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Michigan Supreme Court Announces April 7-8, 2021
Oral Arguments Schedule

LANSING, MI, March 17, 2021 —The Michigan Supreme Court announced that oral arguments in twelve cases will be heard on Wednesday, April 7, and Thursday, April 8, 2021. The Court will convene at 9:30 a.m. via Zoom and attorneys for the parties have all agreed to argue their cases via Zoom. The Courtroom will be closed to the public. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

Oral arguments will be livestreamed on the Court's YouTube page. Follow the Court on Twitter to receive regular updates as cases are heard.

These brief accounts may not reflect the way that some or all of the Court's seven justices view the case. The attorneys may also disagree about the facts, issues, procedural history, and significance of this case. For further details, please contact the attorneys.

Wednesday, April 7, 2021
Morning Session – 9:30 a.m.

MOAA 161232 (15-minute arguments per side)

JEFF TRECHA, as Next Friend of BRADLEY TRECHA, Plaintiff-Appellant, — Edwin Jakeway

v (Appeal from Ct of Appeals)
(Genesee CC – Bell, C.)

BRENDEN REMILLARD, Defendant-Appellee. — Mary Nemeth

After losing the final point in a high school tennis match that occurred during team practice, the defendant hit a tennis ball behind him toward a fence, not realizing that a teammate, Bradley Trecha, was standing behind him. The ball hit Bradley in the eye, causing significant damage. The plaintiff, as Bradley's next friend, filed a negligence action against the defendant. The defendant moved for summary disposition, arguing that he and Bradley were co-participants in the tennis practice, and that Bradley assumed the foreseeable risk of being hit by a tennis ball. The trial court granted the defendant's motion, and the Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address whether, assuming Bradley Trecha was a participant in the recreational activity of tennis when his injuries occurred, the particular risk that caused his injuries was reasonably foreseeable under the circumstances. See *Bertin v Mann*, 502 Mich 603, 619-622 (2018).

MOAA 160606 (15-minute arguments per side)

DANIEL C. KROLCZYK and JONI KROLCZYK, Plaintiffs-Appellants, — Dani Liblang

v (Appeal from Ct of Appeals)
(Oakland CC – Grant, N.)

HYUNDAI MOTOR AMERICA and BILL MARSH HYUNDAI, LLC, Defendants-Appellees. — Gregory LaVoy

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The plaintiffs experienced numerous problems with a car they purchased and sued the defendants in circuit court. After a case evaluation award of $14,000, the parties stipulated that the damages were under the $25,000 jurisdictional limit of the district court. The defendants drafted an order to transfer the case to the district court, and the circuit court entered the order. After a 6-day trial that resulted in a judgment for the plaintiffs, the defendants argued that the district court lacked subject-matter jurisdiction because the *ad damnum* clause (the clause in the request for relief stating the amount of damages) in the plaintiffs' complaint stated that the damages were over $25,000. The plaintiffs moved to amend their complaint. The district court granted the plaintiffs' motion and entered a judgment against the defendants. The circuit court affirmed the district court, but the Court of Appeals, in an unpublished opinion, reversed on the basis of *Hodge v State Farm Mut Auto Ins Co*, 499 Mich 211 (2016), concluding that the district court lacked subject-matter jurisdiction because the plaintiffs' complaint pled damages in excess of $25,000. The Supreme Court has ordered oral argument on the application to address: (1) whether the district court properly exercised jurisdiction over this case notwithstanding that the circuit court's November 18, 2015, transfer order lacked the defendant's stipulation "to an appropriate amendment of the complaint," Administrative Order No. 1998-1; (2) whether, assuming any error in the transfer was nonjurisdictional, the district court properly exercised jurisdiction over this case where, upon transfer, the complaint contained an *ad damnum* clause seeking more than the district court's jurisdictional limit, see MCL 600.8301; and (3) whether, assuming the district court properly exercised jurisdiction upon transfer notwithstanding the complaint's *ad damnum* clause, the district court nevertheless had the authority to permit amendment of the complaint.

MOAA 160594 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, — Alexis Gipson-Goodnough

v (Appeal from Ct of Appeals)
(Monroe CC – Weipert, M.)

ERICK ROSEAN ALLEN, Defendant-Appellant. — Lindsay Ponce

The defendant was convicted of possessing less than 25 grams of cocaine and was sentenced as a fourth-offense felony offender to 2.5 to 15 years in prison. He was on parole when he committed the cocaine possession offense. The defendant claimed he was entitled to credit against his prison term for the 16 days he spent in jail before a parole detainer was lodged against him. The prosecution conceded in the Court of Appeals that the defendant was entitled

to this credit, but a majority of the panel rejected this concession, holding in a published opinion that, under *People v Idziak*, 484 Mich 549 (2009), the defendant, as a parolee, was not entitled to this credit. The Supreme Court has ordered oral argument on the application to address: (1) whether this Court's holding *Idziak* encompasses parolees who are arrested for a new offense but are not subject to a parole detainer; if so, (2) whether that part of *Idziak*'s holding was correctly decided; and (3) whether the defendant has established plain error affecting his substantial rights.

MOAA 160740 (15-minute arguments per side)

DAVID A. MAPLES, Mark Bendure
Plaintiff-Appellant, Robyn Frankel

v (Appeal from Ct of Appeals)
(Ct of Claims – Talbot, M.)

STATE OF MICHIGAN, Linus Banghart-Linn
Defendant-Appellee.

The plaintiff filed a lawsuit for compensation under the Wrongful Imprisonment Compensation Act (WICA), MCL 691.1751 *et seq*. The Court of Claims granted summary disposition in favor of the defendant. The Court of Appeals affirmed in a published opinion, concluding that the plaintiff failed to satisfy the definition of "new evidence" under MCL 691.1752(b). The Supreme Court has ordered oral argument on the application to address whether the proffered evidence is "new evidence" under MCL 691.1752(b). The Court has directed the Attorney General to file separate supplemental briefs arguing both sides of the question presented.

MOAA 160772 (15-minute arguments per side)
[Justice Bernstein not participating]

SARON E. MARQUARDT, Personal Representative Thomas Miller
of the ESTATE OF SANDRA D. MARQUARDT,
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Washtenaw CC – Swartz, D.)

VELLAIAH DURAI UMASHANKAR, M.D., Joanne Geha Swanson
Defendant-Appellee.

In this medical malpractice case, the trial court granted summary disposition to defendant Dr. Umashankar, holding that he did not receive notice of the plaintiff's intent to sue as required by MCL 600.2912b. Dr. Umashankar treated Sandra Marquardt (now deceased) at the University of Michigan hospital and subsequently left his position at the hospital and moved to India. In July 2009, Marquardt's attorney mailed a notice of intent (NOI) to the "Risk Manager" at the hospital, notifying the risk manager that Marquardt intended to file suit against Dr. Umashankar and other physicians, as well as the University of Michigan Health Systems, Inc. The trial court held that the NOI was insufficient because it was not directed or addressed to Dr. Umashankar. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address whether the decedent failed to give Dr. Umashankar notice as required by MCL 600.2912b, by way of notice mailed on July 20, 2009, on the ground that the notice was not addressed or directed to him.

Wednesday, April 7, 2021
Afternoon Session – t/b/d

MOAA 161051 (15-minute arguments per side)

DOREEN ROTT, Melissa Stewart
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Oakland CC – Matthews, C.)

ARTHUR ROTT, Ronald Paul
Defendant-Appellee.

The plaintiff brought claims of negligence and premises liability against the defendant, her brother, after she was allegedly injured on his zip line. The defendant pled various defenses, including a defense under the recreational land use act ("RUA"), MCL 324.73301(1), which if applicable would mean that the defendant was only liable for gross negligence or willful and wanton misconduct. The defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (10), arguing that the plaintiff's claims were barred by the RUA, and the plaintiff responded that the RUA did not apply because she was not on the land for the purpose of riding the zip line and the RUA did not cover zip lines. The trial court held that the RUA applied, but that there were genuine issues of material fact regarding whether the defendant engaged in gross negligence or willful and wanton misconduct. Both parties filed applications for leave to appeal. The Court of Appeals denied the plaintiff's application "for failure to persuade the Court of the need for immediate appellate review," granted the defendant's application, and issued an unpublished opinion holding that there was not a genuine issue of material fact and reversing and remanding for entry of an order granting summary disposition to the defendant under MCR 2.116(C)(10). Following entry of the order in the trial court, the plaintiff appealed, challenging whether the RUA applied. The Court of Appeals affirmed in a published opinion, holding that the plaintiff's arguments regarding the applicability of the RUA were subject to the law of the case doctrine and that, regardless, the RUA applied. The Supreme Court has ordered oral argument on the application to address: (1) whether the Court of Appeals erred in its application of the law of the case doctrine; (2) the proper interpretation of the "for the purpose of" language in the RUA, MCL 324.73301(1); and (3) whether zip lining falls within the purview of the RUA.

MOAA 160707 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Joseph Shopp
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Wayne CC – Fresard, P.)

GREGORY CARL WASHINGTON, John Royal
Defendant-Appellant.

