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FOR IMMEDIATE RELEASE

Michigan Supreme Court Announces November 2019 Oral Arguments Schedule

LANSING, MI, October 25, 2019 —The Michigan Supreme Court announced that oral arguments in ten cases will be heard November 6-7, 2019. The Court will convene to hear the cases beginning at 9:30 a.m. in the Supreme Court courtroom, located on the sixth floor of the Hall of Justice. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

The Court broadcasts its oral arguments and other hearings live on the Internet. Watch the stream only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench. Follow the Court on Twitter to receive regular updates as cases are heard. Please contact the Office of Public Information at 517-373-0129 or SeaksL@courts.mi.gov for permission to film or photograph during the hearing. See the link to Request and Notice for Film and Electronic Media Coverage of Court Proceedings. The request must be submitted three days in advance of the hearing.

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

Wednesday, November 6, 2019
Morning Session - 9:30 a.m.

158302

MEEMIC INSURANCE COMPANY, Plaintiff/Counterdefendant-Appellant, — James Gross

v (Appeal from Ct of Appeals) (Berrien – Donahue, J.)

LOUISE M. FORTSON and RICHARD A. FORTSON, Individually and as Conservator for JUSTIN FORTSON, Defendants/Counterplaintiffs-Appellees. — Robert Chasnis

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Justin Fortson was seriously injured when he fell off the hood of a vehicle. He lived with his parents, who were named insureds under a policy issued by plaintiff-insurer. When it

was discovered that the parents had reported providing attendant care on dates when Justin was incarcerated or residing elsewhere, plaintiff stopped providing benefits and filed this lawsuit alleging breach of contract and fraud. The trial court granted summary disposition to plaintiff under a provision that voided the policy if an insured person committed fraud related to the policy or any claim. In a published split opinion, the Court of Appeals reversed in part and remanded for further proceedings. First, the majority held that there was fraud but that *Bazzi v Sentinel Ins Co*, 502 Mich 390 (2018), was not dispositive because that case addressed the innocent third-party rule in the context of fraud in the procurement of an insurance policy. Second, the majority held that the policy's fraud provision was invalid as applied to Justin because it conflicted with his statutory right under MCL 500.3114(1) to receive benefits as a relative domiciled in the same home. And, third, the majority held that the fraud provision did not apply because the policy was canceled or not renewed after the accident and the parent-caregivers who committed the fraud were no longer named insureds at the time of the fraud. The dissent disagreed with the majority on each of its three holdings. The Supreme Court has granted defendants' application for leave to appeal.

MOAA 158065

PEOPLE OF THE STATE OF MICHIGAN, David Porter
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Mecosta – Jaklevic, P.)

KELLY CHRISTOPHER WARREN, Michael Naughton
Defendant-Appellant.

Defendant, who had a history of drunk driving convictions, was arrested in 2014 and charged with operating a motor vehicle while intoxicated, third offense (OWI-3rd) and other charges. Several months later, while on bond for the 2014 offense, he was again arrested and charged with OWI-3rd and other charges. He ultimately pleaded guilty to OWI-3rd in each case in exchange for dismissal of the remaining charges. The trial court sentenced defendant on both offenses to serve consecutive prison terms of 2 to 5 years. Defendant moved to withdraw his pleas on the basis that the trial court had not informed him at the plea-proceeding that he faced the possibility of consecutive terms. The trial court denied the motion. The Court of Appeals, in a split unpublished opinion, affirmed. The Supreme Court has directed oral argument on defendant's application for leave to appeal to address whether, when a defendant's plea of guilty or no contest will subject him to the trial court's discretion to impose consecutive sentences, the court must advise the defendant of that possibility before the court may accept the plea. See US Const, Am XIV; Const 1963, art 1, § 17; MCR 6.302(B).

MOAA 158789

DAVID R. SANDERS and HEATHER H. SANDERS,
Plaintiffs-Appellees,

Matthew Hanley

v (Appeal from Ct of Appeals)
(Montmorency – Mack, M.)

