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STATE OF MICHIGAN

COURT OF APPEALS

JOYS MALCOLM KING, JR.,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant-Appellee,

and

JOHN DOE, MICHIGAN ASSIGNED CLAIMS PLAN, and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants.

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No. 375797
Wayne Circuit Court
LC No. 22-013145-NI

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

ACKERMAN, P.J. (*concurring*).

I concur with the majority opinion because I agree that under *Stanley v Farmers Ins Exch*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 374881), we lack jurisdiction over this appeal. I write separately because I believe *Stanley* was wrongly decided and because its reasoning exposes related uncertainty in our caselaw governing this Court's appellate jurisdiction. I respectfully suggest that these issues warrant the Supreme Court's attention because that Court is uniquely positioned to resolve them.

I. *STANLEY* WAS WRONGLY DECIDED

For this Court to have jurisdiction over an appeal, the appellant must be aggrieved by the trial court's decision. See *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290-291; 715 NW2d 846 (2006). In *Stanley*, the plaintiff brought various claims against the defendant, and the trial court granted partial summary disposition in the defendant's favor. *Stanley*, ___ Mich App at ___; slip op at 1-2. The parties then entered into a stipulated order dismissing the plaintiff's remaining claims, from which she claimed an appeal. *Id*. at ___; slip op at 2. We dismissed the

appeal for lack of jurisdiction, holding that she was not aggrieved because she had consented to the final order and had not expressly reserved the right to appeal the earlier summary disposition ruling. *Id*. at ___; slip op at 2-3.

I do not believe that a party's consent to a final judgment should, by itself, resolve whether that party remains aggrieved by an earlier ruling. An aggrieved party is one who has "some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency," and, in the appellate context, one who can "demonstrate an injury arising from . . . the actions of the trial court." *Federated Ins Co*, 475 Mich at 291 (citation omitted). A party's agreement to dismiss what remains of a case does not mean that the party cannot "demonstrate an injury arising from" *prior* "actions of the trial court." Construing a consent judgment as consent not only to the matters actually agreed upon, but also to every prior adverse ruling in the case, is inconsistent with modern litigation practice and our court rules.

In 1963, the General Court Rules introduced mandatory joinder of some claims and permissive joinder of others, along with liberal provisions governing counterclaims and cross-claims. See GCR 1963, 203.1-.3. Our current rules retain that basic arrangement. MCR 2.203(A)-(D). Parties are therefore invited, and sometimes required, to bring multiple claims against an opposing party in a single civil action.

Some of those claims may be more worthwhile—whether in terms of expected monetary recovery or simply personal significance—than others, yet the rules permit, and sometimes require, all of them to be litigated together. Motion practice may then dispose of some claims while leaving others unresolved. If the claims disposed of first are the most valuable or important ones, it does not seem consistent with "the just, speedy, and economical determination of every action," MCR 1.105, to require a party to litigate lesser claims through trial merely to preserve appellate review of the rulings that matter most. If a party is prepared to abandon those remaining claims to obtain a final judgment and pursue their appeal of right, our jurisdiction should not depend on requiring the party to continue litigating claims that neither side has an economic or practical reason to pursue.

The better inquiry focuses on "what the party agreed to in the judgment or order and the injury that the party complains of on appeal." *Jaber v P & P Hospitality, LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363572); slip op at 7, quoting *Sandoval v Farmers Ins Exch*, ___ Mich App ___, ___ (2024) (Docket Nos. 361166 and 361176) (O'BRIEN, J., dissenting); slip op at 6. If an appellant does not challenge anything to which the appellant actually stipulated, but instead seeks review of an earlier adverse judicial ruling, the fact that the appellant later agreed to terminate the remaining litigation should not erase the injury caused by that earlier ruling.

Nor do I regard *Stanley*'s recognition that parties may expressly reserve appellate rights in a stipulated order as an adequate solution. Requiring an express reservation gives the opposing party an opportunity to refuse to stipulate unless the reservation is removed. That creates a "potential for gamesmanship" because "aggrieved parties might decline to agree to consent judgments or stipulated orders of dismissal as a result." *Jaber*, ___ Mich App at ___; slip op at 10, citing *Jaber v P & P Hospitality, LLC*, ___ Mich App ___, ___ n 11 (2024); slip op at 14-15 n 11. The consequence is that one party may effectively condition an efficient end to the remaining trial court litigation on the other party's surrender of their right to appellate review.