Following a jury trial in 2004, the defendant was convicted of second-degree murder and other crimes. The Court of Appeals affirmed the defendant's convictions, but remanded the case to the trial court for resentencing. The defendant filed an application for leave to appeal in the Supreme Court, and while the application was pending in the Supreme Court, the trial court

resentenced the defendant in violation of MCR 7.215(F)(1)(a) (providing that a Court of Appeals judgment is not effective until the disposition of the application for leave to appeal in the Supreme Court) and MCR 7.305(C)(6)(a) (providing that an application in the Supreme Court stays any proceedings on remand that were ordered by the Court of Appeals). Ten years later, after a second direct appeal and a motion for relief from judgment, the defendant filed a successive motion for relief from judgment, arguing that the trial court lacked jurisdiction to resentence him. The trial court granted relief and ordered resentencing. After the Court of Appeals affirmed in a published opinion, the Supreme Court heard oral argument on the prosecution's application. In lieu of granting leave appeal, the Court vacated the Court of Appeals opinion and remanded to that court for reconsideration in light of *Luscombe v Shedd's Food Products*, 212 Mich App 537 (1995). On remand, the Court of Appeals issued a published opinion reversing the trial court's grant of resentencing, holding that although the trial court erred by resentencing the defendant too soon, this was not a structural error occasioned by a lack of subject-matter jurisdiction. The Supreme Court has ordered oral argument on the application to address: (1) whether the trial court's act of resentencing the defendant while an application for leave to appeal was pending in the Supreme Court constituted a defect in subject-matter jurisdiction; and (2) if so, whether defects in subject-matter jurisdiction can be challenged in a successive motion for relief from judgment. Compare MCR 6.502(G)(2) (only permitting a second or subsequent motion for relief from judgment if it is based on a retroactive change in the law or on a claim of new evidence) and *In re Ives*, 314 Mich 690, 696 (1946) ("The question of jurisdiction of the subject-matter may be raised at any time.").

Thursday, April 8, 2021
Morning Session – 9:30 a.m.

No. 1 160291 (20-minute arguments per side)

VERNON BOWMAN, Individually and as Personal Representative of the ESTATE OF KELLY M. BOWMAN,
Plaintiff-Appellant,

Mark Bendure

v (Appeal from Ct of Appeals)
(Macomb CC – Caretti, R.)

ST. JOHN HOSPITAL AND MEDICAL CENTER, and ASCENSION MEDICAL GROUP MICHIGAN, doing business as ROMEO PLAN DIAGNOSTIC CENTER, and TUSHAR S. PARIKH, M.D.,
Defendant-Appellant.

Renee Pries
Joanne Geha Swanson

Kelly Bowman had a lump in her right breast. On June 12, 2013, defendant Dr. Tushar Parikh, a radiologist, reviewed a mammogram and concluded that the lump was benign. In April 2015, Bowman had another mammogram, followed by a biopsy. The April 2015 biopsy confirmed that the lump was cancerous. Bowman had a bilateral mastectomy on May 18, 2015, and learned that her cancer was metastatic. A biopsy in July 2016 revealed further metastasis. Bowman began treating with another doctor, who told her, in August 2016, that her 2013 mammogram should have been reported as suspicious for cancer. On December 10, 2016, Bowman's attorney mailed a notice of intent to sue the defendants. Bowman and her husband filed a medical malpractice lawsuit against Dr. Parikh and other defendants on June 12, 2017. The defendants moved for summary disposition under MCR 2.116(C)(7), arguing that the plaintiffs failed to file the complaint (or serve the notice of intent) before the statute of limitations expired. The only

issue was whether the plaintiffs timely initiated the action under the discovery rule, MCL 600.5838a(2). The defendants argued that Bowman should have discovered her claim by April 2015, when her cancer was diagnosed, or in May 2015 at the latest, when she learned that she had metastatic cancer. The plaintiffs argued that Bowman did not know that Dr. Parikh misinterpreted the 2013 mammogram until the other doctor told her in August 2016. The trial court denied the motions for summary disposition. The Court of Appeals, in a 2-1 unpublished opinion, reversed, holding that the defendants were entitled to summary disposition. The Supreme Court has granted leave to appeal to address: (1) whether this Court's decision in *Solowy v Oakwood Hosp Corp*, 454 Mich 214 (1997), adopted the correct standard for application of the six-month discovery rule set forth in MCL 600.5838a(2); (2) if not, what standard the Court should adopt; and (3) whether the plaintiff in this case timely served her notice of intent and filed her complaint under MCL 600.5838a(2).

MOAA 161118-9 (15-minute arguments per side)
In re GUARDIANSHIP OF ORTA, MINOR.

MARIA ORTA,
Petitioner-Appellee, — Vivek Sankaran

v (Appeal from Ct of Appeals)
(Delta PC – Goebel, R.)

LISA KEENEY, Guardian, — Benjamin Parmet
Respondent-Appellant.