TUMBLEWEED SALOON, INC., and PAINTER INVESTMENTS, INC., doing business as CHAUNCEY'S PUB,
Defendants-Appellants,
and

Scott Feuer

SHAWN SPOHN and ZACHARY PIERCE,
Defendants.

Plaintiff David Sanders was injured after being physically attacked by defendants Shawn Spohn and Zachary Pierce, both of whom were intoxicated after being served alcohol at the two defendant bars, Tumbleweed Saloon and Chauncey's Pub. Plaintiff and his companion that evening consulted with an attorney, who sent a letter to one of the defendant bars, stating that he was "represent[ing]" the injured plaintiff and requesting that the bar preserve any security videos. The dramshop act provides that a retail alcohol licensee may not "sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated." MCL 436.1801(2). The notice provision of the dramshop act, MCL 436.1801(4), states that a plaintiff must "give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section." The trial court granted summary disposition to the defendant bars, holding that, despite the initial lawyer's affidavit to the contrary, plaintiffs and that attorney had an attorney-client relationship at the time of the letter and, therefore, the later notice by plaintiffs' current counsel was untimely. The Court of Appeals reversed in a split unpublished opinion. The majority held that there was no "meeting of the minds" in support of the finding of an attorney-client relationship and that a genuine question of fact existed regarding the existence of such a relationship. The dissent opined that there was no outstanding question of fact and that the trial court did not clearly err in concluding that an attorney-client relationship existed when the lawyer sent the letter. The Supreme Court has directed oral argument on defendant bars' application for leave to appeal to address whether the Court of Appeals erred when it concluded that there was a genuine question of fact as to whether there was an attorney-client relationship between plaintiffs and the attorney who sent the initial letter on their behalf to one of the defendants.

Wednesday, November 6, 2019
Afternoon Session - 1:00 p.m.

MOAA 157210

PEOPLE OF THE STATE OF MICHIGAN, William Worden
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Livingston – Hatty, M.)

DENNIS KEITH TOWNE, Michael Skinner
Defendant-Appellant.

Four state police troopers went to defendant's home after 10:00 p.m. on a December night when they knew the power was out in the area to execute an arrest warrant for defendant's son. The troopers had information that the son lived elsewhere but may be staying with his parents. Two troopers conducted a knock-and-talk with defendant at his front door, while the other two went to the rear of the house to prevent the son from escaping, if he was in the house. Defendant refused consent for a search of his home. Two troopers left to obtain a search warrant, while the other two remained behind to secure the home. One trooper waited in his patrol car in the driveway to watch the front of the house, and the other walked through the backyard and stood near a tree line to watch the rear of the house. After 45-50 minutes, the trooper smelled burning marijuana coming from the home. After conferring, the troopers determined that exigent circumstances existed and forcibly entered the home without a search warrant. They did not find the subject of the arrest warrant, but did find a large amount of marijuana. Defendant was charged with manufacturing marijuana. The district and circuit courts denied defendant's motions to suppress the marijuana. Defendant pleaded guilty to manufacturing marijuana, conditioned on his ability to challenge the actions of the police on Fourth Amendment grounds. The Court of Appeals held in an unpublished opinion that there was no Fourth Amendment violation and affirmed defendant's conviction. The Supreme Court remanded the case to the Court of Appeals to reconsider its decision in light of *People v Frederick*, 500 Mich 228 (2017). In an unpublished opinion, the Court of Appeals held that *Frederick* had no impact on its prior decision, and it reaffirmed that decision. The Supreme Court has directed oral argument on defendant's application for leave to appeal to address: (1) whether the police exceeded the proper scope of a knock and talk when they approached and secured the defendant's home at night while attempting to execute an arrest warrant for the defendant's son, who lived elsewhere, see *People v Frederick*, 500 Mich 228 (2017); (2) whether the police had sufficient grounds to believe that the subject of the arrest warrant was inside the defendant's home; (3) the appropriate standard to be used by a reviewing court to determine whether the police are permitted to enter a third-party's home or curtilage to execute an arrest warrant, see *Steagald v United States*, 451 US 204 (1981); *United States v Pruitt*, 458 F3d 477 (CA 6, 2006); *United States v Hardin*, 539 F3d 404 (CA 6, 2008); (4) if the proper scope of a

