SUPREME COURT OF THE

STATE OF MICHIGAN

In re Estate of CLIFFMAN.

Elmer Carter, Philip Carter, David Carter and Doug Carter

Appellants

vs.

Betty Woodwyk and Virginia Wilson

Appellees

Court of Appeals No. 321174
Allegan County Probate Court
File No. 13-58358-DE

APPELLANTS' APPLICATION FOR LEAVE TO THE SUPREME COURT

KENNETH A. PUZYCKI (P45404)
Counsel for Appellants
Law Office of Kenneth A. Puzycki PLLC
380 Garden Ave
Holland, MI 49424
616.738.8800

KENNETH B. BREESE (P27177)
Counsel for Appellees
Cunningham Dalman, P.C.
321 Settlers Road
Holland, MI 49423
616.392.1821

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STATEMENT OF ORDER BEING APPEALED

This case involves four adult step-children ("the Carters") who have been denied a share of the recovery arising out of the wrongful death of their step-father, Gordon Cliffman ("Gordon.")

Probate Court Ruling. The Appellees (Gordon's sisters) moved the Allegan County Probate Court to preclude the Carters from filing claims for a portion of the wrongful death recovery. At a hearing held on March 21, 2014, Probate Judge Michael Buck, stated on the record that he believed that the statute was ambiguous and that the legislative history supported the step-children's position. However, the Court also stated that it was required by law to follow *In re Combs*, 257 Mich App 622; 669 NW2d 313 (2003); lv den 469 Mich 1021; 678 NW2d 440 (2004). Accordingly, the Probate Court granted Appellee's Petition for declaratory relief and entered an order denying the Carters the right to file claims on March 21, 2014.

Court of Appeals Ruling – affirming the Probate Court. The Carters appealed to the Court of Appeals. That Court denied the appeal, issuing a written opinion, *per curiam* on June 9, 2015. A copy of the Court of Appeals decision is attached as Exhibit 1. The Court of Appeals followed *Combs*, which held that "spouse" should be defined using an ordinary dictionary, but is silent on whether the Wrongful Death Act, MCL 600.2922, should be read *in pari materia* with provisions contained in the Estate and Protected Individuals Code, MCL 700.1101 *et seq.* (commonly referred to as "EPIC"), or any other statute.

The Carters now seek leave to appeal to this Honorable Court, contending that *Combs* was incorrectly decided. The Carters ask that *Combs* be overruled and that the Court of Appeals' decision be reversed, becasuse the holding in *Combs* actually frustrates the intent of the legislature in 1985 amdnedments to MCL 600.2922, the Wrongful Death Act.

QUESTIONS PRESENTED

ISSUE #1: **Do the "children of the deceased's spouse," referred to in the Wrongful Death Act, MCL 600.2922, include children of the decedent's predeceased spouse?**

Appellants: YES

Appellees: NO.

Probate Court: NO. Followed *Combs*.

Court of Appeals: NO. Followed *Combs*.

ISSUE #2: **Did the Court of Appeals err, in this case and in *Combs*, in ascribing to the ordinary dictionary meaning to the undefined statutory term "spouse," when (1) the Wrongful Death Act must necessarily be read *in pari materia* with other provisions of the Revised Judicature Act and EPIC that also use the term "spouse"; and when (2) the legislative history, properly cognizable by this court, reveals an intention to extend the right to recover to a decedent's step-children?**

Appellants: YES. "Spouse" is a technical term, subject to additional scrutiny. *Combs* was in error in this regard.

Appellees: NO.

Probate Court: NO. Followed *Combs*.

Court of Appeals: NO. Followed *Combs*.

STANDARD OF REVIEW

De Novo Review

Questions of statutory interpretation are reviewed *de novo*. *People v. Mazur*, Michigan Supreme Court, Docket No. 149290; ____ Mich ___ (2015); quoting *Michigan v McQueen*, 493 Mich 135, 146-147; 828 NW2d 644 (2013).

INTRODUCTION

This case involves four adult step-children whose step-father died as the result of injuries he suffered in an automobile accident. Based on a 2003 published Court of Appeals opinion, *In re Combs*, 257 Mich App 622; 669 NW2d 313 (2003); *lv den* 469 Mich 1021; 678 NW2d 440 (2004), they have been denied any share of the wrongful death settlement proceeds.

At first blush, this case appears to be about the definition of the term "spouse" the Wrongful Death Act. More importantly, this case is about ***how*** the Court should define all of the terms (including "spouse") of the Wrongful Death Act. For the past 22 years, the appellate courts have defined those terms inconsistently. The Carters ask this Court to reconcile those cases, not only to provide clarity in this case, but also to provide interpretive guidance for application in future cases. The Carters submit that the Wrongful Death Act ***must*** be read *in pari materia* with EPIC to define all of the technical terms ("child," "parent," "brother," "sister") contained in the Wrongful Death Act and the other provisions of the RJA.[1] All of those terms are subject to the same analysis and fate as "spouse." As a result, the potential impact of this case extends far beyond the current litigants, and warrants this Court's time and consideration, satisfying the grounds for granting leave to appeal prescribed by MCR 7.302(B)(3) and (5): The question involves both legal principles of major significance to the state's jurisprudence, and a decision by the Court of Appeals that is clearly erroneous, and that will cause material injustice, because it is based on application of reasoning that conflicts with the rules this Court has prescribed for interpreting statutes.

Because this case has such far-reaching implications, the Carters have sought the assistance and support of the Probate and Estate Planning Section, the Litigation Section and the Family Law Section of the Michigan Bar Association. As of the date of this Application, the Probate and Estate Planning Section has expressed its intent to file a request for leave to file an *amicus curiae* brief in support of this Application. The Litigation Section and the Family Law Section are contemplating participation, but have not committed at this point in time.

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[1] And if necessary, to examine the legislative history of the Wrongful Death Act.

STATEMENT OF FACTS

Family History and Background.

Gordon Cliffman ("Gordon") was born in 1930, one of eight children. Gordon had no biological children. He married Betty Carter in 1976. At that time, Betty was a divorced mother with six minor children from her prior marriage. Gordon never adopted any of the boys, but raised them as his own. Betty died in 1996. Gordon never remarried. The Carters, now adults in their 40's and 50's, are Betty's four surviving sons.[2]

On October 2, 2012, Gordon died from injuries he sustained in a motor vehicle accident. Gordon was survived by the Carters, and four sisters,[3] two of whom are the Appellees. [4]

Probate Estate. Like so many people, Gordon died intestate. On January 14, 2013, the Ottawa County Probate Court[5] appointed Philip Carter ("Philip"), one of Gordon's step-sons (and one of the Appellants), as personal representative of Gordon's estate.[6] At Philip's request, the Ottawa County Probate Court transferred the case to Allegan County Probate Court,[7] the county of which Gordon was a resident.

Wrongful Death Settlement. As Personal Representative of the estate, Philip negotiated a $50,000 settlement of a third-party liability claim with the at-fault driver's insurance company, and an under-insured motorist coverage claim with Gordon's insurance company, for an additional $250,000.00. On December 18, 2013, the Allegan

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[2] Two of Betty's sons were deceased at the time of Gordon's death.
[3] Three of Gordon's siblings died before he did. One of Gordon's sisters, Bernice Berens, died after Gordon. She is not an appellee, but her estate remains an interested person, both in the probate estate, and the distribution of the wrongful death settlement proceeds.
[4] Gordon also had several nieces and nephews who survived him. The nieces and nephews are heirs of the probate estate, per the laws of intestacy, but are not potential takers under the Wrongful Death Act.
[5] Ottawa County Probate Court, File No. 12-59527-DE
[6] Three of Gordon's four sisters attended the January hearing in Ottawa County Probate Court, and did not object to the appointment of Philip Carter as personal representative.
[7] Allegan County Probate Court, File No. 13-58358-DE

County Probate Court approved the gross settlement amount of $300,000.00. The Court also approved the payment of $100,000 for attorney fees, and allocated $40,000.00 of the remaining $200,000 to the probate estate for Gordon's conscious pain and suffering. Because Gordon died intestate, the $40,000.00 has been distributed to his heirs-at-law (not including the Carters) under the laws of intestacy. The remaining amount, $160,000.00, was allocated to loss of society and companionship, and is being held in an IOLTA account, awaiting the final determination of the issue presented in this case, i.e. whether the Carters are entitled, under the Wrongful Death Act, as "children of the deceased's spouse," to participate in the distribution of the damages allocated to the loss of society and companionship.

LAW AND ANALYSIS

The Carters recognize that this Court resorts to legislative history only in narrow circumstances, and even then only to certain types of legislative history materials. With this recognition, the Carters ask this Court to refer to the following testimony reflecting the purpose of the deletion of the term "surviving" as a modifier of "spouse" in the Wrongful Death Act. As the argument below will demonstrate, this testimony provides ample assurance that the narrow circumstances permitting reference to legislative history material exist here.

> Michigan House Judiciary Committee Meeting, House Bill 4487, May 16, 1985:
>
> ". . . ***We did have one suggestion, and it's already been addressed by Representative Nash, and that was to strike the word "surviving" in House Bill 4487 on page 2, line 24***. I would like to briefly indicate that the reason we feel that should be struck is that since you're including stepchildren, ***you should treat all stepchildren equally and not treat them differently if you have a situation where your wife has predeceased you***. Specifically and the issue that I raised with Representative Nash was that ***if you marry someone that has relatively young children that become part of your family, it's possible that your wife would predecease you and that you would still have those stepchildren under your care and guidance. If the word "surviving" is left in and then you died as a result of a wrongful death, those stepchildren would be barred from taking.*** Conversely, if you married a woman that had adult [sic]stepchildren and you died with her surviving you, stepchildren that might have never lived with you would have an opportunity to come forward and claim. We're suggesting that ***by striking the word "surviving," we don't hurt anybody else, and we take care of the possible class of stepchildren that might be left out.***" [Attorney Joseph Buttiglieri, testifying in front of the Michigan House Judiciary Committee, Lansing Michigan, May 16, 1985. (Emphasis added.)]

GENERAL BACKGROUND

The main issue before this Court is to determine what the legislature intended when it used the phrase "children of the deceased's spouse" in the 1985 amendment to the Wrongful Death Act. Specifically, the Carters ask this Court to determine whether the legislature intended to allow ***all of a decedent's step-children*** to file claims for a portion of any wrongful death proceeds, or whether the legislature wanted to ***limit the class*** to those step-children whose parent survived the step-parent's death. Indirectly, the Carters are also asking this Court to determine the proper way to interpret the undefined terms in that statute, including but not limited to the term "spouse," and the phrase "children of the deceased's spouse."

The case law on how to interpret the Wrongful Death Act is inconsistent. Whereas this Court has read the Revised Judicature Act (of which the Wrongful Death Act is a part) and the probate statutes, *in pari materia*, to define its terms, ***three published Court of Appeals cases***[8] (including Combs), interpreting the Wrongful Death Act since its 1985 amendment, have failed to employ that interpretive approach.

In 1997, this Court decided Lindsey v Harper Hospital, 455 Mich 56, 564 NW2d 861 (1997), a case involving a wrongful death suit and the connection between the probate statute and the Revised Judicature Act (of which the Wrongful Death Act is a part). In that case, this Court held that the Revised Probate Code (the RPC) MCL 700.101, *et seq.* (Repealed and replaced with EPIC in April, 2000) and the RJA should be read *in pari materia.* That case involved a wrongful death suit filed by the personal representative of a decedent's estate. The probate court appointed the decedent's daughter as "temporary personal representative" and issued letters of authority to her. About a month later, the probate court appointed the same daughter as "personal representative," and re-issued letters of authority to her in that capacity. She filed a wrongful death action against the defendant hospital within two-years of her appointment as (full) personal representative,

[8] In re Renaud Estate Boling v. Renaud, 202 Mich App 588 (1993), lv to appeal denied 444 Mich 987 (1994) and In re Claim of Rodney Turner, Turner v Grace Hospital, 209 Mich App 66 (1995); *application for leave granted* 451 Mich 899 (1996); *leave vacated and lower court ruling reversed* 454 Mich 863 (1997).

but after the two-year anniversary of her appointment as "temporary personal representative."

At that time, section 5852 of the RJA, 600.5852, required a "personal representative" to file a wrongful death action within two-years of the probate court's issuance of the "letters of authority" to the personal representative. The RJA neither defined the term "personal representative," nor distinguished between a "temporary personal representative" and a "personal representative." The RPC, on the other hand, defined both "temporary personal representative" and "personal representative," and outlined the duties and obligations of both positions. The Court held that it was appropriate to read the RJA and the RPC, *in pari materia*, since both statutes served a common purpose.

