

Order

Michigan Supreme Court
Lansing, Michigan

June 15, 2022

Bridget M. McCormack,
Chief Justice

162537-8

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

BOBBIE JO KOOMAN, Personal Representative
of the ESTATE OF ROBERT J. ROMIG, and
TERRY ROMIG,
Plaintiffs-Appellants,

v

SC: 162537
COA: 347653
Ottawa CC: 18-005518-NO

BOULDER BLUFF CONDOMINIUMS UNITS
73-123, 125-146, INC., d/b/a BOULDER BLUFF
ESTATES CONDOMINIUM ASSOCIATION,
and GEROW MANAGEMENT COMPANY, INC.,
Defendants-Appellees.

BOBBIE JO KOOMAN, Personal Representative
of the ESTATE OF ROBERT J. ROMIG, and
TERRY ROMIG,
Plaintiffs-Appellants,

v

SC: 162538
COA: 348254
Ottawa CC: 18-005518-NO

BOULDER BLUFF CONDOMINIUMS UNITS
73-123, 125-146, INC., d/b/a BOULDER BLUFF
ESTATES CONDOMINIUM ASSOCIATION,
“BOULDER BLUFF ESTATES CONDOMINIUM
ASSOCIATION,” and GEROW MANAGEMENT
COMPANY, INC.,
Defendants-Appellees.

By order of March 11, 2022, while retaining jurisdiction, this Court remanded this case to the Ottawa Circuit Court to permit the defendants-appellees to raise the argument that the state court proceedings in this matter are barred by collateral estoppel. We ordered that court to submit its findings on this issue to the Clerk of the Supreme Court within 56 days, and it did so on April 29, 2022. Despite this Court’s order retaining

jurisdiction and requesting the submission of findings, the circuit court purported to issue an opinion and order granting partial summary disposition to the defendants pursuant to MCR 2.116(C)(7). The grant of summary disposition was improper because this Court retained jurisdiction. We therefore VACATE the last paragraph of the circuit court's April 29, 2022 opinion and order. The remainder of the opinion and order is treated as the submission of findings.

On order of the Court, the application for leave to appeal the October 15, 2020 judgment of the Court of Appeals is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we VACATE the October 15, 2020 judgment of the Court of Appeals, and we REMAND this case to that court to address the issue of whether the state court proceedings in this matter are barred by collateral estoppel, taking into consideration the Ottawa Circuit Court's submission of findings. The appellants' motion for supplemental briefing is DENIED.

We do not retain jurisdiction.

VIVIANO, J. (*concurring*).

I agree with the Court's vacatur of the Court of Appeals' judgment and remand for consideration of whether collateral estoppel bars these proceedings. If these proceedings are barred, then the statutory interpretation issue before the Court will have become moot. Generally, when a case has become moot on appeal, the reviewing court must then determine whether to vacate a lower court decision such as the Court of Appeals' judgment here. See *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 589 (2020). Although vacatur is the usual practice, it is not automatic and instead “turns on ‘the conditions and circumstances of the particular case.’” *Id.* at 589 (citations omitted). In other words, in some moot cases a lower court decision will not be vacated but instead will be allowed to stand. By vacating the Court of Appeals judgment *now*, before a determination of mootness is made, we have preempted the usual vacatur analysis. Ordinarily, absent the need for further factual development or findings, I would not favor this course in such circumstances.¹ I do not object to this outcome in the present case because it appears that vacatur would be appropriate here in the event that the lower court determines the case is moot. See *Alvarez v Smith*, 558 US 87, 95-97,

¹ I supported the earlier remand to the trial court in this case because further factual development was necessary and, in any event, we retained jurisdiction. See generally *Manguriu v Lynch*, 794 F3d 119, 122 (CA 1, 2015) (“Where pertinent facts are in dispute or additional factfinding is needed to determine whether the case has actually become moot, remand is required. . . . So, too, changed circumstances that are either disputed or unclear may require remand.”).

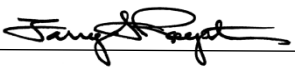
(2007). It is also worth noting that nothing in the majority's order takes a position on the Court of Appeals' prior decision in this case. Thus, although the majority glosses over this point, if the Court of Appeals on remand holds that the proceedings are not barred by collateral estoppel, it may reinstate its October 15, 2020 decision. I therefore concur.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 15, 2022


Clerk