



MICHIGAN COURTS NEWS RELEASE

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FOR IMMEDIATE RELEASE

REMINDER: Michigan Supreme Court Announces May 5, 2021 Oral Arguments Schedule

LANSING, MI, April 30, 2021 - The Michigan Supreme Court announced that oral arguments in six cases will be heard on Wednesday, May 5, 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, May 5, 2021
Morning Session – 9:30 a.m.**

[MOAA 161017](#) (15-minute arguments per side)

THOMAS HAAN, CONNIE HAAN, KRISTIN BROOKS, and JILL RHODES,

Plaintiffs/Counterdefendants-Appellees,
and

WILLIAM RHODES, CASEY ALLEN, LAURA ALLEN, TRAVIS STEPHENSON, MARCIANN STEPHENSON, KEVIN MARCY, and SUSAN MARCY,

Plaintiffs/Counterdefendants,

v (Appeal from Ct of Appeals)
(Allegan CC – Baillargeon, W.)

LAKE DOSTER LAKE ASSOCIATION,
Defendant/Counterplaintiff-Appellant.

Robert Riley

Robb Krueger

Lake Doster is a man-made lake in Allegan County. Property owners without direct access to Lake Doster obtained permission from the developer's Building Control Committee to build and

maintain docks on common property and conveyed the docks with their properties before the formation of defendant Lake Doster Lake Association and the transfer of the developer's rights to the defendant. After a conflict arose over the defendant's plan for the placement and sharing of docks, the plaintiffs filed a lawsuit contending that the plan would revoke and substantially impair their vested rights and diminish the value of their properties. The plaintiffs asserted that association member applications created a contract under which the plaintiffs' past permitted rights to build and maintain docks became binding on the defendant. The defendant filed a counterclaim for declaratory judgment. The trial court denied the plaintiffs' motion for summary disposition, but granted summary disposition in favor of the defendant under MCR 2.116(C)(10). Some of the plaintiffs appealed, and the Court of Appeals, in a 2-1 unpublished opinion, reversed and remanded the case to the trial court for entry of judgment for those plaintiffs. The Supreme Court has ordered oral argument on the application to address whether the Court of Appeals: (1) erred by determining that the dedication and recorded restrictions did not prevent the plaintiffs from claiming an easement for the maintenance of the plaintiffs' docks; (2) erred by determining that the plaintiffs' requests for placement of docks under the recorded covenants and restrictions constituted more than a permissive and revocable license and expanded into an enforceable easement; (3) erred by determining that the application for membership constituted an enforceable contract conferring on the plaintiffs an easement for the permanent maintenance of docks; and (4) erroneously considered extrinsic evidence and decided questions of fact that were in dispute.

MOAA 160968 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Deborah Blair

v (Appeal from Ct of Appeals)
(Wayne CC – Slavens, M.)

KELLIE NICHOLE STOCK,
Defendant-Appellant.

Ian Kierpaul

As a result of a fatal motor vehicle crash following a high-speed police chase, the defendant was convicted by a jury of a number of charges, including several involving operating a motor vehicle while intoxicated. The Court of Appeals, in a 2-1 unpublished per curiam opinion, reversed the defendant's convictions for operating a vehicle while license suspended or revoked, but affirmed the remaining convictions and sentences. Among the issues the defendant raised on appeal, she challenged the sufficiency of the evidence on the driving while intoxicated charges, where evidence of cocaine metabolites in her system was used to demonstrate intoxication. The Supreme Court has ordered oral argument on the application to address whether: (1) under *People v Feezel*, 486 Mich 184, 204-212 (2010), the prosecution failed to present sufficient evidence that the defendant had cocaine in her system at the time of the crash based only on the presence of a cocaine metabolite in the defendant's urine; and (2) defense counsel was ineffective for failing to challenge the use of cocaine metabolites to establish intoxication.

MOAA 161243 (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.)

SHANE JEREMY HAWKINS,
Defendant-Appellant.