knock and talk was not exceeded in this case, whether the plain view or exigent circumstances exceptions to the warrant requirement permitted the police to forcibly enter the defendant's home based on an officer's perceptions while posted at the rear of the home in the curtilage or in an "open field"; and (5) whether the exclusionary rule should apply under these circumstances.

MOAA 158486

PEOPLE OF THE STATE OF MICHIGAN, Erik Wannik
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Tuscola – Gerhart, A.)

JOHN DAVID VANDERPOOL, Gaëtan Gerville-Réache
Defendant-Appellant.

On June 24, 2013, defendant was sentenced to serve two years of probation. In September 2015, months after the two-year probation period ended, defendant's probation agent petitioned the trial court to extend defendant's probation for one year. On September 24, 2015, the court agreed and entered an order extending probation until June 25, 2016. Meanwhile, on December 4, 2015, probation agents conducted a compliance check at defendant's home and found heroin. When arrested, defendant was found to be in possession of heroin. He was charged with two counts of possession with intent to deliver heroin and with violating probation. He moved to suppress the evidence, arguing that the December 4 compliance check search was illegal because the trial court lacked authority to extend his probation period after it had expired. The trial court denied the motion. The Court of Appeals affirmed in a split published opinion. The appeals court unanimously agreed that under *People v Marks*, 340 Mich 495 (1954), the trial court was authorized to extend defendant's probation after it expired. One judge dissented, in part, on due process grounds. The Supreme Court has directed oral argument on defendant's application for leave to address: (1) whether the Tuscola Circuit Court had jurisdiction to extend the defendant's probationary term in September 2015; and (2) whether the extension of the probationary term without notice or a hearing violated the defendant's due process rights. Compare *People v Marks*, 340 Mich 495 (1954), with *Gagnon v Scarpelli*, 411 US 778 (1973).

Thursday, November 7, 2019
Morning Session – 9:30 a.m.

MOAA 158305-8
In re RELIABILITY PLANS OF ELECTRIC UTILITIES FOR 2017-2021.

158305

ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY,
Appellee,

v (Appeal from Ct of Appeals)
(Public Service Comm'n)

CONSUMERS ENERGY COMPANY,
Appellant,
and

MICHIGAN PUBLIC SERVICE COMMISSION, ENERGY MICHIGAN, INC., and MICHIGAN ELECTRIC AND GAS ASSOCIATION,
Appellees.

Michael Patwell

Kelly Hall

Spencer Sattler
Brion Doyle

158306

ENERGY MICHIGAN, INC.,
Appellee,

v (Appeal from Ct of Appeals)
(Public Service Comm'n)

CONSUMERS ENERGY COMPANY,
Appellant,
and

MICHIGAN PUBLIC SERVICE COMMISSION, and MICHIGAN ELECTRIC AND GAS ASSOCIATION,
Appellees.

158307

ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY,
Appellee,

v (Appeal from Ct of Appeals)
(Public Service Comm'n)

MICHIGAN PUBLIC SERVICE COMMISSION,
Appellant,
and

CONSUMERS ENERGY COMPANY, ENERGY

MICHIGAN, INC., and MICHIGAN
ELECTRIC AND GAS ASSOCIATION,
Appellees.

158308
ENERGY MICHIGAN, INC.,
Appellee,

v (Appeal from Ct of Appeals)
(Public Service Comm'n)

MICHIGAN PUBLIC SERVICE COMMISSION,
Appellant,
and

CONSUMERS ENERGY COMPANY, and
MICHIGAN ELECTRIC AND GAS ASSOCIATION,
Appellees.

These appeals concern the efforts of the Public Service Commission (PSC) to ensure sufficient electric capacity and reliability through its implementation of § 6w of the Public Service Commission Act, MCL 460.6w(8), as added by 2016 PA 341 (Act 341). The issue is whether the statute authorizes the PSC to impose a "local clearing requirement," which is a measure of electric resource capacity located in a particular local resource zone, on individual alternative electric suppliers. The PSC determined that it has that authority. Consumers Energy Company supported the PSC's decision. Two interest groups—the Association of Businesses Advocating Tariff Equity (ABATE) and Energy Michigan, Inc.—appealed. In a published opinion, the Court of Appeals reversed, holding that the PSC exceeded its statutory authority under § 6w. The Supreme Court has directed oral argument on the applications for leave to appeal of the PSC and Consumers Energy Company to address whether the Court of Appeals erred in holding that 2016 PA 341 does not authorize the PSC to impose a local clearing requirement on individual alternative electric suppliers.

158333, 158335
158333
TOMRA OF NORTH AMERICA, INC., June Summers Haas
Plaintiff-Appellee,

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

DEPARTMENT OF TREASURY, Randi Merchant
Defendant-Appellant.

158335
TOMRA OF NORTH AMERICA, INC.,
Plaintiff-Appellee,

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

DEPARTMENT OF TREASURY,
Defendant-Appellant.

Plaintiff is in the business of selling and leasing container recycling machines, which are commonly located in grocery stores for use by customers to return bottles and cans for recycling. Plaintiff and the Department of Treasury dispute whether plaintiff is required to pay sales and use tax for container recycling machines that plaintiff sells and leases to its Michigan customers. The dispute requires a determination whether plaintiff's container recycling machines are used in an "industrial processing activity," which would mean that an industrial processing exemption applies under either the General Sales Tax Act (GSTA), MCL 205.54t, or the Use Tax Act (UTA), MCL 205.94o. The Court of Claims granted summary disposition to the defendant, holding that the container recycling machines are not used in an industrial processing activity, so plaintiff is not entitled to the statutory exemption. In a split published opinion, the Court of Appeals reversed and remanded for further proceedings. The Supreme Court has granted the defendant's applications for leave to appeal.

MOAA 158013

PEOPLE OF THE STATE OF MICHIGAN, Brendan Maturen
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ingham – Aquilina, R.)

XUN WANG, Patricia Maceroni
Defendant-Appellant.

After an undercover investigation into the family medical clinic where defendant worked for a licensed doctor, she was charged with two counts of Medicaid fraud and one count of the unlawful practice of a health profession. She was convicted as charged after a bench trial. On appeal, defendant challenged, among other things, the sufficiency of the evidence supporting her convictions. In an unpublished opinion, the Court of Appeals affirmed her convictions. The Supreme Court has directed oral argument on defendant's application for leave to appeal to address: (1) whether the statutory exception in MCL 333.16294 is an element of the offense for which the prosecutor has the burden of proof, see *People v Rios*, 386 Mich 172 (1971); but see *People v Langlois*, 325 Mich App 236 (2018); (2) if the statutory exception is an element of the offense, whether the Court of Appeals erred in holding that the evidence was sufficient to sustain the defendant's conviction under MCL 333.16294 and specifically, whether the Court of Appeals erred in concluding that the defendant's actions were consistent with the practice of medicine and therefore could not be delegated to her under MCL 333.16215; and (3) if the statutory exception is not an element of the offense, whether defense counsel rendered ineffective assistance for failing to raise a delegation defense and bring the relevant statutory

provisions to the trial court's attention. In addition, defendant shall address whether the evidence was sufficient to sustain her convictions under MCL 400.607(1), and specifically whether the evidence was sufficient to show that she was in possession of facts under which she was aware or should have been aware that her conduct was substantially certain to cause the payment of a Medicaid benefit. See MCL 400.602(f).

