

STATE OF MICHIGAN
COURT OF APPEALS

JOHN WETTERHOLT and CAROLYN
WETTERHOLT,

UNPUBLISHED
September 8, 1998

Plaintiffs-Appellants,

v

No. 201300
Muskegon Circuit Court
LC No. 95-333579 NO

LILLIAN VANDENBERG and JACK
VANDENBERG, d/b/a ROBBINS ROAD
DEVELOPMENT COMPANY,

Defendants-Appellees.

Before: Donald E. Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiffs seek to upset a circuit court order which summarily dismisses their premises liability action. MCR 2.116(C)(10). We dismiss for lack of jurisdiction. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court has jurisdiction of an appeal as of right from a circuit court final judgment or final order. MCR 7.203(A)(1); *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 5; 497 NW2d 514 (1993). Because plaintiffs voluntarily dismissed Jack Vandenberg from the suit on December 5, 1995 and because the October 8, 1996 opinion and order disposed of all the claims of plaintiffs against the sole remaining defendant, that being Lillian Vandenberg, the October 8, 1996 opinion and order constituted a final order for purposes of MCR 7.203(A)(1). MCR 2.602; *McCarthy & Assoc, Inc v Washburn*, 194 Mich App 676, 678-679; 488 NW2d 785 (1992). Accordingly, to perfect a timely claim of appeal, plaintiffs were required to file their claim within twenty-one days of the entry of the October 8, 1996 order. MCR 7.204(A)(1)(a). Plaintiffs did not file their claim of appeal within this twenty-one-day period. Accordingly, this Court lacks jurisdiction to entertain this appeal. MCR 7.204(A).

Plaintiffs' appeal is dismissed without prejudice to the filing of a delayed application for leave to appeal from the October 8, 1996 opinion and order within 21 days of the issuance of this opinion, the

twelve-month period provided by MCR 7.205(F)(3) being tolled while an appeal was

pending pursuant to a claim of appeal. *Riza v Niagara Machine & Tool Works, Inc*, 411 Mich 915 (1981).

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh