STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

WHITE ACRES, LLC, *et al.*,

Plaintiffs,

vs.

SHUR-GREEN FARMS, LLC, *et al.*,

Defendants.
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Case No. 15-07614-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING MOTION TO AMEND
ORDER OF DISMISSAL PURSUANT TO MCR 2.612

Occasionally, a motion sets off a battle between a judge's head and heart. This is just such a motion. In October of 2019, after protracted negotiations among a host of parties, the Court and the attorneys placed on the record a comprehensive settlement of these consolidated cases. Central to the settlement was an agreement among the remaining parties that there would be an appeal of an opinion and order from October 10, 2017, awarding summary disposition under MCR 2.116(C)(10) to Defendant Zoetis of Delaware, Inc. ("Zoetis"). Somehow, though, the remaining parties neglected to include a right to appeal in the stipulation and order of dismissal that they submitted and the Court entered on June 24, 2020. Thus, Michigan Court of Appeals Chief Judge Christopher Murray issued an order on July 21, 2020, dismissing all pending appeals against Zoetis for lack of jurisdiction. In response, the disappointed appellants returned to this Court, seeking entry of an amended stipulation and order of dismissal designed to cure the jurisdictional impediment to the appeals. The Court has sympathy for the disappointed appellants, but the Court lacks leeway under MCR 2.612 to enter the amended stipulation and order of dismissal, so the Court must regretfully deny the relief sought.

The attorneys for the various parties placed the settlement on the record in two sessions – one on October 11, 2019, and another on October 29, 2019. At the latter session, several attorneys made mention of future appellate rights, and the Court explained: "As far as I understand, nobody is giving up any appellate rights against Zoetis[.]" See Hearing Tr (Oct. 29, 2019) at 11. The Court concluded its acceptance of the settlement by stating its intention to "wait for somebody to submit a dismissal or a judgment or some document that indicates that the last pending claim is resolved and the case is closed." Id. at 16. Then the Court expressly referred to preserving appellate rights before closing the proceedings on the record:

> [W]hat I'm trying to do now is make sure that you submit something that you believe accurately and adequately preserves your appellate rights against Zoetis. I don't want to foul it up, okay?

Id. at 17. Nevertheless, when the parties submitted the "Stipulation and Order of Dismissal" months later, that document included no reference to appellate rights. Trusting the parties, the Court signed and entered the "Stipulation and Order of Dismissal" on June 24, 2020. But because that document took the form of a stipulated order of dismissal that included no reservation of the right to appeal any ruling, Chief Judge Murray dismissed all appeals on July 21, 2020, for lack of jurisdiction.

After dismissal of the appeals, the parties returned to this Court with a proposed "Amended Stipulation and Order of Dismissal" that expressly reserves their appellate rights against Zoetis. But Zoetis objected to the parties' request to amend the stipulation and order of dismissal, insisting that the parties' reliance upon MCR 2.612 for such relief is misplaced. During a conference call with the attorneys for the parties (including Zoetis), the Court called for submission of briefs followed by oral argument. Now, based upon the record developed by the parties, the Court must determine whether it has the authority under MCR 2.612 to enter the "Amended Stipulation and Order of Dismissal."

The parties have cited three provisions in MCR 2.612 to support their motion for amendment of the original "Stipulation and Order of Dismissal" entered on June 24, 2020, but the first provision they have cited – MCR 2.612(A) addressing "clerical mistakes" – manifestly has no application here. As our Court of Appeals has explained, the purpose of the clerical-mistake rule "is to make the lower court record and judgment accurately reflect what was done and decided at the trial level." Stokus v The Walled Lake School District Board of Education, 101 Mich App 431, 433 (1980). The parties in this case were granted absolute discretion to draft and submit a proposed judgment reflecting their settlement. They took months to agree upon the terms of their "Stipulation and Order of Dismissal," which the Court signed and entered without alteration as soon as it was submitted by counsel for the parties. Although the Court and the parties discussed reservation of appellate rights against Zoetis, the Court cautioned the parties to preserve their appellate rights in the final order and then afforded them the opportunity to do so in drafting the final order. The Court cannot invoke MCR 2.612(A) governing "clerical errors" to rewrite the final order drafted by the parties simply because that order failed to accomplish the result that the parties intended.[1]

The second provision in MCR 2.612 cited by the parties addresses "[m]istake, inadvertence, surprise, or excusable neglect." See MCR 2.612(C)(1)(a). Unfortunately for the parties, however, that provision "was not 'designed to relieve counsel of ill-advised or careless decisions.'" Limbach v Oakland County Board of County Road Commissioners, 226 Mich App 389, 393 (1997), quoting

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[1] Nor should the Court shoulder the responsibility for failing to add a reservation of appellate rights to the "Stipulation and Order of Dismissal" that the parties signed and submitted. A proposed final judgment submitted by the parties often rests upon developments unknown to the Court. In this case, the Court had no way to know whether Zoetis – like Heritage Interactive Services, LLC – had made a payment to other parties to extinguish their appellate rights. See Hearing Tr (Oct 29, 2019) at 10 (explaining payment to extinguish appellate rights).

Lark v The Detroit Edison Co, 99 Mich App 280, 283 (1980). Nor may the parties turn to the catch-all language in MCR 2.612(C)(1)(f), which simply permits the Court to rely upon "[a]ny other reason justifying relief from the operation of the judgment." As our Court of Appeals has explained, under the catch-all provision, "generally 'relief is to be granted only where the judgment was obtained by the improper conduct of the party in whose favor it was rendered.'" Rose v Rose, 289 Mich App 45, 54 (2010). Here, no such "'improper conduct'" can be attributed to Zoetis. And, more broadly, the Court realizes that "[w]ell-settled policy considerations favoring finality of judgments circumscribe relief under MCR 2.612(C)(1)." Id. at 58. If the parties had promptly returned for correction of their original "Stipulation and Order of Dismissal," the Court would be more inclined to grant relief than in the present circumstances, where the parties have returned for assistance after having their appeals dismissed for lack of jurisdiction.[2] To provide relief to the parties under MCR 2.612 at this late date would upset the finality furnished to Zoetis by our Court of Appeals. That the Court will not do, so the parties' motion to amend the order of dismissal under MCR 2.612 shall be denied.

IT IS SO ORDERED.

Dated: August 11, 2020

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

[2] Nor does the Court find authority for relief in Field Enterprises v Department of Treasury, 184 Mich App 151 (1990), where the parties resurrected a dismissed appeal by "fil[ing] an amended 'consent' judgment wherein their right to appeal was preserved." Id. at 153. Here, in contrast, Zoetis has not joined the parties in submitting the "Amended Stipulation and Order of Dismissal." Instead, Zoetis has strenuously opposed the entry of the "Amended Stipulation and Order of Dismissal," so this case differs from Field Enterprises in an especially significant respect.