MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

GRANDPARENTS' VISITATION CASE BEFORE MICHIGAN SUPREME COURT IN ORAL ARGUMENTS NEXT WEEK

LANSING, MI, March 6, 2003 – Twelve cases, including a dispute over Michigan's grandparents' visitation law, will come before the Michigan Supreme Court next week for oral argument.

At issue in *DeRose* v. *DeRose* is whether a state law that allows judges to order grandparenting time, based on a "best interests of the child" standard, is constitutional. The Michigan Court of Appeals has ruled that the statute is unconstitutional, saying that the law usurps a parent's right to decide whether grandparent visitation is in a child's best interests.

Also before the Court is *In re C.A.W., Minor* (*FIA* v. *Heier*). In that case, the parental rights of a child's mother and legal father were terminated. The child's possible biological father sought to intervene in the proceedings, and the Michigan Court of Appeals, in a 2-1 decision, ruled that he had standing to do so. That ruling is now contested by the state Family Independence Agency.

The Court will also hear *People* v. *Cress*, in which a defendant convicted of felony murder seeks a new trial on the basis of newly-discovered evidence. In another case, *Maskery* v. *Board of Regents, University of Michigan*, the plaintiffs seek damages for injuries that one of them suffered in a slip and fall on steps at the entrance to the Betsy Barbour Residence Hall.

Of the eight remaining cases before the Court, five are civil cases and three concern criminal law matters.

Court will be held **March 11, 12, and 13** in the Supreme Court Room on the sixth floor of the Michigan Hall of Justice. Court will convene at **9:30 a.m.** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the*

significance of their cases. For further details about these cases, please contact the attorneys.)

Tuesday, March 11, 2003
Morning session

WILKIE, et al. v. AUTO-OWNERS INSURANCE COMPANY (case no. 119295)
Attorney for plaintiff Kay Wilkie, personal representative for the Estate of Paul K. Wilkie:

Thomas A. Doyle/517.323.7366
Attorney for plaintiff Janna Lee Frank: Jonathan E. Maire/517.487.8300
Attorneys for defendant Auto-Owners Insurance Company: Donald S. Young and Lori M. Silsbury/517.374.9150
At issue: The case involves an interpretation of insurance policy language concerning underinsured motorist coverage. Is there a role for insureds' "reasonable expectations" in applying the policy language?
Background: Plaintiff Janna Frank was seriously injured, and her passenger Paul Wilkie was killed, when a vehicle driven by Stephen Ward collided with the vehicle Frank was driving. Ward was also killed in the collision. Ward's vehicle was insured by Citizens Insurance Company under a policy that had a $50,000 single limit of liability. The car that Frank drove was owned by Wilkie's mother Kay Wilkie and was insured by Auto-Owners Insurance Company. The Auto-Owners policy provided underinsured motorist coverage with policy limits of $100,000 per person, not to exceed a total of $300,000 per occurrence. Kay Wilkie, as personal representative of her son's estate, and Janna Frank split the $50,000 provided under the Citizens Insurance policy. They also sued Auto-Owners, seeking underinsured motorist insurance benefits. Auto-Owners contended that it owed each plaintiff $50,000 (the $100,000 Auto-Owners policy limit minus the $50,000 provided by Ward's policy). Under the policy's "limit of liability" provision, Auto-Owners argued, the plaintiffs could only receive the amount over "the total limits of all bodily injury liability bonds and policies available to the owner or operator of the underinsured automobile." The policy further states that the "Limit of Liability is not increased because of the number of ... claims made or suits brought [or] persons injured..." Accordingly, the $50,000 Ward policy limit should be set off against the policy limit for each plaintiff, Auto-Owners argued. Wilkie and Frank asserted that Auto-Owners owed each of them $75,000 (the $100,000 policy limit minus the $25,000 each actually received under Ward's policy). Clinton County Circuit Judge Jeffrey L. Martlew ruled in favor of the plaintiffs, finding that only the amount each actually received, and not the entire $50,000 policy limit, should be set off against the amount each plaintiff could receive under the Auto-Owners policy. The Court of Appeals affirmed in a published opinion. The court held that Auto-Owner's interpretation was inconsistent with "reasonable expectations" of coverage. The court held that the "reasonable expectation would be that the insured has contracted to have the amount of the policy limits available to him, whether paid by the underinsured motorist, or by the insured's policy." Auto-Owners appeals.

QUALITY PRODUCTS AND CONCEPTS COMPANY v. NAGEL PRECISION, INC.

