

STATE OF MICHIGAN  
COURT OF APPEALS

In Re JAMES SHAKE,

Plaintiff-Appellant,

COA Case No. 364967

v.

EXECUTIVE COURT ADMINISTRATOR OF THE  
WAYNE COUNTY CIRCUIT COURT,

Related to LCC No. 19-016384-NZ  
Hon. Kevin J. Cox

Defendant-Appellee.

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**PLAINTIFF-APPELLANT'S BRIEF IN SUPPORT OF COMPLAINT**

**\*ORAL ARGUMENT NOT REQUESTED\***

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
INDEX OF AUTHORITIES.....	3
STATEMENT OF THE BASIS OF JURISDICTION .....	4
QUESTIONS INVOLVED.....	5
INTRODUCTION .....	6
STATEMENT OF FACTS .....	6
ARGUMENT .....	8
CONCLUSION AND REQUEST FOR RELIEF.....	10
CERTIFICATE OF WORD COUNT .....	10
CERTIFICATE OF SERVICE .....	11

## INDEX OF AUTHORITIES

### Cases

<i>Barham v Workers' Compensation Appeal Board</i> , 184 Mich App 121 (1990).....	9
<i>Lapeer County Clerk v Lapeer Circuit Judges</i> , 465 Mich 559 (2002) .....	9

### Rules

MCR 2.227(B)(1).....	7
MCR 3.302(D) .....	4, 9
MCR 7.203(C) .....	4, 8

### Constitutional Provisions

Const 1963, Art VI, Sec 4.....	8
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## **STATEMENT OF THE BASIS OF JURISDICTION**

This court has jurisdiction for superintending control over the Circuit Court pursuant to MCR 3.302(D) and MCR 7.203(C).

## **QUESTIONS INVOLVED**

This is not an appeal, and therefore there is no question involved other than: Should the lower court do its duty and transfer the case as ordered by the lower court judge?

## **INTRODUCTION**

Plaintiff-Appellant had filed an action in the Wayne County Circuit Court. After a hearing on jurisdiction, the Circuit Court determined that this was properly a matter for the District Court, as the amount in controversy did not meet the minimum requirements for the Circuit Court. The Circuit Court ordered the clerk of the court to prepare the case records and transfer them to the 36<sup>th</sup> District Court on June 17, 2020.

Plaintiff-Appellant tried several times to pay the required fee and get the case to proceed in the District Court, but was told repeatedly that the file had not been received. Numerous calls and emails to the Circuit Court failed to resolve the situation. Upon information and belief, the case file appears to have been lost. Plaintiff-Appellant moved the Circuit Court for a writ of mandamus or superintending control to locate the file and complete the transfer, but nothing happened.

Plaintiff-Appellant has no other legal avenue to resolve this situation. An appeal would not have been proper, even if it had been timely filed, as no final order resolving the matter has been entered. Plaintiff-Appellant cannot start anew and file in the District Court because he is outside the statute of limitations. For Plaintiff's case to proceed, it appears that his case must be transferred from the Circuit Court and continue as originally filed.

In his Complaint, Plaintiff-Appellee stated that he was not filing a brief in this matter because there were no substantive legal issues involved. However, the court rules require such a brief. The filing of this brief supersedes that statement made in the Complaint.

## **STATEMENT OF FACTS**

This is an action made necessary by the lower court's failure to transfer or locate a file. On or about December 6, 2019, Plaintiff-Appellant filed this lawsuit against his previous employer, the United Auto Workers, alleging claims of conversion, fraud, and breach of contract. He sought

trebled monetary damages and declaratory relief. This case was filed in the Wayne County Circuit, and titled *Shake v UAW*, 19-016384-NZ.

On or about April 10, 2020, the Circuit Court ordered the parties to brief the question of jurisdiction. On June 17, 2020, the Circuit Court ordered that the matter was properly in a district court based on the amount in controversy, and ordered the case be transferred to the 36th District Court. Exhibit A.<sup>1</sup>

To comply with MCR 2.227(B)(1), on June 30, 2020, Plaintiff-Appellant submitted the required filing fee to the District Court, along with a letter and a copy of the Circuit Court's June 17, 2020, Order. Exhibit B. Upon information and belief, at the time Plaintiff-Appellant submitted his filing fee, the 36<sup>th</sup> District Court was substantially shut down and/or operating in a much-reduced capacity due to COVID-19. Plaintiff-Appellant's counsel sent multiple emails and called the 36<sup>th</sup> District Court multiple times to inquire about the status of the case's transfer. These calls and emails were not returned.

On September 14, 2020, the 36<sup>th</sup> District Court returned Plaintiff-Appellant's check for the filing fee, and explained that it had not received the file from the 36<sup>th</sup> Circuit. Exhibit C.

Plaintiff-Appellant submitted another letter to the 36<sup>th</sup> District Court on November 11, 2020. On January 8, 2021, Plaintiff-Appellant received an email from the 36<sup>th</sup> District Court explaining that it had still not received the file from the 3<sup>rd</sup> Circuit. Exhibit D.

