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STATE OF MICHIGAN

COURT OF APPEALS

VELOCITY MRS -- FUND IV, LLC,

Plaintiff-Appellee,

v

411 HELP, LLC, 4 TRANSPORT, INC, GRAVITY IMAGING, LLC, and SPINE & HEALTH, PLLC,

Defendants-Appellees,

and

HASSAN FAYAD,

Defendant,

and

4 UR RECOVERY, LLC, 411 PT, INC, and FOUR TRANSPORT, INC,

Appellants.

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August 17, 2026
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No. 371811
Wayne Circuit Court
LC No. 21-013338-CB

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

ACKERMAN, P.J. (*concurring in the judgment*).

I concur in the result reached by the majority: This Court lacks jurisdiction over this appeal because appellants filed a claim of appeal from a non-final judgment. I do not join the majority opinion solely because it acknowledges that this Court has "discretion to treat appellants' claim of appeal as a granted application for leave to appeal." I do not believe this Court properly possesses any such discretion and therefore concur only in the result.

On many occasions, this Court has asserted that it may treat a claim of appeal as an application for leave to appeal. See, e.g., *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 200

n 1; 536 NW2d 784 (1995) ("[T]his Court has no jurisdiction over the matter as an appeal of right. Nevertheless, we have elected to treat the case as if leave to appeal had been granted.") (citation omitted). The Supreme Court has also at times gestured that this option is available. See, e.g., *Varran v Granneman*, 497 Mich 928, 928 (2014) ("If the Court of Appeals determines that the . . . order is not appealable by right, it may then dismiss the defendant-appellant's claim of appeal for lack of jurisdiction, or exercise its discretion to treat the claim of appeal as an application for leave to appeal and grant the application."). But the legitimacy of this practice appears to have been taken for granted rather than analyzed. In my view, there is no sound basis—either formalistically or prudentially—for it.

Consider first the formal question. Constitutionally, this Court possesses no appellate jurisdiction beyond that provided by the Legislature.[1] See Const 1963, art 6, § 10 ("The jurisdiction of the court of appeals shall be provided by law . . . ."). Our statutory grant of jurisdiction gives us "jurisdiction on appeals from all final judgments and final orders from the circuit court, court of claims, and probate court, as those terms are defined by law and supreme court rule," and provides that such judgments and orders are "appealable as a matter of right." MCL 600.308(1). The statute thus incorporates by reference the Supreme Court's definition of final judgments and orders in MCR 7.202(6). See *Nonhuman Rights Project, Inc v DeYoung Family Zoo, LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 369247); slip op at 7.

By contrast, when a judgment or order is not final, this Court has "jurisdiction on appeal . . . only on application for leave to appeal granted by the court of appeals." MCL 600.308(2)(c). That language unmistakably restricts this Court's jurisdiction: We have appellate jurisdiction *only* when an application for leave to appeal has been made and granted. When we treat a claim of appeal as an application and grant it, we subvert the clear intention of the Legislature to limit our appellate jurisdiction. So far as I can tell, *none* of the cases in which either this Court or the Supreme Court has assumed that we can treat a claim of appeal as an application and grant it have engaged with the terms of the statutory grant of appellate jurisdiction within which we are required to operate.

There are also compelling prudential reasons to enforce our jurisdictional boundaries. Resolving a case on jurisdictional grounds will ordinarily be faster and less resource-intensive than resolving it on the merits. This Court has no shortage of work, and there is substantial value in resolving cases with straightforward jurisdictional defects on that basis. In 2025, this Court received 5,097 new filings—more than any of the preceding five years—and disposed of 4,733 cases, resulting in a 93% clearance rate. Michigan Court of Appeals, 2025 Annual Report, p 1 <https://www.courts.michigan.gov/49e82a/siteassets/reports/coa/annualreports/annualreport2025.pdf> (accessed August 11, 2026). Against that backdrop, unnecessarily reaching the merits of cases outside our appellate jurisdiction consumes judicial resources that could instead be devoted

[1] The Constitution does separately grant this Court original jurisdiction over Headlee Amendment matters. See Const 1963, art 9, § 32.

to cases we are authorized to decide. If we lack jurisdiction over a case, I see no useful purpose in manufacturing it to reach the merits.[2]

This Court's practice of overlooking jurisdictional defects also leaves the law governing our jurisdiction underdeveloped. That is precisely what occurred in *In re Investigative Subpoena*, 258 Mich App 507, 508 n 2; 671 NW2d 570 (2003), where the appellee "argue[d] that we lack jurisdiction," but "[r]ather than address the merits of th[at] issue, we treat[ed] [the] respondent's claim of appeal as an application for leave to appeal and grant[ed] it." When jurisdictional questions go unanswered, the governing law remains needlessly uncertain. That combination of uncertainty and this Court's willingness to bypass jurisdictional defects also diminishes appellees' incentive to incur the expense of filing a motion to dismiss for lack of jurisdiction under MCR 7.211(C)(2)(a).

Finally, vesting this Court with discretion to treat a claim of appeal as an application for leave creates a problematic incentive for appellants: They are given a reason to file a claim of appeal and see what happens. That practice not only encourages improper filings and the avoidable expenditure of judicial and administrative resources, but also disadvantages appellants who carefully examine the court rules, determine that they must seek leave, and conscientiously follow the prescribed procedure. An appellant who seeks leave must satisfy substantially greater front-end requirements, including filing a supporting brief, submitting specified supporting materials, and, when appealing an interlocutory order, showing how awaiting final judgment would cause substantial harm; an appellant proceeding by claim of appeal need only file a single-sheet claim of appeal to initiate the appeal. Compare MCR 7.205(B) with MCR 7.204(B). When this Court treats a claim of appeal as an application and grants it, an appellant who improperly proceeded by claim of appeal obtains the benefit of discretionary review without having satisfied those requirements. I see no reason to reward that noncompliance, especially at the expense of litigants who followed the rules. That disparity is itself a form of inequity that I do not believe this Court should foster.

For all of these reasons, I will decline, moving forward, to participate in the practice of treating a claim of appeal as an application for leave to appeal. In this case, the majority does not exercise that alleged discretion, and I therefore concur in the result. But I concur only in the result because—if we are not exercising it—I would not refer in our opinion to discretion I do not believe we properly have.

/s/ Matthew S. Ackerman

[2] Nor does dismissal necessarily foreclose an appellant's opportunity to obtain discretionary review. If this Court dismisses a timely claim of appeal for lack of jurisdiction, MCR 7.205(A)(4)(b) permits the appellant, subject to the conditions stated in the rule, to file a delayed application for leave to appeal within 21 days of the dismissal order or an order denying reconsideration.