(case no. 119219)
Attorney for plaintiff Quality Products: Stephen K. Valentine, Jr./248.851.3010
Attorney for defendant Nagel Precision: Richard J. Landau/734.214.7669
At issue: The plaintiff, a manufacturer's representative, solicited business from two machine tool suppliers expressly excluded from his territory under his contract with the defendant. He claims that the defendant knew of his actions but kept silent. Does the defendant's alleged silence waive a contract provision stating that the contract could only be modified in writing?
Background: Plaintiff Quality Products and its principal, Kenneth Barton, entered into a contract with Nagel Precision in 1993. The contact expressly stated that Quality Products would not receive commissions for sales to machine tool suppliers. However, Barton did have contact with two machine tool suppliers in 1994, and he sought commissions from Nagel Precision for one supplier's order. The plaintiff claims that Nagel Precision was aware of his activities with the two suppliers, but remained silent. Nagel Precision's CEO disputes this, stating that he told Barton that Nagel Precision would not pay commission on sales to the two suppliers. The plaintiff filed suit in Wayne County Circuit Court. Nagel Precision moved for summary disposition based on the contract provision excluding commissions for sales to machine tool suppliers. Judge Brian Zahra, then on the Wayne County Circuit Court, granted Nagel Precision's motion and dismissed the suit. He found that the plaintiff had tried to unilaterally modify the agreement by soliciting sales from suppliers outside his territory as defined by the contract. While there was evidence that Nagel Precision was aware of the plaintiff's activities, there was no evidence that it encouraged the plaintiff or consented to alter the contract, the judge found. Ultimately, the Court of Appeals reversed in an unpublished per curiam opinion. The Court of Appeals concluded that there was sufficient evidence to raise a fact issue whether defendant's silence in the face of Barton's activity in, and reporting to defendant concerning, procuring the turnkey business was a waiver of the provision requiring modification by the parties' agreement in writing. Nagel Precision appeals.

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION v. STATE HOUSING DEVELOPMENT AUTHORITY (case no. 120410-11)
Attorney for plaintiff Parkwood Limited Dividend Housing Association: Richard Bisio/248.740.5698
Attorneys for defendant State Housing Development Authority: Thomas L. Casey, Terrence P. Grady and Matthew H. Rick/517.373.1130
Co-counsel for defendant State Housing Development Authority: Carl H. von Ende, Frederick A. Acomb and Robert E. Gilbert/313.963.6420
At issue: Does the Court of Claims, which hears claims against the state, have jurisdiction to decide a claim of entitlement to escrowed funds – or is the court's jurisdiction limited to claims for monetary damages?
Background: State law establishes the Court of Claims and gives that court exclusive jurisdiction to "hear and determine all claims and demands, liquidated and unliquidated, *ex contractu* and *ex delicto*, against the state and any of its departments, commissions, boards, institutions, arms or agencies." (MCL 600.6419(1)(a)) Parkwood Limited Dividend Housing is a limited partnership that owns and operates a multi-unit apartment complex. The apartment complex was financed by a mortgage between the Parkwood and the State Housing Development

Authority (MSHDA) in 1973. The parties also executed a "regulatory agreement" requiring Parkwood to deposit funds into several reserve accounts. In 1998, Parkwood informed MSHDA that it intended to prepay its mortgage. Parkwood asked whether the amounts in the reserve accounts would be credited toward the amount due under the mortgage or paid to Parkwood after satisfaction of the mortgage. MSHDA responded, citing state law and the parties' agreements, that it would retain the money in three of the reserve accounts as "surplus." Parkwood did not prepay the mortgage, but sued MSHDA in Wayne County Circuit Court, seeking a declaratory judgment on the issue of which party would be entitled to the reserve accounts. Parkwood's complaint did not request money damages. Wayne County Circuit Judge Kathleen I. MacDonald dismissed the case, ruling that the Court of Claims had exclusive subject-matter jurisdiction over the dispute. Parkwood also sued in the Court of Claims; Court of Claims Judge Lawrence M. Glazer ruled in MSHDA's favor on the issue of the reserve accounts. Parkwood appealed both the circuit court and Court of Claims rulings. In an unpublished 2-1 decision, the Court of Appeals reversed. The Court of Appeals majority held that the Court of Claims did not have subject matter jurisdiction over the case because the dispute did not include a claim for money damages. MSHDA appeals.