In 2015, the maternal grandmother (respondent) of two young children obtained full guardianship over the children after the children's mother (petitioner) agreed to leave the children in her care for a month and later agreed to extend that stay until the petitioner could get into an apartment. The trial court denied the petitioner's petitions to terminate the guardianship in 2016 and 2018. In an unpublished opinion, the Court of Appeals reversed the trial court's most recent order denying the petitioner's petition to terminate the guardianship. In so doing, the Court of Appeals relied on *In re Ferranti*, 504 Mich 1 (2019), to permit the petitioner to attack the initial 2015 guardianship determination. The court found that because the term "reside" in MCL 700.5204(2)(b) requires that the petitioner intend that the children permanently reside with the respondent and because there was no such intent here, the initial guardianship was invalid. The Supreme Court has ordered oral argument on the application to address: (1) whether *In re Ferranti*, 504 Mich 1 (2019), applies to guardianship proceedings; and (2) whether, to establish a guardianship under MCL 700.5204(2)(b), a parent must intend that his or her child permanently reside with another person.

MOAA 159194 (15-minute arguments per side)
PEOPLE OF THE STATE OF MICHIGAN, — Brent Morton
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Eaton CC – Cunningham, J.)

ERNESTO EVARISTO URIBE, — Michael Waldo
Defendant-Appellant.

The defendant was convicted of four counts of first-degree criminal sexual conduct for acts of anal penetration of the complainant from the time she was five until she was nine years old. At

trial, Dr. Stephen Guertin testified about statements the complainant made to him and testified that she was sexually abused. The Court of Appeals affirmed defendant's convictions in a 2-1 unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether Dr. Guertin's testimony about the complainant's statements to him was admissible under the medical treatment exception to the hearsay rule, see *People v Garland*, 286 Mich App 1 (2009), and *People v Shaw*, 315 Mich App 668 (2016); (2) whether Dr. Guertin's testimony was contrary to this Court's decision in *People v Thorpe*, 504 Mich 230 (2019), and/or *People v Harbison*, 504 Mich 230 (2019); and (3) if error occurred, whether reversal of the defendant's convictions is warranted.

MOAA 160592 (15-minute arguments per side)

ESURANCE PROPERTY & CASUALTY INSURANCE COMPANY,
Plaintiff-Appellant, — Drew Broaddus

v (Appeal from Ct of Appeals)
(Wayne CC – Allen, D.)

MICHIGAN ASSIGNED CLAIMS PLAN and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,
Defendants-Appellees. — Lori McAllister

Esurance Property & Casualty Insurance Company paid approximately $571,000 in first-party no-fault benefits to a person seriously injured in an automobile accident. Esurance then obtained a ruling that the insurance policy had been procured through fraud and was void *ab initio* (from the beginning). Because there was no other potentially applicable insurance, Esurance sued the Michigan Assigned Claims Plan and the Michigan Automobile Insurance Placement Facility (defendants), seeking reimbursement under a theory of equitable subrogation. The trial court granted summary disposition to the defendants under MCR 2.116(C)(8), and the Court of Appeals affirmed in a published opinion. The Supreme Court has ordered oral argument on the application to address whether a finding that an insurance policy was void *ab initio* because it was procured by fraud bars a subsequent claim for equitable subrogation for benefits that were paid pursuant to that policy before it was found to be void.

MOAA 161098 (15-minute arguments per side)

SUSAN MOORE, Guardian/Conservator for the ESTATE OF JOSEPH DANIEL VELEZ, JR.,
Plaintiff-Appellee, — Barbara Goldman

v (Appeal from Ct of Appeals)
(Macomb CC – Biernat, J.)

SHAFER, R. SHAFER BUILDERS, REVOCABLE LIVING TRUST AGREEMENT DATED 12/14/89, by trustees RICHARD N. SHAFER and KAREN J. SHAFER,
Defendants-Appellants, — Richard Mitchell
and

HENSELY MANUFACTURING, INC.,

Defendant.

Joseph Velez, Jr., was injured when he fell off the flat roof of an industrial building while performing roofing work. Suit was brought against several parties, including the owners of the building and the general contractor. Those defendants moved for summary disposition, and the trial court granted summary disposition in their favor. The Court of Appeals affirmed in part and reversed in part in an unpublished opinion. The Court of Appeals unanimously agreed that the trial court did not err in granting summary disposition in favor of the general contractor on the plaintiff's claim under the common work area doctrine. But a two-judge majority reversed the grant of summary disposition on the claim raised against the building owners, which was based on a premises liability theory. The Supreme Court has ordered oral argument on the application to address whether the Court of Appeals erred when it determined that genuine issues of material fact precluded dismissal of the plaintiff's premises liability claim. *Perkoviq v Delcor Home-Lake Shore, Ltd*, 466 Mich 11 (2002); *Hoffner v Lanctoe*, 492 Mich 450 (2012).

-MSC-