

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0530

DANIEL K. O'CONNELL AND VALERY A.  
O'CONNELL AND on behalf of themselves  
as members of Glastonbury Landowners  
Association,

Plaintiffs and Appellants,

v.

GLASTONBURY LANDOWNERS ASSOCIATION,  
INC. and current GLASTONBURY LANDOWNERS  
BOARD OF DIRECTORS,

Defendants and Appellees.

**FILED**

OCT 26 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORDER

On September 12, 2016, Plaintiffs and Appellants Daniel and Valery O'Connell, appearing as self-represented litigants, filed a notice of appeal seeking relief from District Court orders including an order quashing discovery, a protective order, and an order granting summary judgment to the defendants. Through counsel, Appellees Glastonbury Landowners Association, Inc. (GLA), have moved for dismissal of this appeal in reliance upon M. R. App. P. 6(5)(a) and 6(5)(e), which lists orders and judgments considered not final and not appealable. GLA states that this appeal is not ripe because GLA filed a counterclaim in April 2013, seeking to enjoin the O'Connells "from filing further vexatious lawsuits without prior court approval." GLA explains that this claim is still pending with the Park County District Court, which the court recognized in its June 1, 2016 Order granting GLA's motion for summary judgment and dismissing all of the O'Connells' claims. The GLA points out that the court stated: "The GLA's counterclaim remains to be litigated."

In response, the O'Connells request the right to proceed with this appeal because "extraordinary circumstances and gross mis-justice entitle them to file an out-of-time appeal." In their response, titled Appellants' Petition Brief, they raise several arguments concerning the merit of GLA's counterclaim, an order of sanctions against them, and the

underlying proceedings. The O'Connells' argument in opposition to GLA's motion is found in their interpretation of M. R. App. P. 4(6), the rule concerning an out-of-time appeal. The O'Connells construe this rule as a means to bypass the finality requirement of Rule 6(3) so as to allow them an immediate "out-of-time" appeal from the court's orders. GLA has filed a memorandum in opposition to O'Connells' Petition Brief.

The purpose of an out-of-time appeal is to bring an otherwise late-filed appeal of a final judgment within this Court's jurisdiction. This rule does not apply to the O'Connells' situation here because they timely—though prematurely—filed a notice of appeal. The issue here is not timeliness but rather is whether the O'Connells are appealing a final judgment. They are not.

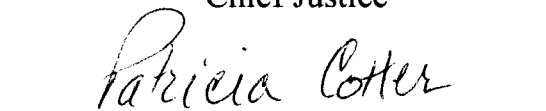
M. R. App. P. 4(1)(a) provides that "[a] final judgment conclusively determines the rights of the parties and settles all claims in controversy . . . , including any necessary determination of the amount of costs and attorney fees to be awarded, or sanction imposed." As GLA correctly points out, all of the claims for relief have not been adjudicated as required for final judgment on appeal. M. R. App. P. 6(5)(a). Because judgment will not be final here until the District Court resolves the counterclaim and enters a final judgment, the O'Connells' notice of appeal is premature. Following the entry of the court's final judgment the O'Connells will have the opportunity to pursue an appeal. Accordingly,

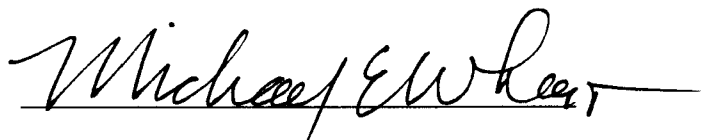
IT IS ORDERED that the motion to dismiss appeal is GRANTED, and this appeal is DISMISSED without prejudice.

The Clerk is directed to provide a copy of this Order to counsel of record, to Daniel K. O'Connell, and to Valery A. O'Connell.

DATED this 25<sup>th</sup> day of October, 2016.

  
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Chief Justice

  
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Patricia Cotter

  
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Michael E. Wheeler

*David K.*  
*Jim Rice*  
Justices