I do not see why appellate review that would otherwise be available should turn on that bargaining dynamic. A party should not lose an appeal of right simply because the party pleaded multiple claims as permitted, or even required, by MCR 2.203, or because the requested relief was sufficiently complex that the trial court could summarily dispose of the most valuable or important components while leaving less significant avenues of relief to be litigated to an unprofitable conclusion.

Stanley also appears not to have considered an important provision of our court rules. Under our summary disposition motion practice, when a motion "is denied, or if the decision [on the motion] does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment." MCR 2.116(J)(1). A party aggrieved by the court's decision then has a choice: seek immediate interlocutory review *or* "proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment." MCR 2.116(J)(2)(a), (c).

The rule thus gives an aggrieved party two appellate paths. The party may seek immediate review by application for leave to appeal, or the party may proceed to final judgment and obtain review in an appeal of right from that judgment. In the latter circumstance, the aggrievement produced by the summary disposition ruling necessarily persists through entry of final judgment; otherwise, the second option would be illusory.

Nothing in MCR 2.116(J)(2)(c) conditions that second path on the final judgment having been *adversely litigated*. The rule says that a party may proceed to "final judgment," not to a final judgment entered after trial, a contested final judgment, or a final judgment containing an express reservation of appellate rights. So long as a party remains aggrieved by the earlier summary disposition ruling, the text suggests that entry of final judgment supplies the procedural event necessary to obtain review of that earlier ruling.

Stanley produces a different result. Under its reasoning, a party aggrieved by a summary disposition ruling may initially elect the option expressly preserved by MCR 2.116(J)(2)(c)—waiting for a final judgment rather than pursuing interlocutory review—but then lose that appellate option if the final judgment happens to be stipulated. Put differently, *Stanley* concludes that the form of the eventual final judgment can extinguish the very aggrievement that MCR 2.116(J)(2) recognizes. That effectively reads into the rule an exception for stipulated final judgments that its text does not contain.

The rule can instead be read more straightforwardly. Once a party is aggrieved by a trial court's ruling on a motion for summary disposition, MCR 2.116(J)(2)(c) permits that party to preserve the issue for an appeal taken after final judgment. On that reading, the subsequent entry of a stipulated final judgment does not transform the earlier adverse judicial ruling into something to which the party consented.

That said, the Supreme Court is the best arbiter of whether MCR 2.116(J)(2) has that effect. The provisions in MCR 2.116(J)(2) were introduced in 1985 with the Michigan Court Rules to "clarify[] the appellate options of a party aggrieved by a court's decision." MCR 2.116, 419A Mich 38, 44 (staff comment). There is an argument that MCR 2.116(J)(2) should be understood as abrogating earlier caselaw that suggested—albeit *only* suggested, as Judge O'BRIEN disputed

this characterization in *Sandoval*—that a party who agrees to a consent judgment forfeits every grievance concerning *any* aspect of the trial court proceedings. See, e.g., *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958); *Chapin v Perrin*, 46 Mich 130, 131; 8 NW 721 (1881). But the Supreme Court is in the best position to decide whether Judge O'BRIEN is correct, whether MCR 2.116(J)(2)'s "clarification" has the effect that I posit it has, or whether *Stanley* was correctly decided. In the meantime, *Stanley* is a published opinion, and we are bound by it. I therefore agree that it must be applied here and that this appeal must be dismissed for lack of jurisdiction.

II. RELATED JURISDICTIONAL PROBLEMS

Stanley holds that an appellant in plaintiff's position is not aggrieved and therefore cannot maintain an appeal of right in this Court. For the reasons already explained, I disagree. But the caselaw relating to aggrieved parties and consent judgments has two additional and related problems. And because of the nature of those problems, it may be difficult, if not impossible, for a panel of this Court to create a conflict under MCR 7.215(J)(1) that would permit us to resolve them internally. Here too, Supreme Court guidance may be necessary.

Our recent decision in *Jaber* suggests that when this Court lacks jurisdiction over an appeal of right, the problem can be cured by treating the claim of appeal as an application for leave to appeal. See *Jaber*, ___ Mich App at ___; slip op at 10-11 (noting that "this Court may exercise its discretion to treat a claim of appeal as a granted application for leave to appeal for reasons of judicial economy" and that "this Court has treated a portion of a claim of appeal as a granted application for leave to appeal when considering a challenge to subject-matter jurisdiction") (cleaned up). To be sure, MCR 7.203(A) says that this Court "has jurisdiction of an appeal of right filed by an aggrieved party from" certain trial court orders, while MCR 7.203(B) says that we "may grant leave to appeal from" certain orders without repeating the requirement that the appealing party be aggrieved. But proceeding by application should not cure an absence of aggrievement.

