

## MSC Order List: October 27, 2010

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[28. October 2010 By Madelaine Lane](#)

On Wednesday, October 27, 2010, the Michigan Supreme Court granted the motion of the State Bar of Michigan Real Property Law Section for an extension of time for filing its brief amicus curiae in the matter of [Tus v. Hurt](#), Case No. 139769. The Court also granted the Attorney General the opportunity to participate in the oral argument in [People v. Dowdy](#), Case No. 140603. The Court took substantive action in one criminal and four civil cases which are discussed after the jump.

In [Sunde v. Sunde](#), Case No. 141733, in lieu of granting leave to appeal the July 30, 2010 Court of Appeals order, the Court remanded the matter back to the Oakland County Circuit Court for reconsideration of the plaintiff's motion for a change in domicile. In reaching this conclusion, the Court held that the trial court made its decision regarding the change in domicile on the basis of an incomplete factual record. In particular, the Court noted that the trial court erred in disregarding plaintiff's proffered evidence that the defendant had a history of domestic violence. A history of domestic violence is an express factor to be considered under MCL 722.31(4). On remand, the trial court was directed to allow both parties to present testimony and evidence regarding all of the MCL 722.31 statutory factors. The Court further ruled that the trial court should base its decision on remand with the minor children as its primary focus.

The Court remanded the case of [Smitter v. Thornapple Township](#), Case No. 141085 to the Court of Appeals as on leave granted. On remand, the Court of Appeals is directed to consider its April 5, 2010 order denying the appellant's application for leave to appeal.

In [Auto-Owners Ins. Co. v. Ferwerda Enterprises, Inc.](#), Case No. 140735, the Court vacated the Court of Appeals' January 28, 2010 judgment addressing attorney fees. On July 15, 2010, the Court directed the Mason County Circuit court to file a clarification of record. Specifically, the Court asked the trial court to explain whether it found that Auto Owner's claim was frivolous within the meaning of MCR 2.625(A)(2) and/or MCL 600.2591(3)(a)(i)-(iii). The trial court filed the clarification and stated it found that the plaintiff's arguments were inappropriate and without legal merit within the definition of MCL 600.2591(3)(a)(i)-(iii). Based on this clarification, the Court vacated the Court of Appeals' decision regarding attorney fees and reinstated the trial court's attorney fee award.

The Court granted the plaintiff-appellant's application for leave to appeal in [Bronson Methodist Hospital v. Allstate Ins. Co.](#), Case No. 140301. On May 5, 2010, the Court ordered this application held in abeyance pending the Court's decision in [Univ. of Michigan Regents v. Titan Ins. Co.](#), 487 Mich \_\_ (2010). Our post regarding the court's opinion in [Titan](#) can be found [here](#). Following the Court's decision in [Titan](#), it reconsidered the plaintiff's

application for leave to appeal the November 24, 2009 Court of Appeals' decision and granted leave. On appeal, the Court will consider whether the assigned claims plan notice and commencement section of the No-Fault Insurance Act, found at MCL 500.3174, extends the one-year recovery period under MCL 500.3145(1).

Finally, the Court peremptorily reversed the July 10, 2010 Court of Appeals decision in *People v. Reid*, Case No. 141597. Our post discussing the Court of Appeals' opinion in *Reid* can be found [here](#). The Supreme Court held that the Court of Appeals wrongly concluded that the circuit court did not have jurisdiction to try a defendant's misdemeanor charge once the felony charge was dismissed on the day of trial. In reaching this conclusion, the Court noted that a circuit court is vested with jurisdiction over misdemeanor charges where a defendant has been charged with both misdemeanor and felony offenses arising out of the same criminal transaction. Once jurisdiction is properly attached, any doubt is resolved in favor of the court retaining jurisdiction. *People v. Velting*, 443 Mich. 23, 32 (1993). Additionally, if the legislature intended to divest a court of jurisdiction over a particular matter, once jurisdiction attached, this intent must be clearly and unambiguously stated. *Id.* In this case, MCL 600.8311(a), which grants jurisdiction over misdemeanor matters to the district court, does not expressly divest a circuit court of jurisdiction over a misdemeanor case where the felony charge is resolved on the day of trial. The Court remanded the case back to the Court of Appeals for consideration of the remaining issues the defendant raised on appeal.