thereupon have full jurisdiction of the action as though the action had been originally commenced therein.

This Court noted that although the trial court's clerk may not have entirely complied with the relevant court rule's procedural dictates, the relevant court rule's purpose was to ensure that an order comporting with the judge's decision was entered, and because the judge executed and entered such an order, the order was valid. *Saba*, 111 Mich App at 310-311. Because the order was validly entered, the Wayne Circuit Court lost jurisdiction and any subsequent motions both could and must have been filed in Monroe Circuit Court. *Id*. at 311-312. This Court observed that it would be possible for the transferor court to make an order granting a change of venue effective some reasonable number of days after entry, in which case it would retain jurisdiction to entertain a motion for rehearing or reconsideration during that period, but the court did not do so there. *Id*. at 312.

Pursuant to 1986 PA 178, MCL 600.1651 now provides:

> An action brought in a county not designated as a proper county may nevertheless be tried therein, unless a defendant moves for a change of venue within the time and in the manner provided by court rule, in which case the court shall transfer the action to a proper county on such conditions relative to expense

> and costs as provided by court rule and section 1653. The court for the county to which the transfer is made shall have full jurisdiction of the action as though the action had been originally commenced therein.

The only change that is not obviously purely stylistic is that instead of transferring the action "on such conditions relative to expense and costs as may be provided by court rule," the transferring court must now do so "on such conditions relative to expense and costs as provided by court rule and section 1653."

Plaintiff argues that the new reference to MCL 600.1653 is significant. We disagree. Nothing in the amendment changes the fact that after the change of venue becomes effective, the transferee court has full jurisdiction of the action; consequently, the transferor court has none. Both versions of the statute explicitly reserve to the transferor court jurisdiction to impose "conditions relative to expense and costs." Under MCL 600.1653, in relevant part, the transferor court must impose certain expenses on the party who opposed the motion after affording that party a hearing. MCL 600.1653 makes no reference, express or implied, to jurisdiction, venue, or the relationship between a court's duty to assess costs and jurisdiction. The new reference to MCL 600.1653 is, in short, nothing more than a specification of a particular provision pursuant to which those costs should be determined. Its addition to MCL 600.1651 does not substantively change the operation of MCL 600.1651 itself.

Under GCR 404 when *Saba* was decided, and presently under MCR 2.223(B), "the court" is to order the change of venue at cost to the plaintiff, "which may include reasonable compensation for the defendant's expense, including reasonable attorney fees," and if those expenses are not paid within a particular time, the action is to "be dismissed by the court to which it was transferred." The Court Rules, therefore, have at all relevant times considered there to be a difference between essentially residual jurisdiction to evaluate the costs to be imposed for the transfer—reserved to the transferor court—and the jurisdiction to take any kind of substantive action in the matter—now only the transferee court.

Under MCR 2.119(F), a specific time period[2] is now provided within which "a motion for rehearing or reconsideration of the decision on a motion must be served and filed." MCR 2.119(F) was a new provision in 1985, but *Saba* indicates that motions for rehearing were nevertheless available at the time; and GCR 528[3] provided for relief from orders and GCR 527[4] permitted new trials or amendment of judgments, the former within a reasonable time and the latter within 20 days. More importantly, nothing in MCR 2.119(F) or any other past or present rule that we have found, suggests, or to the best of our research has ever been construed as suggesting, that it renders orders automatically ineffective until the expiration of some time period. Indeed, unless otherwise explicitly specified, orders are effective when signed by the judge. *Moriarity v Shields*, 260 Mich App 566, 570-571; 678 NW2d 642 (2004). Nothing in

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[2] 21 days as of the 2008 amendment to the Court Rule.

[3] Generally now incorporated into MCR 2.612.

[4] Generally now incorporated into MCR 2.611.

MCR 2.119(F) appears jurisdictional in nature. See *Bers v Bers*, 161 Mich App 457, 463; 411 NW2d 732 (1987).