In *Federated Ins Co*, 475 Mich at 290-292, the Supreme Court indicated that "aggrieved party" status is a *constitutional* requisite of justiciability. The Court again emphasized the relationship between aggrievement and justiciability in *League of Women Voters v Secretary of State*, 506 Mich 561, 575-576; 957 NW2d 731 (2020). Accordingly, the fact that MCR 7.203(B) does not repeat the phrase "aggrieved party" cannot mean that a person who has suffered no judicially cognizable injury may nevertheless invoke this Court's jurisdiction simply by proceeding through an application for leave. If *Jaber* is understood to suggest that an application for leave can cure a constitutional absence of aggrievement, then I believe it is mistaken.

I also question *Jaber*'s suggestion that this Court may treat a claim of appeal as an application and grant it. I have addressed that practice before and explained why I believe it is unsupported both formally and prudentially. See *Velocity MRS—Fund IV, LLC v 411 Help, LLC*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2026 (Docket

No. 371811) (ACKERMAN, P.J., concurring in the judgment).[1] But I have a few more thoughts to add to that discussion here.

When this Court was first established, the statutory statement of our jurisdiction was fairly simple. See MCL 600.308 and 600.309, as enacted by 1964 PA 281. At that time, MCL 600.308(1)-(2) gave this Court jurisdiction over certain "final judgments," while MCL 600.308(3) gave this Court jurisdiction over "[s]uch other judgments or interlocutory orders as the supreme court may by rule determine." Under MCL 600.309, appeals from final judgments, in turn, were a matter of right, while other appeals were available "by right or by leave as provided by the statute or the rules promulgated by the Supreme Court." See also *People v Brothman*, 4 Mich App 709, 713; 145 NW2d 355 (1966) ("Section 308 declares that the Court of Appeals has jurisdiction on appeals from all final judgments of the circuit court. Section 309 states that all appeals permitted by the act to the court of appeals from final judgments are by right. The logical conclusion is that all final judgments of the circuit court are appealable by right to the court of appeals.").

As this Court observed, under that arrangement, there was "no exception made by this statute for cases that originated in a lower tribunal but terminated with a final circuit court judgment." *Id*. This Court likewise exercised jurisdiction over appeals from the traffic and ordinance division of recorder's court. See *Walber v Wayne Circuit Judge*, 2 Mich App 145, 149; 138 NW2d 772 (1966). The Legislature promptly changed that arrangement. Following an amendment, this Court had jurisdiction over "final judgments from the circuit courts, court of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court." MCL 600.308(1), as amended by 1968 PA 116. Final judgments from the traffic and ordinance division of recorder's court, along with final judgments "from all other courts," were instead appealable to the circuit court, "upon which further review may be had *only upon application for leave to appeal granted by the court of appeals*." *Id*. (emphasis added). In short, 1968 PA 116 was intended to alter the jurisdictional arrangement reflected in cases such as *Brothman* and *Walber* and to restrict this Court's jurisdiction.

The scope of our jurisdiction under MCL 600.308 has evolved over the years, but the Legislature's intent to impose meaningful limits on that jurisdiction has been present ever since. Admittedly, the statutory text does not define what it means for this Court to grant leave to appeal. The precise mechanics of that requirement therefore are not prescribed by statute; what is clear is that the requirement was intended to operate as a limitation.

The Supreme Court has supplied the ordinary procedure by rule. Under MCR 7.205(E)(2)-(3), an application is submitted to a motion panel and, if granted, placed in the queue for

[1] Formally, our jurisdiction over cases requiring discretionary review exists only within the limits the Legislature has prescribed, and the statutory requirement of an "application for leave to appeal granted by the court of appeals," MCL 600.308(2)(c), should not be treated as though it were interchangeable with the filing of a claim of appeal. Prudentially, converting an improper claim of appeal to a granted application rewards parties who bypass the requirements governing discretionary review, creates poor incentives for future litigants, consumes judicial resources, and prevents the law governing our jurisdiction from developing as it should.

consideration by a merits panel. I do not suggest that this precise sequence is itself part of the sine qua non of an "application for leave to appeal granted by the court of appeals" within the meaning of the statute. In theory, I could imagine an arrangement consistent with the statutory text in which a merits panel treated a claim of appeal as an application for leave, granted it, and then *returned the case to the queue* for the merits of the appeal to be decided by a future panel. But even if such an arrangement arguably complied with the *statute*, it would create the undesirable incentives I wrote about in *Velocity MRS—Fund IV, LLC* and would still be *imprudent*.