Afternoon session

PEOPLE v. MENDOZA (case no. 120630)
Prosecuting attorneys: Timothy A. Baughman and Deborah K. Blair/313.833.2888
Attorney for defendant Richard Mendoza: Linda D. Ashford/313.237.6316
Attorney for amicus curiae Criminal Defense Attorneys of Michigan: Peter J. Van Hoek/313.256.9833
Attorneys for amicus curiae Prosecuting Attorneys Association of Michigan: Kathryn G. Barnes and John S. Pallas/248.858.0656
At issue: Did the trial judge err by refusing to give an instruction on involuntary manslaughter in this second-degree murder case?
Background: Richard Mendoza was arrested and charged for his part in the shooting death of a marijuana dealer named William Stockdale. Ivan Tims, another man charged in the shooting, was tried separately. Tims and Mendoza allegedly came to Stockdale in order to buy marijuana. Mendoza claimed that Tims was the one who shot Stockdale. Mendoza also wanted to present an alternative theory. Mendoza claimed that, after he entered the house where Stockdale was, he heard tussling and turned to see the Stockdale and Tims struggling over a gun. As the two fought, Mendoza asserted, he heard shots and then watched as Stockdale's nephew produced a silver revolver, which he pointed toward both Tims and Stockdale. According to Mendoza, as he attempted to knock the revolver away, Stockdale's nephew pulled the trigger, shooting Stockdale. Based on this theory, Mendoza asked the trial court to instruct the jury on the lesser offense of involuntary manslaughter. Wayne County Circuit Judge Sean F. Cox refused to give the instruction, indicating that he did not think that the record supported such an instruction. The jury convicted Mendoza of second-degree murder. The Court of Appeals reversed Mendoza's conviction in an unpublished per curiam opinion. The trial court erred when it refused to instruct on involuntary manslaughter because Mendoza's account, "if believed by the jury, could support a finding that the victim's killing was an unintended death, without malice, and not caused by

any action of defendant naturally tending to cause death," the Court of Appeals said. The prosecution appeals.

MASKERY v. BOARD OF REGENTS, UNIVERSITY OF MICHIGAN (case no. 121338)
Attorney for plaintiffs Ann E. Maskery and Robert Maskery: Robert Maskery/248.681.9027
Attorneys for defendant Board of Regents: Charles J. Hurbis and Mary F. Clinton/734.761.8358; Thomas J. Blessing/734.764.0304
At issue: Is a university dormitory that is locked 24 hours a day a "public building" for purposes of governmental immunity? Under Michigan's governmental immunity statute, governmental agencies may be sued for injuries "resulting from a dangerous or defective condition of a public building."
Background: Ann E. Maskery slipped and fell while on the steps at the entrance to the Betsy Barbour Residence Hall at the University of Michigan. Maskery was using a courtesy telephone to gain entry to the locked residence hall. The plaintiffs, Ann and Robert Maskery, filed a lawsuit in the Court of Claims against the University of Michigan Board of Regents. The plaintiffs argued that the residence hall and its adjacent premises were open for use by members of the general public, and was a public building. Accordingly, the university was not immune from liability, the plaintiffs asserted. The university contended that the public building exception did not apply because the building was a private residence hall leased to students enrolled at the University of Michigan for their personal use, and not a building open to the use of the general public. The Court of Claims held that the public building exception to governmental immunity did not apply to the residence hall, and granted summary disposition for the university. In an unpublished per curiam opinion, the Court of Appeals ultimately ruled that the residence hall was a public building. The university appeals.

Wednesday, March 12, 2003
Morning session

PEOPLE v. CRESS (case no. 121189)
Prosecuting attorneys: Nancy Mullett and Jennifer Kay Clark/269.969.6980
Attorney for defendant Thomas D. Cress: David A. Moran/313.256.9833
Attorneys for amicus curiae Prosecuting Attorneys Association of Michigan: James J. Gregart and Judith B. Ketchum/269.383.8900
Attorney for amicus curiae National Association of Criminal Defense Lawyers Criminal Defense Attorneys of Michigan: Bridget M. McCormack/734.763.4319
At issue: Should a new murder trial be granted on the basis of newly-discovered evidence? Another person has confessed to the murder for which the defendant was convicted.
Background: The body of 17-year-old Patricia Rosansky was found on April 6, 1983, in a wooded ravine in Bedford Township near Battle Creek. Thomas D. Cress was charged with her murder. In 1985, a jury convicted Cress of felony murder. Cress is currently serving a mandatory life term in prison. In 1997, Cress moved for new trial on the basis of newly discovered evidence. He claimed that a man named Michael Ronning was the real killer and that Ronning had confessed. Cress also contended that some prosecution witnesses had recanted their

testimony and that another prosecution witness had admitted testifying falsely. He also asserted that the prosecution had destroyed physical evidence from the murder scene. In December 1997, Calhoun County Circuit Judge Allen L. Garbrecht granted Cress' request for a new trial, but reversed in March 1999, stating that Ronning was "a false confessor." The Court of Appeals reversed in a 2-1 published opinion. The majority found in part that the trial judge erred by finding that the newly discovered evidence of Ronning's confession did not make a different result probable on retrial. The trial judge also erred by declining to consider the prosecution's alleged bad-faith destruction of evidence, the majority said. The prosecution appeals.