A plain reading of MCR 2.119(F) provides a right to move for rehearing or reconsideration, but it does not reveal any requirement that orders remain pending for any period of time or that motions for reconsideration or rehearing be heard by the court that decided the original motion. This Court, shortly after MCR 2.119(F) was adopted, opined that it would be *preferable* for a motion for reconsideration to be heard by the judge who entered the original judgment or order, but not absolutely required. *Williams v Kamin*, 151 Mich App 496, 499-500; 390 NW2d 735 (1986). We also find somewhat instructive this Court's analysis of MCR 2.227(B)(1), under which after a transfer of an action for lack of jurisdiction in the original court, "[t]he action proceeds in the court to which it is transferred as if it had been originally filed there." While a substantially different situation, this language is strikingly similar to the second sentence of MCL 600.1651. After a transfer under MCR 2.227, "'the rulings of the original court become, in effect, the rulings of the new court.'" *Brooks v Mammo*, 254 Mich App 486, 497; 657 NW2d 793 (2002) (quotation omitted). We think the same result must be achieved by the similar language of MCL 600.1651.

Moreover, neither the amendment to MCL 600.1651 nor any part of MCL 600.1653 in any way suggests that the Legislature was attempting to grant the trial court jurisdictional authority to decide substantive issues like a motion for reconsideration after a change of venue. In effect, that would be a grant of permission to one court to interfere in the rulings of another. Rather, MCL 600.1653 only reflects the Legislature's decision that a trial court can decide the issue of costs after granting the change of venue, and "courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature." *Gladych v New Family Homes*, *Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003) (citations omitted). We have found no statutes or other applicable Court Rules governing motions for reconsideration. The *Saba* Court's reading of the statute is the only reading that is rationally possible: once a transfer of venue is made, the transferee court has full jurisdiction over the action and, therefore, the transferor court has none.[5] Any motion for rehearing or reconsideration would have to be heard by whichever court has jurisdiction over the action at the time the motion is brought, which, after entry of an order changing venue, would be the transferee court.

We note our agreement with *Williams*, 151 Mich App at 499-500, that the more sensible approach would be to reserve jurisdiction over motions for reconsideration or rehearing to the

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[5] While legislative bill analyses are generally not favored ways to gain insight into statutes, we note that 1986 PA 178 was a package of amendments to many statutory sections with the overall purpose of discouraging frivolous claims or defenses by imposing costs on prevailing parties. House Legislative Analysis, HB 5154, January 15, 1986. This supports our conclusion, based on a plain reading of the text of the statute, that the amendment to MCL 600.6151 was intended only to enhance the court's already-extant obligation to evaluate and impose costs on the plaintiff in the event venue is transferred.

transferor court for the time period specified by MCR 2.119(F). The judge who initially decided the motion, and who is undoubtedly the most familiar with the matter, is in the superior position to determine whether the court made a mistake. Furthermore, even if a jurisdictional transfer is legally instantaneous, as a practical matter, the physical and administrative transfer may take some time, leaving a case in functional limbo for some period. Finally, it is possible that the transferee court may, out of deference to the transferor court or for some other reason, simply not entertain a motion to reconsider a decision made by the transferor court. However, in the event the transferee court denied a party the right to have its motion for reconsideration entertained, the transferee court would be immediately subject to superintending control by this Court. MCR 7.203(C)(1). Consequently, we are not concerned that a party will be absolutely unable to have its motion for reconsideration entertained.

In summary, we believe that the *Saba* Court's analysis was correct and has not been affected by the subsequent amendment to MCL 600.1651. We note also that according to the trial court's register of actions, the entry for June 13, 2011, states "closed – motion for change of venue granted, order to follow." On that same day, there is an entry reflecting the trial court's order granting the change of venue. Nothing in the change of venue order or the lower court record indicates that the change of venue did not to take effect immediately or did not take effect until a decision about costs had been rendered. We do not doubt that this may prove to be a serious inconvenience, and so the better practice might be to make orders changing venue effective as of some reasonable time thereafter, as *Saba* suggested. *Saba*, 111Mich App at 312. But because no such delayed effect was included in the order here, the change of venue had immediate effect, and the trial court was therefore immediately divested of any jurisdiction to entertain the motion for reconsideration or any other substantive issue other than the costs and expenses relative to the transfer.

We therefore need not consider defendants' alternative argument that it was an abuse of discretion.

Reversed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello