

# MICHIGAN SUPREME COURT



## *Office of Public Information*

contact: Marcia McBrien | (517) 373-0129

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### **Can children conceived after father's death inherit under state's intestacy law? Supreme Court to consider issue of first impression in oral arguments Court also to hear challenge to DHS 60-month lifetime limit on family cash assistance**

LANSING, MI, November 8, 2012 – Are children conceived after their father's death – via in vitro fertilization using his frozen sperm – his "children" for purposes of Michigan's intestacy law? That is a question that the Michigan Supreme Court will consider when it hears oral arguments in *In re Certified Question (Mattison v Commissioner of Social Security)* next week. The issue is one of first impression in Michigan.

The case comes to the Supreme Court as a certified question from the U.S. District Court for the Western District of Michigan; the federal court is considering a woman's challenge to the Social Security Administration's denial of her application for children's survivors' benefits. The SSA maintains that the posthumously conceived children did not "survive" the woman's husband, who died in Michigan, as defined by Michigan's Estates and Protected Individuals Code and so cannot inherit intestate from him or receive Social Security survivor's benefits. Under the Social Security Act, an applicant for child's benefits must demonstrate that he or she is the "child" of the deceased wage earner; the act provides that, in determining whether the applicant is the deceased's child, the Commissioner of Social Security "shall apply" the intestacy law of the state where the deceased lived at the time of death. The U.S. Supreme Court recently ruled that the question whether posthumously conceived children qualify for Social Security benefits must be determined using state intestacy law.

The Court will also hear arguments in a challenge to the Michigan Department of Human Services' 2011 change in policy that limits family cash assistance to 60 months. The policy would also eliminate a hardship exemption that previously allowed some recipients to continue receiving cash assistance past the lifetime limit. The plaintiffs in *Smith v DHS Director*, who receive cash assistance under the hardship exemption, challenge the DHS policy, arguing in part that the DHS director had no authority to revoke what the plaintiffs contend is an entitlement under the state's Social Welfare Act.

The Court will hear oral arguments in eight other cases, including *Price v High Pointe Oil Company*, in which a Dewitt woman sought damages for emotional distress and mental anguish against a fuel oil delivery service that mistakenly pumped nearly 400 gallons of oil into her home's basement, forcing the home's destruction. The seven other cases involve age discrimination, criminal law, eminent domain, governmental immunity, no-fault insurance, paternity, and Whistleblowers' Protection Act issues.

The Court will hear oral arguments in its courtroom on the sixth floor of the Michigan Hall of Justice on **November 14 and 15**, starting at **9:30 a.m.** each day. The Court's oral arguments are open to the public.

As a public service, the Court provides summaries of the cases it will hear at <http://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Oral-Arguments/Pages/default.aspx>.

*Please note: 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 14**  
*Morning Session*

**ADMIRE v AUTO-OWNERS INSURANCE COMPANY (case no. 142842)**

**Attorneys for plaintiff Kenneth Admire:** George T. Sinas, Stephen H. Sinas/(517) 394-7500

**Attorney for defendant Auto-Owners Insurance Company:** Kimberlee A. Hillock/(517) 351-6200

**Attorney for amicus curiae Michigan Catastrophic Claims Association:** Jill M. Wheaton/(734) 214-7629

**Attorney for amicus curiae Michigan Insurance Coalition and Insurance Institute of Michigan:** Lori McAllister/(517) 374-9150

**Attorney for amicus curiae Coalition Protecting Auto No-Fault:** Joanne Geha Swanson/(313) 961-0200

**Attorney for amicus curiae Auto Club Insurance Association concurrence in Michigan Catastrophic Claims Association:** James G. Gross/(313) 963-8200

**Trial Court:** Ingham County Circuit Court

**Background:** At issue is whether the defendant insurance company is obligated to pay for a new van plus the cost of modifying the van to accommodate the injured plaintiff's needs. The insurer argues that it is obligated to pay for the modifications only. ... [Read more](#)