PEOPLE v. GOTTSCHALK AND SILAGY (case no. 121833-4)
Special prosecutor: Maureen Holahan/989.362.4747
Attorneys for defendants Fred Gottschalk and Jeffrey Silagy: Michael G. Woodworth and Phillip M. Stevens/517.886.7176
Attorneys for amicus curiae Attorney General and Prosecuting Attorneys Association of Michigan: Thomas L. Casey and Robert Ianni/517.241.6565**;** David L. Morse/517.546.1850
At issue: Does a special prosecutor have authority to initiate a criminal prosecution - or only to try a case started by the elected prosecutor?
Background: Jeffrey Silagy, a Department of Natural Resources employee, signed a complaint against Steven Freund, stating that Steven Freund filled or caused a wetland to be filled without the appropriate permit. In response, Freund filed a complaint alleging that Silagy committed perjury. After investigating the case, the Iosco County prosecutor decided not to pursue the perjury charge. The prosecutor concluded, however, that a charge pursuant to MCL 752.11 — a misdemeanor offense based on a public official's failure to uphold or enforce the law — might be appropriate. The prosecutor also determined that he and his office had a conflict of interest because there was a possibility he could be called as a witness. At the prosecutor's request, the circuit court appointed a special prosecutor to review the incident report and determine whether a warrant should be issued. The special prosecutor investigated and initiated charges of conspiracy and obstruction of justice against Silagy and his supervisor, Fred Gottschalk. After evidence was given at the preliminary examination, the district court bound the defendants over on charges of conspiracy and obstruction of justice. The defendants challenged the special prosecutor's authority to bring the criminal case and also challenged the sufficiency of the evidence. Iosco County Circuit Judge J. Richard Ernst rejected the various challenges of the defendants. The Court of Appeals reversed and dismissed the charges in an unpublished per curiam opinion. The court ruled that the special prosecutor did not have the authority to investigate and initiate criminal charges. The prosecution appeals. The prosecution argues in part that the applicable statute, MCL 49.160, was amended in 1978 to confer all the powers of a prosecutor upon a special prosecutor. The defendants contend in part that the request for a special prosecutor was limited to the special prosecutor reviewing the complaint and deciding whether a warrant should be issued.
NORTHVILLE TOWNSHIP, et al. v. NORTHVILLE PUBLIC SCHOOLS, et al. (case no. 120213)
Attorney for intervening plaintiffs: Susan K. Friedlaender/248.566.8448
Attorneys for defendants Northville Public Schools, Superintendent of Northville Public Schools, and Northville Board of Education: Robert A. Lusk, Lincoln G. Herweyer and

Kristin R. Binkley/313.965.7610
Attorneys for amicus curiae Michigan Association of School Boards: Anthony A. Derezinski and Brad A. Banasik/517.327.5929
Attorney for amicus curiae Michigan Environmental Council, Tip of the MITT Watershed Council and Michigan Land Use Institute: John F. Rohe/231.347.7327
Attorney for amicus curiae Michigan Townships Association and Michigan Municipal League: John H. Bauckham/616.382.4500
At issue: Where a local school district chooses a site for a new high school, is the district exempt from the township's zoning and land-sue authority?
Background: Northville Public Schools planned to build a new high school on a 48-acre site in Northville Charter Township. The township contended that the district's site plan failed to meet the minimum requirements of the township's land use and development regulations. The school district asserted that it was not bound by local zoning ordinances. The township then sued to enjoin the construction. Local residents, some of whose properties abut the school site, intervened as plaintiffs. The plaintiffs sought summary disposition and a declaration that the school construction project was subject to the township's zoning regulations. But Wayne County Circuit Judge Kathleen MacDonald concluded that Michigan's Revised School Code, which gives the Superintendent of Public Instruction sole and exclusive jurisdiction over approval of plans for school building construction, preempts any local zoning. The township ultimately settled the case; the intervening plaintiffs appealed. The Court of Appeals affirmed in a published opinion. The intervening plaintiffs appeal, arguing in part that the School Code does not preclude all local zoning regulation. They also argue that applying the statute to pre-empt all local zoning regulation is an unconstitutional delegation of legislative authority to the Superintendent of Public Instruction.