Thursday, November 7, 2019
Afternoon Session - 1:00 p.m.

156849

RAFAELI, LLC, and ANDRE OHANESSIAN, Christina Martin
Plaintiffs-Appellants,

v (Appeal from Ct of Appeals)
(Oakland – Langford-Morris, D.)

OAKLAND COUNTY and ANDREW MEISNER, John Bursch
Defendants-Appellees. Matthew Hodges

Plaintiffs lost their properties by forfeiture and foreclosure for unpaid 2011 property taxes pursuant to the General Property Tax Act, MCL 211.1 *et seq*. (GPTA). After the foreclosure, the county sold the properties to third parties for substantially more than the amount of the underlying tax debts. In accordance with the GPTA, the surplus proceeds from the sales were retained by the county and were not distributed to plaintiffs. One plaintiff lost about $76,000 in surplus proceeds arising from a tax delinquency of about $6,000. Another plaintiff lost about $24,500 in surplus proceeds arising from a tax delinquency of $8.41. Plaintiffs brought a putative class action alleging that defendants violated the Takings Clauses of the Michigan and United States Constitutions (Const 1963, art 10, § 2 and US Const, Am V) by retaining the surplus proceeds. The trial court granted summary disposition in favor of defendants because plaintiffs did not have any property interests in the surplus proceeds since they had forfeited the properties. The Court of Appeals affirmed in an unpublished opinion, with one judge concurring. The Supreme Court has granted plaintiffs' application for leave to appeal to address whether the defendants violated the Takings Clause of the federal or state constitution, or both, by retaining proceeds from the sale of tax foreclosed property that exceeded the amount of the tax delinquency in accordance with MCL 211.78m(8)(h).

MOAA 158563

RYAN MENARD, by his Conservator, SHELLY MENARD,
Plaintiff-Appellant,

Mark Granzotto

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

TERRY R. IMIG and SHARRYL ANN EVERSON,
Defendants,
and

MACOMB COUNTY DEPARTMENT OF ROADS and COUNTY OF MACOMB,
Defendants-Appellees.

Carson Tucker

While riding his bicycle, 15-year-old Ryan Menard was struck and injured by a pickup truck driven by Terry Imig. Plaintiff, as Ryan's conservator, filed this negligence action against defendants Imig, the Macomb County Department of Roads, and Macomb County. The Macomb defendants moved for summary disposition on various grounds, including governmental immunity. Plaintiff countered with evidence that (1) construction in the area had resulted in increased traffic on the road; (2) the road was potholed, parts of it had washed out after rain, and it had a washboard effect; (3) the width of the roadway had narrowed due to the build-up of sediment and plant life on the sides of the surface; (4) Ryan had steered his bike to the right side of the road to avoid being hit, but a driver travelling in the opposite direction turned on her high-beam headlights, temporarily blinding Imig so that he did not see Ryan until he struck him from behind and dragged him under his truck; and (5) an expert witness had opined that the condition of the road, as well as the glare of the headlights, were contributing factors to the cause of the accident. The trial court denied the motion, holding that plaintiff had presented sufficient evidence to support a claim under the highway defect exception to the Government Tort Liability Act (GTLA), MCL 691.1401 *et seq*. The Court of Appeals reversed in a split unpublished opinion. The majority held that, although plaintiff's theory based on increased glare and blindness was sufficient to establish a logical sequence of cause and effect, plaintiff failed to demonstrate proximate cause. The dissent held that plaintiff had presented sufficient evidence of causation to avoid summary disposition. The Supreme Court has directed oral argument on plaintiff's application for leave to appeal to address (1) whether the Court of Appeals erred in its determination of cause-in-fact, and (2) whether the narrowing of the roadway combined with the oncoming driver's use of high-beam headlights, or any other cause-in-fact, was a proximate cause of that accident.

-MSC-