STATE OF MICHIGAN
IN THE SUPREME COURT

On appeal from the Court of Appeals
before Fitzgerald, P.J., and Meter and Boonstra, JJ.

ROBERT PORTER and
JUDITH PORTER,

Plaintiffs-Appellants,

v.

CHRISTINA MARIE HILL,
f/k/a CHRISTINA MARIE PORTER,

Defendant-Appellee
/

Michigan Supreme Court No.:
147333

Court of Appeals No.:
306562

Saginaw Circuit Court No:
11-012799-DZ

147333 Supp
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SUPPLEMENTAL BRIEF ON APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

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STATEMENT OF QUESTIONS PRESENTED
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Q: Whether the parents of a man whose parental rights to his minor children were terminated prior to his death have standing to seek grandparenting time with the children under the Child Custody Act, MCL 722.21 et seq.,

Appellants answer: Yes, standing exists

Q: Whether the term "natural parent" in MCL 722.22(d) and (g)[1] is the equivalent of "legal parent" or "biological parent."

Appellants answer: Biological parent by dictionary definition

[1] In this Court's order dated October 25, 2013, the order inaccurately references MCL 722.22(d) and (g), the two subsections in the *predecessor* statute defining grandparent and parent. The effective definitions of grandparent and parent currently reside at MCL 722.22(e) and (h) respectively.

INTRODUCTION

This is a matter involving the standing of natural grandparents to seek[2] an order of grandparenting time under the CHILD CUSTODY ACT OF 1970 (hereinafter the "Act"). Leave has been sought to appeal the Court of Appeals' erroneous majority decision misinterpreting (i.e. substituting) the term "natural" under the Act to mean 'legal' when defining parent and grandparent under the Act. This Court has ordered oral argument on "whether to grant the application or take other action." *Porter v Hill*, order of the Supreme Court, Oct 25, 2013 (Docket No. 147333). A failure to correct the Court of Appeals' decision on this issue affects thousands of natural grandparents throughout the state given this erroneous decision was published, and having stare decisis effect.[3] Additionally, the misinterpretation will reduce the number of eligible grandparents the Legislature intended to grant the right to *request* an order for grandparenting time.[4] As the trial court judge himself noted, "*I hope the Court of Appeals reverses me on this issue...*" *Porter v Hill*, __ Mich App __; __ NW2d __ (2013) (Boonstra, J., dissenting), slip dissenting op at 3. The trial court judge noted the significance when further stating "*it's something the appellate courts should decide.*" Trial Transcript, Sept 6, 2011, p. 11. Because the issue is so narrow and the error of the lower courts so contrary to the

[2] The issue presented in the pending application is not whether the Appellants are fit grandparents or if it is in the best interests of these grandchildren to see their grandparents. Rather, the issue present is one solely of standing—whether Appellants are proper parties to even request adjudication their request for an order of grandparenting time.

[3] A published decision of the Court of Appeals has precedential effect under the rule of stare decisis and is binding on all lower courts. MCR 7.215(C)(2); *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004).

[4] Attached are statistics from the Michigan Department of Human Services on the number of Michigan parental terminations by court order arranged by county in 2012. By the Court of Appeals' majority opinion, this putative class of more than 1,200 grandparents (652 terminations x 2 natural parents of terminated parent) would be precluded, regardless of the best interests of the grandchild, from even *seeking* an order of grandparenting time upon the happening of any of the triggering events of MCL 722.27b(1)(a)-(f).

universal rules of statutory interpretation, this Court is requested to, in lieu of granting leave to appeal, vacate the majority decision of the Court of Appeal, adopt the dissent's well-written opinion as this Court's own, and remand this matter back the trial court for additional adjudication on whether an entry of an order for grandparenting time is in the best interests of the grandchildren consistent with MCL 722.27b. In the alternative, leave remains requested by Appellants, the grandparents of two grandchildren, for full briefing and presentation to the Supreme Court.