I likewise disagree with this Court's suggestion in *Guzowski v Detroit Racing Ass'n*, 130 Mich App 322, 325; 343 NW2d 536 (1983), that "[w]hen a litigant mistakenly claims an appeal by right, . . . the nonappealing party's failure to assert the jurisdictional defect in the first responsive pleading or motion should be deemed to waive the defect." In other words, *Guzowski* said that such a defect should be "analyzed as a personal jurisdiction problem" to justify treating a claim of appeal as an application. *Id*. I disagree; in my view, these defects are clearly subject-matter jurisdiction problems.

Under the current version of MCL 600.308(1), this Court has jurisdiction over an appeal of right from a final judgment as defined in rules adopted by the Supreme Court.[2] An appellee's failure to object to an improper claim of appeal does not transform a nonfinal order into a final one; that is an objective reality that cannot be altered by the parties. The situation is therefore not analogous to personal jurisdiction, where a party can waive a jurisdictional defect by submitting to the court's authority. "Lack of subject-matter jurisdiction may be raised at any time, and parties to an action can neither confer jurisdiction by their conduct or action nor waive the defense by not raising it." *Winters v Dalton*, 207 Mich App 76, 79; 523 NW2d 636 (1994). We have consistently described this Court's jurisdiction in the same terms. See, e.g., *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004) ("The question of jurisdiction is always within the scope of this Court's review.").

These two strands of our caselaw present an unusual institutional problem. Because both relate to this Court's discretionary docket, a panel that believes the cases are wrong can generally avoid applying them without ever reaching an outcome that creates a cognizable conflict. A panel that does not believe an application for leave can cure the absence of aggrieved party status can simply decline to grant leave. Similarly, a panel that does not believe it is legitimate or prudent to treat a claim of appeal as an application and grant it can simply decline to exercise that supposed discretion. In either circumstance, the panel can avoid the disputed proposition, leaving no rule for it to follow "only because it is required to do so." MCR 7.215(J)(2).

The same problem persists at the next stage of our conflict procedure. Even if a conflict were declared, the judges of this Court would then be polled on whether to convene a special panel,

[2] It would be preferable for the Legislature to specify expressly that this Court has jurisdiction to entertain an appeal by leave where there could also have been an appeal of right. As written, MCL 600.308 can be read to suggest that the circumstances are mutually exclusive, which could in turn imply that we lack authority to grant leave when an appeal of right was available. I see little purpose in such a distinction, however, and a party who files an unnecessary application for leave when an appeal of right was available should not be punished for exercising caution.

and "[s]pecial panels may be convened to consider outcome-determinative questions only." MCR 7.215(J)(3)(a). Because a panel majority that rejects either the efficacy of applications as a means of curing the absence of aggrievement or the legitimacy of treating a claim of appeal as an application can ordinarily prevent those doctrines from becoming outcome-determinative simply by declining discretionary review, it seems inevitable that when polled, the judges of this Court would not consider the doctrine outcome-determinative.

The result is that this Court's procedures force it to shadowbox with these jurisdictional questions rather than confront them directly. The disputed propositions will therefore likely continue to appear in our caselaw while remaining unusually resistant to correction through this Court's conflict procedure. That structural difficulty provides an additional reason for Supreme Court review.

III. CONCLUSION

I agree that *Stanley* controls this case and requires dismissal, but I believe it was wrongly decided. Aggrievement should turn on the judicial injury an appellant seeks to challenge, not on the appellant's later agreement to terminate the remaining litigation. Whether changes in Michigan pleading standards or the "clarification" of an aggrieved party's appellate options in MCR 2.116(J)(2) alter the effect of earlier Supreme Court decisions such as *Dora* or *Chapin* is ultimately a question the Supreme Court is best positioned to answer.

Related questions likewise warrant the Supreme Court's attention. This Court's conflict procedure is poorly suited to resolve whether this Court may treat a claim of appeal as an application for leave to appeal and grant it, or whether doing so can cure a jurisdictional defect arising from the appellant's lack of aggrievement. Because those questions may evade resolution through this Court's ordinary mechanisms for correcting conflicting precedent, uncertainty may persist unless the Supreme Court intervenes. For the sake of clarity and certainty in the law governing our jurisdiction, I respectfully urge it to do so.

/s/ Matthew S. Ackerman