

STATE OF MICHIGAN
COURT OF APPEALS

GWENDOLYN PARKER and MELVIN
PARKER,

UNPUBLISHED
November 10, 2009

Plaintiffs-Appellees,

v

No. 286004
Oakland Circuit Court
LC No. 2006-079509-CK

HOME SOLUTIONS OF MICHIGAN, INC.,
MICHIGAN HOME SOLUTIONS, and BARTON
GREENBERG,

Defendants,

and

PATRICIA GITLER,

Defendant-Appellant.

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

MEMORANDUM.

Defendant Patricia Gitler appeals as of right from a post-judgment order awarding sanctions to plaintiffs under MCR 2.114(E). We affirm.

On appeal, defendant raises several issues relating to the trial court's entry of a default judgment and the denial of her motion to set the default judgment aside. In her June 12, 2008, claim of appeal, defendant purported to claim an appeal from both the July 11, 2007, default judgment and the May 28, 2008, order awarding sanctions. This Court subsequently dismissed defendant's claim of appeal "as to the July 11, 2007 default judgment . . . because it was not filed within 21 days of the August 9, 2007, order denying the motion to set aside the default judgment." *Parker v Home Solutions of Michigan, Inc*, unpublished order of the Court of Appeals, entered July 30, 2008 (Docket No. 286004). Thus, defendant's issues related to the default judgment are not properly before this Court.

The only order that this Court has jurisdiction to consider in this appeal is the May 28, 2008, order awarding sanctions. However, defendant does not raise any issue on appeal with respect to that order and, therefore, has abandoned the issue. *Shember v Univ of Michigan Medical Ctr*, 280 Mich App 309, 315; 760 NW2d 699 (2008), lv held in abeyance ___ Mich ___;

762 NW2d 523 (2009). Accordingly, there is nothing left for this Court to review and defendant is not entitled to appellate relief.

Plaintiffs argue that defendant's appeal is frivolous, entitling them to sanctions. MCR 7.216(C)(1) authorizes sanctions for a vexatious appeal. However, MCR 7.211(C)(8) provides that a request for damages under MCR 7.216(C) must be contained in a motion, and a request contained in any other pleading, including a brief filed under MCR 7.212, does not constitute a motion under this rule. Such a motion may be filed "at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious." MCR 7.211(C)(8). Accordingly, we deny plaintiffs' request for sanctions, without prejudice to plaintiffs filing an appropriate motion under MCR 7.211(C)(8).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Donald S. Owens