ARGUMENT

Michigan's CHILD CUSTODY ACT OF 1970 is undisputedly the exclusive means for pursuing orders of parenting time. *Van v Zahorik*, 460 Mich 320, 328; 597 NW2d 15 (1999). The question of standing under this Act, as a legal doctrine, does not address the substantive merits of the parties' claims but rather questions whether a litigant "is a proper party to request adjudication of a particular issue." *Lansing Schs Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 355; 792 NW2d 686 (2010). Absent standing, a court will not even hear such petitions—the doors to the courthouse are closed. See *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 658; 684 NW2d 800 (2004)(Weaver, J., concurring in result only). In 2010, Michigan returned to its prior standing jurisprudence of fulfilling standing where "there is a legal cause of action." *Lansing Schs, supra* at 372.

The Act explicitly provides a cause of action for these Appellant grandparents seeking a grandparenting time order in two ways pertinent for this case. It is undisputed the grandchildrens' biological father, Russell Porter, is the biological son of Appellants;

he is deceased by suicide; and that prior to his death he divorced Appellee Christina Hill, the biological mother and sole legal parent of Appellants' grandchildren.[5]

Given such, Appellants are entitled to seek a grandparenting order as the "child's parents are divorced" as well as "[t]he child's parent who is a child of the grandparents is deceased." MCL 722.27b(1)(b),(c). To reach the contrary opposition result demanded by the Act, Appellee and the lower courts took the term "parents" and "grandparents" and imposed a new definition, rather than using the explicit definition provided by Section 2 of the Act.

"Parent" and "grandparent" in the Act are terms of art—words or phrases having a particular meaning in a particular context. *People v Law*, 459 Mich 419, 425 fn 8; 591 NW2d 20 (1999); see also MCL 8.3a. "'Grandparent' means a natural or adoptive parent of a child's natural or adoptive parent." MCL 722.22(e) (emphasis added). "'Parent' means the natural or adoptive parent of a child." MCL 722.22(h) (emphasis added). The simple questions in this case are whether Appellants are each the "natural... parent of a child's natural... parent" or whether the "child's [natural] parents are divorced." MCL 722.27b(1)(b)-(c). The terms 'parent' and 'grandparent' are *explicitly* defined, for purposes of this Act, as those persons having a "natural" rather than 'legal' relationship to the child.[6] Natural, in turn, is undefined by the Act. Instead of looking to a plain and

[5] It is also undisputed that Russell Porter had suffered, prior to his death, the termination of his legal parental rights (but not obligations) over Appellant's grandchildren. But as this brief shows, the explicit definitions of parent and grandparent look only to natural or adoptive relationships. As such, the prior termination of parental rights is irrelevant as to standing.

[6] This is where Appellee's previous argument runs afoul of the rules of statutory interpretation. Appellee correctly recites MCL 722.27b(1)(c) (see *Appellee's Response to Petition for Leave to Appeal*, p. 4) but then fails incorporate the Legislature's specific definitions of 'parent' and 'grandparent' contained in the definition section, MCL 722.22, of the Act into the operative language of 722.27b(1)(c). Instead, Appellee irrelevantly argues "Russell Porter [dad] was not the *legal* parent of these children at the time of

ordinary definition of "natural" under the mandatory rules of statutory interpretation, the trial court and the Court of Appeals substituted the phrase "natural" for 'legal' despite the judicial constraint that the Legislature is presumed to have intended the meaning it plainly expressed, and that clear statutory language must be enforced as written. *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008). Courts may not speculate regarding legislative intent beyond the words expressed in a statute. *Omne Fin, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). In assessing whether Appellants have standing as grandparents under the Act, the majority decision in the Court of Appeals ignores the plain language definitions selected and provided by the Legislature, contrary to the long-standing rules of statutory construction. As the dissent below correctly opines,

> The touchstone of legislative intent is the statute's language. *United States Fidelity & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009). The words of a statute provide the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the overall context in which they are used. *In re Receivership of 11910 South Francis Rd, 492 Mich 208, 222; 821 NW2d 503 (2012)*. An undefined statutory word or phrase must be accorded its plain and ordinary meaning, unless the undefined word or phrase is a term of art with a unique legal meaning. MCL 8.3a; *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008).