Adrienne Young

Following a jury trial, the defendant was convicted of two counts of third-degree criminal sexual conduct and one count of accosting, enticing, or soliciting the 14-year-old complainant. At trial, the complainant testified that the defendant forcibly penetrated her, but the defendant testified that nothing happened. Without objection, the officer-in-charge of the case, Detective Boczar, testified that he had specialized training in the statewide protocol for the forensic interviewing of child sexual assault victims and that the complainant's allegations against the defendant seemed authentic to him. He also testified that, based on his investigation, the defendant's explanation for why the complainant made the allegations was not true. The Court of Appeals found that although Detective Boczar's testimony was improper, the defendant had failed to establish that, but for trial defense counsel's failure to object to the testimony, there was a reasonable probability that the outcome of the trial would have been different. The Supreme Court has ordered oral argument on the application to address whether there is a reasonable probability that, but for trial defense counsel's failure to object to Detective Boczar's testimony, the outcome of this trial would have been different. *Strickland v Washington*, 466 US 668, 694 (1984).

MOAA 161335 (15-minute arguments per side)

THOMAS J. O'BRIEN, JR.,
Plaintiff-Appellee,

Gaëtan Gerville-Réache

v (Appeal from Ct of Appeals)
(Oakland – Langton, L.)

ANN MARIE D'ANNUNZIO,
Defendant-Appellant.

Trish Oleksa Haas

The parties are the unmarried parents of twins. The defendant had primary physical custody of the children, but following competing motions regarding custody and a Friend of the Court counseling evaluation, the trial court granted the plaintiff temporary full-time parenting time and suspended the defendant's parenting time. An evidentiary hearing began approximately four months later, and the trial court affirmed its earlier determinations approximately nine months after that, thus making its temporary orders permanent. The Court of Appeals affirmed in a 2-1 unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether the trial court erred by entering a temporary order granting the plaintiff full-time parenting time pursuant to MCR 3.207(B) and suspending the defendant's parenting time without first conducting an evidentiary hearing, see MCL 722.27(1)(c); *Daly v Ward*, 501 Mich 897, 898 (2017), and if so, whether that error was harmless, see *Fletcher v Fletcher*, 447 Mich 871, 879 (1994); (2) whether the trial court palpably abused its discretion by granting the plaintiff sole legal and sole physical custody and by suspending the defendant's parenting time; and (3) whether the trial court's findings of fact are against the great weight of the evidence.

Wednesday, May 5, 2021
Afternoon Session – 12:00 p.m.

MOAA 161838 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Meredith Beidler

v (Appeal from Ct of Appeals)
(Allegan CC – Kengis, R.)

STEPHEN MICHAEL BIESZKA,
Defendant-Appellant.

Edwin Hettinger

The defendant pled guilty to assault with intent to commit criminal sexual conduct involving sexual penetration and received a probationary sentence. The defendant was 18 years old and the complainant was 14 years old at the time of the assault. The defendant filed a petition for exemption from the requirements of the Sex Offenders Registration Act (SORA) under MCL 28.722(w)(iv), which requires a finding by the court that the victim consented to the sexual act. The trial court denied the petition and the Court of Appeals denied leave to appeal, but the Supreme Court remanded the matter to the trial court for reconsideration of the defendant’s petition and directed the trial court to consider all of the information that was presented at the hearing on the defendant’s petition, including text messages from the complainant. On remand, the trial court again denied the defendant’s petition for exemption from registering as a sex offender under SORA. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether the trial court clearly erred by determining that the defendant failed to prove by a preponderance of the evidence that the victim consented to the sexual acts at issue; and (2) whether the 14-year-old victim was legally capable of consenting to the sexual acts in any event. See MCL 750.520d(1)(a) (“A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist . . . (a) That other person is at least 13 years of age and under 16 years of age.”); *People v Starks*, 473 Mich 227, 230, 235 (2005) (“[C]onsent must be given by one who is legally capable of giving consent to the act,” and “[b]ecause a thirteen-year-old child cannot consent to sexual penetration, consent by such a victim is not a defense to the crime of assault with intent to commit criminal sexual conduct involving sexual penetration.”); cf. MCL 28.722(w)(iv) (“This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.”).

MOAA 160772 (15-minute arguments per side)

[Justice Bernstein not participating]

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

Thomas Miller

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

VELLAI AH DURAI UMASHANKAR, M.D.,
Defendant-Appellee.

Joanne Geha Swanson

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.

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