Afternoon session

AMCO BUILDERS & DEVELOPERS, INC. v. TEAM ACE JOINT VENTURE, et al. (case no. 120459)
Attorney for plaintiff AMCO Builders & Developers, Inc.: Rene S. Roupinian/212.603.6441
Attorney for defendant Intervale Excavating & Demolition, Inc.: Ernest R. Bazzana/313.965.3900
At issue: The trial judge entered a default judgment for the plaintiff after the defendants failed to produce a person for deposition as ordered by the court. Did the trial judge abuse his discretion?
Background: AMCO Builders & Developers, Inc. sued Team Ace Joint Venture for breach of contract and tortious interference with a contractual relationship. AMCO alleged that Team Ace Joint Venture attempted to circumvent AMCO's contract by dealing with Clarence Carson, a principal of defendant Intervale Excavating and Demolition, Inc. At a settlement conference, counsel for AMCO informed the trial judge that, due to defendants' lack of cooperation, AMCO had been unsuccessful in its attempts to take Carson's deposition. Wayne County Circuit Judge John A. Murphy ordered the defendants to produce Carson for deposition within thirty days. The judge's order provided that failure to produce Carson for deposition would subject defendants to a motion for a default judgment. When the defendants failed to comply with the order, AMCO filed a motion for entry of default judgment against the defendants. At a

December 23 hearing on the motion, defense counsel stated that he had been unable to reach Carson due to the holidays. Defense counsel also said that he had been caring for his dying son. The attorney admitted that he had "not participated" in discovery and that he had not "been available to properly represent" the defendants, but said that he had restored communications with his clients. Ultimately, the judge entered a default judgment in favor of AMCO. The defendants retained new counsel and moved to set aside the default judgment, arguing that the parties did not intentionally ignore the court's order. In an affidavit attached to the motion, Carson stated that had not been apprised by defendants' former counsel that the court had ordered his deposition within 30 days. Carson also stated he was not aware that his failure to be deposed within that time would result in entry of default and default judgment. The court denied the motion to set aside the default judgment because the defendants' prior attorney had agreed to produce Carson for deposition as required by the order. In a 2-1 unpublished per curiam opinion, the Court of Appeals reversed and remanded the case to the trial court. AMCO appeals.

Thursday, March 13, 2003
Morning session only

DeROSE v. DeROSE (case no. 121246)
Attorney for plaintiff Theresa O'Day DeRose (a.k.a. Theresa Seymour): Sarah J. Biggs/734.281.3666
Attorneys for defendant Catherine DeRose: Richard S. Victor, Daniel R. Victor and Scott Bassett/248.646.7177
Attorneys for amicus curiae American Civil Liberties Union Fund of Michigan: Jay D. Kaplan, Michael Steinberg and Kary L. Moss/313.578.6812; Robert A. Sedler/313.577.3968
Attorneys for amicus curiae Michigan Coalition Against Domestic and Sexual Violence: Anne Argiroff, Judith A. Curtis and Lynelle Morgan/248.615.4493
Attorney for amicus curiae Majority Position of the Family Law Section of the State Bar of Michigan: Karen S. Sendelbach/734.994-3000
Attorney of amicus curiae Minority Position of the Family Law Section of the State Bar of Michigan: John F. Mills/248.642.0333
At issue: Is Michigan's grandparent visitation law unconstitutional?
Background: The case involves a dispute over grandparent visitation between Theresa Seymour (formerly Theresa DeRose), mother of Shaun Ashleigh DeRose, and Catherine DeRose, Shaun's paternal grandmother. Shaun's father, Joseph DeRose, pled guilty in 1997 to first-degree criminal sexual conduct involving Theresa's daughter from a prior marriage. He was sentenced to 12 to 20 years. Theresa filed for divorce and was awarded sole legal and physical custody of Shaun. Catherine filed a petition for visitation. After an investigation, the Wayne County Friend of the Court recommended that Catherine have two hours of supervised visitation with Shaun on alternate Saturdays, with the visitation increasing to four hours after an eight-month period. Catherine was prohibited from discussing with Shaun matters related to Joseph's incarceration. Wayne County Circuit Judge Mary Waterstone, over Theresa's objection, issued an order incorporating the Friend of the Court's recommendation. Ultimately, Theresa appealed the order to the Michigan Court of Appeals. The appellate panel, in a 2-1 decision, vacated the circuit