When a term is undefined, a dictionary may be consulted as the analytical tool to ascertain the term's plain and ordinary meaning. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Natural is defined as "related by blood rather than adoption" or "related by birth; of no legal relationship." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, 2nd ed. (1987). Other dictionaries provide similar definitions.

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his death. *Appellee's Response to Petition for Leave to Appeal*, p. 4 (emphasis added). The majority decision of the Court of Appeals made the same error.

WEBSTER'S NEW WORLD COLLEGE DICTIONARY, 4th ed. (2002) defines natural as "without a legal relationship specifically... b) relating biologically rather than by adoption," while THE WORLD BOOK DICTIONARY (1986) defines the same as "by birth merely, and not legally recognized." BLACK'S LAW DICTIONARY (9th ed) also defines natural, in part, as "[o]f or relating to birth," as in a "natural child as distinguished from [an] adopted child." Taken together, the plain dictionary definition of "natural" means biological and specifically excludes 'legal' as incorrectly applied by the lower courts. Therefore, the conclusion of majority opinion that Appellants, "as Russell's parents, derived their rights as grandparents through him" is an incorrect conclusion of law. Appellants' rights flow instead from their natural, biological status, as *explicitly* provided by the Legislature.

To answer the questions presented by this Court in light of the above analysis, Appellants are undisputedly the biological parent of Russell Porter, who is in turn the biological and deceased parent of Appellants' two grandchildren. The term "natural" in MCL 722.22(e) and (h)[7] means, by definition, "biological." As such, Appellants also answer in the affirmative that the parents of a man whose parental rights to his minor children were terminated prior to his death have standing to seek grandparenting time with the children under the CHILD CUSTODY ACT, MCL 722.21 et seq. The Legislature's use of the term 'natural' to define what is a 'parent' and what is a 'grandparent' under the Act renders Russell Porter's terminated parental status, for purposes of orders of grandparenting time, irrelevant under the Act. To substitute 'natural' for the phrase 'legal,' as accomplished by the trial court and the Court of Appeals, is the judiciary

[7] In this Court's order dated October 25, 2013, the order mistakenly references MCL 722.22(d) and (g), the two subsections in the predecessor statute defining grandparent and parent. The effective definitions of grandparent and parent currently reside at MCL 722.22(e) and (h) respectively.

legislating what the law *ought* to be rather than its rightful duty of asserting what the law actually *is*.[8] See *Terrien v Zwit*, 467 Mich 56, 66; 648 NW2d 602 (2002).

RELIEF REQUESTED

WHEREFORE, this Court is requested to, in lieu of granting leave to appeal, vacate the majority decision of the Court of Appeal pursuant to MCR 7.302(H), adopt the dissent's opinion as this Court's own by a peremptory order, and remand this matter back the Saginaw County Circuit Court for additional adjudication on whether entry of an order for grandparenting time is in the best interests of the grandchildren consistent with MCL 722.27b. In the alternative, leave from this Court remains requested as made by the original application filed with this Court. MCR 7.302(H).

RESPECTFULLY SUBMITTED:

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Date: November 27, 2013

[8] Because debates and decisions on clashing public policy belong to the Legislature and the Legislature has clearly spoken, reassessing the choices of the People's representatives to rewrite the statute with a judicial gloss is improper. Any change must and should come from the Legislature and not by judicial legislation, especially when the Legislature has been quite attentive in this area of law. See 2009 PA 237; 2006 PA 353; 2005 PA 542; 1996 PA 19; 1982 PA 340.