

MSC Order List: December 21, 2011

28. December 2011, By Julie Lam

On December 21, 2011, the Michigan Supreme Court granted the Attorney General's motion to enlarge the record on appeal, and granted the application for leave to appeal the judgment of the Court of Appeals, in [People v. Nunley, No. 144036](#). The parties shall address "whether the Court of Appeals erred when it held that the Department of State certificate of mailing is testimonial in nature and thus that its admission, without accompanying witness testimony, would violate the Confrontation Clause." The Michigan Supreme Court invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file briefs amicus curiae.

The Court ordered the Clerk to schedule oral argument on whether to grant the application for leave to appeal or take other action in [Davis v. Emergency Manager for the Detroit Public Schools, No. 144084](#). At oral argument, the parties shall address "whether the office of Emergency Manager for the Detroit Public Schools should be declared vacant because Roy Roberts did not take the oath of office before entering upon his duties, but subsequently took the oath of office before this quo warranto action was filed."

In [Jones v. Detroit Medical Center, Nos. 141624 & 141629](#), leave to appeal having been granted, and the briefs and oral arguments of the parties having been considered, the Michigan Supreme Court reversed the judgment of the Court of Appeals and remanded the case to the Wayne Circuit Court for further proceedings. The Michigan Supreme Court determined that the lower courts erred by granting partial summary disposition to plaintiffs on the issue of proximate causation because there is a question of fact that should be submitted to the trier of fact. Justice Hathaway dissented, stating that she believed that leave to appeal was improvidently granted because the result reached by the Court

of Appeals was correct. Justices Cavanagh and Marilyn Kelly joined the statement of Justice Hathaway.

Having heard oral argument on the application for leave to appeal in [LaMeau v. City of Royal Oak, No. 141559-60](#), in lieu of granting leave, the Michigan Supreme Court reversed the judgment of the Court of Appeals, for the reasons stated in the Court of Appeals dissenting opinion, and remanded the case to the Oakland Circuit Court for entry of an order granting summary disposition to the public defendants. Justices Cavanagh and Hathaway would deny leave to appeal. Justice Marilyn Kelly wrote a dissenting opinion, criticizing the practice “the Court has used more and more of late” of resolving a case without a written opinion as well as the majority’s reliance on “the flawed analysis of the Court of Appeals dissent.” Justice Kelly opined that there was ample evidence, if believed, to support a finding that the individual defendants were grossly negligent, and that the trial court and the Court of Appeals majority correctly determined that neither the city nor the individual defendants are entitled to summary disposition.

Having heard oral arguments on the application for leave to appeal in [Jilek v. Stockson, No. 141727](#), in lieu of granting leave to appeal, the Michigan Supreme Court reversed the Court of Appeals’ grant of a new trial, and remanded the case to the Court of Appeals for consideration of issues raised but not addressed by that court during its initial review of the case. In Justice Cavanagh’s dissenting view, the trial court seriously erred and deprived the plaintiff of a fair trial, and the error rendered the trial so fundamentally deficient that a refusal to grant a new trial is “inconsistent with substantial justice.” MCR 2.613(A). Justice Marilyn Kelly joins Justice Cavanagh’s dissent that would affirm the result of the Court of Appeals and remand for a new trial. Justice Hathaway would deny leave to appeal.

Having heard oral argument on the application for leave to appeal in [Whitmore v. Charlevoix Co Rd Comm, No. 142106](#), in lieu of granting leave, the Michigan Supreme Court affirmed the judgment of

the Court of Appeals in part, determining that the Court of Appeals did not err in affirming the trial court's denial of defendant's motion for summary disposition, and remanded the case to the Charlevoix Circuit Court for further proceedings. The Michigan Supreme Court clarified that plaintiffs did not properly plead *actual* knowledge of the *particular* defect that caused their injuries, and that the Court of Appeals erred to the extent that its rationale was inconsistent with the Court's decision in *Wilson v. Alpena Co Rd Comm*, 474 Mich 161 (2006). The Michigan Supreme Court reversed in part the judgment of the Court of Appeals regarding defendant's motion to strike portions of plaintiff's allegations relating to defendant's alleged failure to warn, for the reasons stated in Judge Bandstra's partial dissent. Justices Cavanagh, Marilyn Kelly, and Hathaway would deny leave to appeal.

In lieu of granting leave to appeal in *People v. Moore*, No. 143725, the Michigan Supreme Court reversed in part the judgment of the Court of Appeals, for the reasons stated in the Court of Appeals dissenting opinion, and remanded the case to the Macomb Circuit Court for resentencing. The Michigan Supreme Court denied leave to appeal in all other respects.

Chief Justice Young and Justice Markman issued statements denying plaintiff's motion seeking their respective disqualification in *Parisi v. Detroit Entertainment, LLC*, No. 144072. The Michigan Supreme Court denied one application for leave to appeal because the defendant failed to meet the burden of establishing entitlement to relief under MCR 6.508(D) and denied one motion for reconsideration.