**CHARTER TOWNSHIP OF LYON v McDONALD'S USA, L.L.C., et al. (case no. 143342)**

**Attorneys for plaintiff Charter Township of Lyon:** Nancy Vayda Dembinski/(248) 476-6900, Matthew C. Quinn/(248) 399-9703

**Attorney for intervening defendant Milford Road East Development Associates, L.L.C.:** Robert M. Carson/(248) 644-4840

**Attorney for amicus curiae Michigan Chamber Litigation Center:** Clifford W. Taylor/(517) 487-2070

**Attorney for amicus curiae Michigan Townships Association and Michigan Municipal League Legal Defense Fund:** John K. Lohrstorfer/(269) 382-4500

**Trial Court:** Oakland County Circuit Court

**Background:** To extend water and sewer service to another property, Lyon Township exercised eminent domain over water and sewage lines located under a unit in the defendant's development. The defendant's development, Lyon Towne Center, shares owners, utilities, a strategic development plan, and infrastructure with another development, Lyon Crossing. The

defendant owner claims that the township's taking on Lyon Towne Center property harmed Lyon Crossing's market advantage – and that the owner is entitled to damages. ... [Read more](#)

**HALL, et al. v STARK REAGAN P.C., et al. (case nos. 143909, 143911)**

**Attorneys for plaintiffs Patrick C. Hall and Ava Ortner:** Kathleen L. Bogas/(248) 502-5000, Robert W. Palmer/(248) 398-9800

**Attorney for defendants Stark Reagan, P.C., Peter L. Arvant, Kenneth M. Boyer, William D. Girardot, Christopher E. LeVasseur, R. Keith Stark, and Michael H. Whiting:** Thomas G. Kienbaum/(248) 645-0000

**Attorney for defendants Joseph A. Ahern and Jeffrey J. Fleury:** Joseph A. Ahern/(248) 723-6101

**Trial Court:** Oakland County Circuit Court

**Background:** Two attorneys are suing their former law firm for alleged violations of the state's Civil Rights Act, claiming that the firm forced them out because of their age. The firm and other defendants maintain that the plaintiffs have to submit their claims to binding arbitration, rather than pursue them in court, under an agreement that all members of the law firm signed. ... [Read more](#)

*Afternoon Session*

**PETIPREN v JASKOWSKI, et al. (case nos. 144142-3)**

**Attorney for plaintiff Thomas J. Petipren:** Michael H. Cutler/(248) 489-8780

**Attorney for defendant Rodney Jaskowski:** G. Gus Morris/(248) 502-4000

**Attorney for amicus curiae Michigan Association of Chiefs of Police:** Janet A. Napp/(248) 547-1032

**Trial Court:** Sanilac County Circuit Court

**Background:** The plaintiff sued the defendant police chief, alleging that the defendant assaulted him without provocation and wrongfully arrested him. Is the police chief absolutely immune from suit, or can the lawsuit proceed on the ground that he was acting as a police officer and not in his executive capacity? ... [Read more](#)

**BAZZI v MACAULAY (case no. 144238)**

**Attorney for plaintiff Hafez M. Bazzi:** Marc N. Drasnin/(248) 855-3088

**Attorney for defendant Anne Elizabeth Macaulay:** Anne Argiroff/(248) 615-4493

**Trial Court:** Oakland County Circuit Court

**Background:** A man brought a paternity action against his former girlfriend, contending that he was the father of her child – but the woman moved to dismiss the lawsuit, based on what appeared, on its face, to be a valid acknowledgment of parentage signed by another man. Does the plaintiff, the alleged biological father, have standing to bring this paternity suit? ... [Read more](#)

**PEOPLE v VEILLEUX (case no. 145142)**

**Prosecuting attorneys:** Jessica R. Cooper, Jeffrey M. Kaelin/(248) 858-0656

**Attorney for defendant Brian James Veilleux:** John D. Lazar/(248) 543-0390

**Trial Court:** Oakland County Circuit Court

**Background:** The defendant, who was sentenced to serve 630 days on seven counts of contempt

of court, argues that the sentence was excessive – and that the trial court erred by ordering him to serve his contempt sentence consecutive to his sentence on a drug charge. ... [Read more](#)

