

STATE OF MICHIGAN
IN THE COURT OF APPEALS

AFSCME COUNCIL 25, AND ITS
AFFILIATED LOCALS,

Plaintiff-Appellants

Court of Appeals No. 333981
Lower Court Case No. 15-011774-

CK

v

CHARTER COUNTY OF WAYNE
and WARREN EVANS, ITS COUNTY EXECUTIVE

Defendant-Appellees

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**PLAINTIFF-APPELLANTS' RESPONSE TO DEFENDANT-APPELLEESS' MOTION
TO DISMISS FOR UNTIMELINESS, OR IN THE ALTERNATIVE, TO AFFIRM THE
TRIAL COURT'S GRANT FOR SUMMARY DISPOSITION.**

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ORAL ARGUMENT REQUESTED

Now comes Plaintiff-Appellants, AFSCME Council 25 and Its Affiliated Local 3317, (hereinafter called Plaintiff) by and through its attorney, Jamil Akhtar P.C, by Jamil Akhtar and in response to the Defendant-Appellees' (hereinafter called Defendant) Motion to Dismiss for Untimeliness or, in the Alternative Affirm the Trial Court's Grant of Summary Disposition, brought under the provision of MVR 7.203(A)(1), 7.202(6)(a)(i), 7.205(E)(2) and MCR 7.211(C)(6) answers as follows:

1. In answer to paragraph 1, Plaintiff denies the allegations contained therein as being not true. The chain of events which lead to this appeal are as follows:

- a. The Court entered its Decision and Order granting the Defendants' Motion for Summary Disposition on May 6, 2016. (Exhibit 1) All Exhibits are annexed to Plaintiff's Brief.
- b. On May 27, 2016, Plaintiff filed its Motion for Rehearing and/or Reconsideration. (Exhibit 2)
- c. On June 21, 2016, the Court issued a Praecipe Order denying Plaintiff's Motion for Rehearing and/or Reconsideration but did not state that "this Order resolves the last pending claim and closes this case." (MCR 2.602(A)(3) (Exhibit 3)
- d. On June 27, 2016 Plaintiff presented a Final Order under the provisions of MCR 2.603(B)(3) (7 Day Rule) to the Court; the Defendants never filed an objection to the motion and

therefore, the motion was properly before the Court. (Exhibit 4)

e. On July 5, 2016 the Court entered the Final Order in this matter; the Order provided that: "This Order resolves the last pending claim and closes this case." (Exhibit 5)

2. In answer to paragraph 2, Plaintiff denies the allegations contained therein as being not true. Plaintiff once again points out to this Honorable Court that pursuant to MCR 2.602(B)(3)(a) that the Defendants never objected to the 7 Day Order presented to the Court. (Exhibit 4 and 5). The Defendants are now precluded from making any argument that the appeal was not timely filed. The appeal was filed on July 12, 2016 well within the 21 days of the Final Order being entered by the Court. (Exhibit 6)

3. In answer to paragraph 3, Plaintiff once again denies the allegations contained therein as being not true. The Final Appealable Order was entered by the Court on July 5, 2016 and a timely appeal was filed on July 21, 2016. (Exhibit 6)

4. In answer to paragraph 4, Plaintiff denies the allegations contained therein as being not true. This Court has jurisdiction over Plaintiff's Claim of Appeal, and the arguments of the defendant are frivolous. Plaintiff further points out to this Honorable Court that pursuant to MCR 7.204(A)(1)(b), that an appeal from an order denying a Motion for Rehearing or Reconsideration must be filed within 21 days of the Order being entered.

5. In answer to paragraph 5, Plaintiff denies the allegations contained therein as being not true.

6. In answer to paragraph 6, Plaintiff denies the allegations contained therein as being not true; Plaintiff will more fully argue this issue as otherwise set out in its Brief in Opposition to the Defendant's Motion to Dismiss.

WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS that this Honorable Court deny the Plaintiff's Motion in its entirety; make a determination that the Motion is either frivolous in nature or not brought in good faith and that the appropriate sanction be awarded.

Dated: August 15, 2016

Respectfully submitted,

/S/ Jamil Akhtar
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2016, I electronically filed the Plaintiff-Appellant's (1) Response to Defendant-Appellees' Motion to Dismiss For Untimeliness and (2) Response to Motion for Immediate Consideration and (3) Brief in Opposition to Motion to Dismiss for Untimeliness, et al and this Certificate of Service, with the Clerk of the Court using the TrueFiling electronic filing system which will send notification of such filing to all parties of record.

/s/Jamil Akhtar

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