During this period Plaintiff-Appellant also contacted the 3<sup>rd</sup> Circuit via email and telephone, but was unable to receive information on the location of this file or its status.

On or about March 31, 2021, Plaintiff-Appellant again contacted the 3<sup>rd</sup> Circuit by phone, and was told that an email had been sent to a clerk to send the file to the 36<sup>th</sup> District Court. On

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<sup>1</sup> All Exhibits in this Brief are the same as those in the Complaint filed in this matter.

April 2, 2021, in response to the above phone call, Plaintiff-Appellant again sent a letter and check for the filing fee to the 36<sup>th</sup> District Court. Exhibit E. On April 20, 2021, the 36<sup>th</sup> District Court returned Plaintiff-Appellant's check with a letter stating, "Your documents are being returned for the following reason(s). ... Other: Missing Complete Case." Exhibit F.

On April 26, 2021, Plaintiff-Appellant filed an "Ex Parte Motion for Mandamus or Superintending Control" with the Circuit Court requesting that the file be located and transferred. Plaintiff-Appellant was unable to secure a hearing date until November 5, 2021. The matter was heard by the Circuit Court without the participation of the parties or an oral argument. Per the Circuit Court's docket, the matter was heard: "Motion Hearing (9:00 AM) (Judicial Officer Hegarty, Charles S.) Result: Reviewed by Court." Exhibit G.

To date, no further action has been taken, and Plaintiff-Appellant has been unable to continue this matter in the District Court.

### **ARGUMENT**

The Michigan Constitution vests our Supreme Court with power over the lower courts of this state. "[T]he supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court." Const 1963, Art VI, Sec 4. Pursuant to this constitutional power, the Supreme Court has promulgated rules regarding superintending control, MCR 3.302(D) and 7.203(C):

(C) Extraordinary Writs, Original Actions, and Enforcement Actions. The court may entertain an action for:

- (1) superintending control over a lower court or a tribunal immediately below it arising out of an action or proceeding which, when concluded, would result in an order appealable to the Court of Appeals.

MCR 7.203(C).



Our court opinions have shed additional light on the use of the superintending control powers. “The process of seeking an order of superintending control is not an appeal but rather is an original civil action designed to order a defendant to perform a clear legal duty.” *Barham v Workers’ Compensation Appeal Board*, 184 Mich App 121, 127 (1990). “An order of superintending control is not available to a plaintiff who has another adequate remedy by way of an appeal.” *Id.* “When an appeal in the Court of Appeals or the circuit court is available, it must be utilized and a complaint for superintending control must be dismissed.” *Id.* “A superintending control order enforces the superintending power of a court over lower courts or tribunals.” *Id.*, at page 128. “Furthermore, MCR 3.302(D)(1) prescribes that the Supreme Court, Court of Appeals and circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals. MCR 7.203(C)(1) specifically states that the Court of Appeals may entertain an action for superintending control over a lower court or a tribunal immediately below it arising out of an action or proceeding which, when concluded, would result in an order appealable to the Court of Appeals.” *Id.*, at 129.

The opinions have provided the scope for when the proper superintending court is the Supreme Court, or the Court of Appeals: “In sum, then, this [Supreme] Court has general system-wide superintending control over the lower courts, whereas, in contrast, the Court of Appeals only has superintending control in an actual case.” *Lapeer County Clerk v Lapeer Circuit Judges*, 465 Mich 559, 569 (2002).

The Circuit Court clerk has a clear legal duty to transfer this case. Plaintiff-Appellant has no other remedy available and cannot appeal the failure to transfer or the loss of the court file. This Court of Appeals is the proper court to exercise superintending control over the Circuit Court – the lower court under its authority.

## CONCLUSION AND REQUEST FOR RELIEF

While Plaintiff-Appellant is mindful of the difficulties that the lower courts have had in dealing with the Covid-19 pandemic, this transfer must be resolved, and Plaintiff should be allowed to proceed with his case.

Plaintiff-Appellant requests that this court exercise superintending control over the Circuit Court and order that the case file be found and transferred. If the file cannot be found, then Plaintiff-Appellant requests an order that the file be recreated from the motions and pleadings as originally filed, and transferred to the District Court. Plaintiff-Appellant requests any order or writ that accomplishes the task of completing the transfer as ordered by the Circuit Court.

Respectfully submitted,

Dated: February 21, 2023

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## CERTIFICATE OF WORD COUNT

Pursuant to MCR 7.212(B)(3), the above-signed certifies that this brief's word count is approximately 1,531 words, as counted by the word-processing system used.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this brief and the related complaint on Zenell B. Brown, Esq., the Executive Court Administrator of the Wayne County Court, via USPS First Class Certified Mail on February 21, 2023, at 711 CAYMC, Two Woodward Avenue, Detroit, MI 48226.

The undersigned also served John R. Canzano, Esq., the attorney for the Defendant in the related lower court matter, via the electronic MiFile TrueFiling system.

Dated: February 21, 2023

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