court's order. In a published opinion, the majority said that Michigan's grandparenting time statute, MCL 722.27b, is unconstitutional. In so ruling, the majority cited the U.S. Supreme Court's decision in Troxel v Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). In Troxel, the U.S. Supreme Court struck down a Washington statute which allowed any person at any time to petition for visitation with a child based on the "best interest of the child." The Michigan Court of Appeals majority further said that the statute's "best interest of the child" standard does not provide adequate guidance for trial judges who must rule on petitions for grandparenting time, particularly because the standard does not afford any deference to the custodial parent's decision. Catherine DeRose appeals.

JONES v. DEPARTMENT OF CORRECTIONS (case no. 120991)
Attorney for plaintiff James Jones: Bridget McCormack/734.763.4319
Attorney for defendant Department of Corrections: Thomas L. Casey and Jason Julian/517.335.7021
At issue: Michigan's parole statute states that a parole violation hearing must be held within 45 days of the day when the parolee has been returned or is available to be returned to a state correctional facility. In this case, the parolee was arraigned within 39 days, and he contested only one of the charges. However, a hearing on the third charge was not held until 66 days after charges were brought. Must the parole violation charges be dismissed because the hearing was not held within 45 days?
Background: James Jones was convicted of a controlled substance offense and sentenced to 6 to 20 years in prison. He was released on parole on October 2, 1998. On March 11, 2001, Jones was arrested by the Ypsilanti Police following a traffic stop made when the police saw a passenger throw a bottle from the car. While the passenger was outside the vehicle talking to the police, Jones sped away and eluded the officers. He was later arrested and charged with obstruction of justice. On March 12, three charges of parole violation were brought against Jones. The charges were that Jones failed to report to his parole agent on February 13, tested positive for cocaine on February 6, and tried to elude the police on March 11. Thirty-nine days later, Jones was arraigned on those charges. He did not contest the first two, but denied the third. A formal hearing was held on May 16, 66 days after the charges were filed. The hearing officer dismissed the third count because the hearing was more than 45 days after plaintiff was available for return to the Department of Corrections. Ultimately, however, the hearing officer recommended revocation of parole based on the first two counts. The officer recommended that Jones continue to be incarcerated for 18 months before further parole consideration. The Parole Board adopted that recommendation. The Court of Appeals reversed and ordered Jones discharged from prison, stating that the parole violation charges must be dismissed because the hearing was not held within 45 days. The Department of Corrections appeals.

IN RE C.A.W., MINOR (FIA v. HEIER) (case no. 122790)
Attorney for C.A.W.: Jacqueline G. Nanni/586.771.5900
Attorney for petitioner Family Independence Agency: Thomas L. Casey and Chantal B. Fennessey/313.456.0280
Attorney for respondent Larry Heier: Ronald H. Greve/586.777.0202
Attorneys for amicus curiae Children's Law Section of the State Bar of Michigan: Charlotte

L. Allen/989.832.9096; William E. Ladd/313.967.9142**;** Paul Holland/734.763.5000

At issue: Where a child has a legal father, may the child's putative biological father intervene in proceedings to terminate the legal parents' parental rights?

Background: In July 1998, the FIA Child Protective Services (CPS) filed a petition asking the Macomb County Circuit Court Family Division to take temporary custody of three children. The children's mother, Deborah Weber, was married to Robert Rivard who "is the legal father of all three children," the FIA petition stated. The petition also stated that Larry Heier was the alleged biological father of one of the children, C.A.W. At a hearing, the mother testified that Heier was not C.A.W.'s father, and Rivard testified that he was the father. Based on this testimony, the circuit court amended the petition to delete any reference to Heier, although the petition continued to note that there was some question whether Rivard was the biological father of any or all of the children. In November 2000, on CPS's petition, the circuit court terminated Weber's and Rivard's parental rights to all three children. Heier filed a motion to intervene in January 2001. He claimed to be C.A.W.'s biological father and argued that he had not been served properly with notice of the termination proceedings. Macomb County Circuit Family Division Judge Pamela Gilbert O'Sullivan denied Heier's motion, finding that he lacked standing to intervene. The Court of Appeals reversed in a published opinion. A majority of the panel stated that, because Heier's identity as the alleged biological father was at issue from the beginning, he had standing to intervene in the child protective proceeding. The FIA appeals.

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