**Thursday, November 15**  
*Morning Session Only*

**PRICE v HIGH POINTE OIL COMPANY, INC. (case no. 143831)**

**Attorney for plaintiff Beckie Price:** Steven A. Hicks/(517) 482-8933

**Attorney for defendant High Pointe Oil Company, Inc.:** Megan K. Cavanagh/(313) 446-1530

**Attorney for amicus curiae Michigan Manufacturers Association:** Cynthia M. Filipovich/(313) 965-8300

**Attorney for amicus curiae Michigan Association of Realtors:** Gregory L. McClelland/(517) 482-4890

**Attorney for amicus curiae Michigan Association of Home Builders:** Gregory L. McClelland/(517) 482-4890

**Trial Court:** Clinton County Circuit Court

**Background:** At issue is whether the plaintiff can seek emotional distress and mental anguish damages caused by the negligent destruction of her home. The parties agree that all economic damages have been covered by the plaintiff's insurer, the defendant, or the defendant's insurer. ... [Read more](#)

**WHITMAN v CITY OF BURTON, et al. (case no. 143475)**

**Attorney for plaintiff Bruce Whitman:** Tom R. Pabst/(810) 732-6792

**Attorney for defendants City of Burton and Charles Smiley:** Ernest R. Bazzana/(313) 983-4798

**Attorney for amicus curiae City of Flint:** Peter M. Bade/(810) 766-7146

**Attorney for amicus curiae Michigan Association for Justice:** Charlotte Croson/(248) 502-5000

**Attorney for amicus curiae Michigan Municipal League, Michigan Townships Association and the Public Corporation Law Section of the State Bar of Michigan:** Rosalind H. Rochkind/(313) 446-5522

**Trial Court:** Genesee County Circuit Court

**Background:** The plaintiff, the former police chief for the city of Burton, sued the city under the Whistleblowers' Protection Act, claiming that, after he complained that the city was violating a local ordinance by not paying for his unused sick and personal time, the city retaliated against him by not renewing his contract. ... [Read more](#)

**IN RE CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN (Mattison v Commissioner of Social Security) (case no. 144385)**

**Attorney for plaintiff Pamela Mattison, o.b.o. M.M. and M.M.:** Victor L. Bland/(269) 382-6900

**Attorney for defendant Commissioner of Social Security:** Ryan D. Cobb/(616) 456-2404

**Background:** The plaintiff in this case conceived twins, using her deceased husband's frozen sperm, after his death; she applied for Social Security survivor's benefits for the children, but the Social Security Administration denied her application on the ground that the children could not

inherit from her husband under Michigan law. At issue is whether the twins are the “children” of the plaintiff’s husband for purposes of Michigan intestacy law. ... [Read more](#)

**SMITH, et al. v DEPARTMENT OF HUMAN SERVICES DIRECTOR (case nos. 145612-3, 145622-3)**

**Attorneys for plaintiffs Megan Smith, Nicole Kelly, Roshawnda Williams, and Nicole Johnson:** Jacqueline Doig/(989) 755-3120

**Attorney for defendant Department of Human Services Director:** Kristin M. Heyse/(517) 373-7700

**Attorney for amicus curiae Michigan Protection & Advocacy Service, Inc., et al.:** Nicole E. Shannon/(517) 487-1755

**Trial Court:** Genesee County Circuit Court

**Background:** In October 2011, the Michigan Department of Human Services announced that it would impose a lifetime limit of 60 months on family cash assistance payments, and that it was eliminating a hardship exemption that previously allowed some recipients to continue receiving cash assistance past the lifetime limit. The plaintiffs in this case challenge that policy, arguing in part that the DHS director had no authority to revoke what they argue is an entitlement under the state’s Social Welfare Act. ... [Read more](#)

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