**STATE OF MICHIGAN**
IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN
48TH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF MICHIGAN,

Appellee,

v.

KATHERINE HENRY

Appellant.

Court Address and Phone:
Allegan County Building
113 Chestnut Street
Allegan, MI 49010
(269) 673-0300

Assigned to Circuit Judge
**Hon. Margaret Zuzich Bakker**
P31035

Case No. 21-64029-AR

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Myrene Koch (P62570)
*Prosecuting Attorney*
113 Chestnut St
Allegan, MI 49010

Katherine Henry
*Appellant in Pro Per*
7194 Michael Dr
Hudsonville, MI 49426

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## ORDER

Present: The Honorable MARGARET ZUZICH BAKKER
Circuit Judge

Defendant-Appellant is charged with a single count of trespass. The District Court held a hearing on Defendant's motion for summary disposition on February 4, 2021. An order denying Defendant's motion was entered on February 5, 2021. Defendant filed an interlocutory appeal which was denied April 7, 2021. Defendant filed her second appeal on April 8, 2021. Plaintiff-Appellee filed a Special Motion to Dismiss Application for Leave to Appeal on April 9, 2021. Defendant states her first motion for leave to appeal was on substantive due process claims and her current appeal concerns procedural due process claims but does not state a valid legal reason to discriminate between substantive due process and procedural due process in the filing of an appeal or in the timing of filing an appeal.

Plaintiff-Appellee asks Defendant-Appellant's appeal be denied stating that the appeal is not timely as it relates to the hearing on February 4, 2021 or events prior to that. Plaintiff-Appellee also avers that the Defendant's current pleading violates MCR 7.212(B) by exceeding the 50 page limit. Defendant claims her appeal is timely because the court has a continuing obligation to hold hearings publicly and to provide reasonable accommodation for disabilities. Also she argues the denial of public hearings, denial of counsel, and denial of in-person hearings are structural errors that require reversal, even if the appeal is after trial.

The Court denies the appeal due to lack of compliance with MCR 7.105(A). This rule states:

> An application for leave to appeal must be filed with the clerk of the Circuit Court within:
> (1) 21 days or the time allowed by statute after entry of the judgment, order, or decision appealed, or
> (2) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the judgment, order, or decision if the motion was filed within:
> (a) the initial 21-day period, or
> (b) such further time as the trial court or agency may have allowed during that 21-day period

Appellant/Defendant did not file a statement claiming why she was not timely and should be allowed to file late under MCR 7.105(G)(1) which states:

> When an appeal of right or an application for leave was not timely filed, the appellant may file an application as prescribed under subrule (B) accompanied by a statement of facts explaining the delay. The answer may challenge the claimed reasons for the delay. The circuit court may consider the length of and the reasons for the delay in deciding whether to grant the application.

Additionally her arguments are not concise as required under MCR 7.105(B). Defendant's brief is 54 pages long with a 7 page index for a total of 61 pages. The brief filed is over the page limit.

Pursuant to MCR 7.105, Defendant's appeal is not timely filed. The majority of Appellant's claims involve her arraignment, pretrial, or the order denying her motion for summary judgment. All of these hearings were in February 2021. Her filing of appeal is outside the 21 day appeal period. She does not admit her appeal is untimely nor does she include a statement of facts explaining the reasoning for the delay in filing nor has she moved the Court to an untimely pleading pursuant to the rules.

Although the reason for denial of this appeal is based on Defendant/Appellant's failure to comply with the Michigan Court Rules, the Court does not believe her other claims would have survived on appeal even if she had complied with the Michigan Court Rules.
Defendant/Appellant's claim of denial of legal counsel has no basis in the record. Henry was asked about legal counsel during her arraignment and replied that she was an attorney and did not correct the Court when it stated she waived her right to counsel. Present at the hearing was attorney Todd who did not file an appearance at or before her hearing on February 4 and neither of them identified him as representing her. Defendant identified him as there to help her with lip reading. She never requested standby counsel in writing or on the record. In addition, Henry was offered reasonable accommodation for her hearing disability. She was offered a hearing assistance devise and refused to use it or even attempt to use it.

As to the issue of public access, the record clearly states that the public had access via the District Court's YouTube channel. Ms. Henry has not provided this Court with any legal basis that would provide her with standing on the issue of public access.

Henry also cites that during the February 4 hearing in District Court she orally requested the Court redact her personal information from her ticket. She says the Court did not make a ruling on the record. She also states earlier in her brief the Court refused to redact her personal identifying information on her ticket and in the record. She has not filed a written motion for this request.

Under MCR 1.109(D)(10) a party has to file a written request for information to be redacted.

"**(c)** Redacting Personal Identifying Information.**(i)** Protected personal identifying information contained in a document and filed with the court shall be redacted by the clerk of the court on written request by the person to whom it applies." And
**"(ii)** Personal identifying information that is not protected as identified in this rule may also be redacted or made confidential or nonpublic. The party or person whose personal identifying information is in a public document filed with the court may file an ex parte motion asking the court to direct the clerk to redact the information from that document or to make the information either confidential or nonpublic. The court may schedule a hearing on the motion at its discretion. The court shall enter such an order if the party or person's privacy interest outweighs the public's interest in the information. The motion shall be on a form approved by the state court administrative office, must specify the personal identifying information to be redacted, and shall be maintained in the case file as a nonpublic document."

Clearly, this complaint would fail for lack of compliance with the Court rule cited above.

And lastly, Henry complains that she has been denied face to face confrontation of witnesses. However, there is nothing in the record to support her claim. There is no record of a trial, nor any record that a future trial would be conducted virtually as opposed to in person. Such a claim is untimely and not supported by the record. The record supports that the District Court has complied with MCR 6.006 which allows for two-way interactive video technology:

> Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, waivers and adjournments of preliminary examinations, and hearings on post judgment motions to amend restitution.

As stated previously, the Appellant's appeal is denied for lack of compliance with the Michigan Court Rules.

**IT IS SO ORDERED AND ADJUDGED.**

**This is a final order.**

Date: 4/20/21

Margaret Zuzich Bakker, Circuit Judge

**PROOF OF SERVICE**

I certify that on this date the above parties were personally served, or mailed by ordinary mail, a copy of this ORDER.

Date

Signature