> **"Because the term personal representative is not defined in the statute, we examine the Revised Probate Code for a definition. . . Under the rule of construction of statutes *in pari materia*, it is appropriate to harmonize statutory provisions that serve a common purpose when attempting to discern the intent of the Legislature.** Jennings v Southwood, 446 Mich 125, 136-137; 521 NW2d 230 (1994); Wayne Co v Auditor General, 250 Mich 227, 232-233; 229 NW 911 (1930). Lindsey, at p 65.[9]

Because the duties of a temporary personal representative were identical to those of a personal representative, and included the power to bring an action, this Court held that the period of limitations began when the temporary personal representative's letters of authority were issued. Therefore, the suit was time-barred. Thus, the Court read the RPC and the RJA *in pari materia* to determine the correct result.

As in the case at bar, all three of the ***appellate*** court cases involved a determination as to whether certain individuals have a right to file claims for a portion of the proceeds in wrongful death actions. The first case, In re Renaud Estate Boling v. Renaud, 202 Mich App 588 (1993), lv den 444 Mich 987 (1994) involved a child born out of wedlock, whom the decedent had ***given up for adoption***.[10] The court was asked to interpret the term

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[9] Following this Court's holding in Lindsey, the Michigan Legislature subsequently amended MCL 600.5852 to clarify that the period of limitations begins to run when the letters of authority are issued to the "first personal representative" and that the issuance of subsequent letters of authority does not enlarge the time within which the Wrongful Death Action may be commenced.

[10] The child was adopted by the child's mother's new husband.

"descendant" under the Wrongful Death Act. The court did not use a dictionary definition. Instead, the court looked to the legislative history behind the Wrongful Death Act[11] and determined that the legislature intended that the term "descendant" should be defined using the laws of intestate succession found in the Revised Probate Code (RPC) MCL 700.101, *et seq*. (Repealed and replaced with EPIC in 2000.) Under that statute, illegitimate children were not heirs of the decedent, MCL 700.110, and the child was precluded from filing a claim. Although that court's roundabout approach appears to have produced a result consistent with the result that would be reached by simply reading the acts *in pari materia*, the court did not mention that interpretive approach, *per se*.

Two years later, the court of appeals was asked to determine whether a decedent's ***illegitimate child*** was entitled to participate in the distribution of wrongful death proceeds arising from ***his own father's death.*** *In re Claim of Rodney Turner, Turner v Grace Hospital,* 209 Mich App 66 (1995); *application for leave granted* 451 Mich 899 (1996); *leave vacated and lower court ruling reversed* 454 Mich 863 (1997). The court was asked to define the term "child." The court of appeals held that it was obligated to follow *Renaud*. Doing so, the court looked to Revised Probate Code to determine the definition of "child." Under the RPC, for an illegitimate child to be a "child" for purposes of intestacy, one of four conditions had to be established. Because there was no written acknowledgement of paternity, the child was precluded from filing a claim. As in *Renaud*, the court's analysis appears consistent interpreting the Wrongful Death Act and the RPC *in pari materia,* but did not address that concept, *per se*. However, ***this Court reversed the Court of Appeals without a written opinion.*** Instead, and after having been briefed and after oral argument, it issued an "Action on Application," vacating its prior grant of leave, and reversing the conclusions of the lower court. *In re Turner, supra*. Though this Court clearly disagreed with the appellate court,[12] its order determined only the proper result in that case, affording no interpretive guidance of general application in future cases.

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[11] House Legislative Analysis, HB 4486 and 4487, July 22, 1985

[12] The cause having been briefed and orally argued, the order of May 22, 1996, 451 Mich 899, granting leave to appeal is vacated, and in lieu of granting leave to appeal, the judgment of the Court of Appeals is reversed with respect to its conclusions that the defendant was not entitled to share in the settlement proceeds and, even if he were, that the trial court erred in the manner in which the proceeds were distributed. MCR 7.302(F)(1),

This Court's order in Turner suggests an additional reason for granting leave here; because the Court disposed of the case in the narrowest possible ground, i.e. that the Plaintiff had admitted that the decedent was the father of the child. It neither discussed the proper analysis to employ in the interpretation of the Wrongful Death Act nor, more importantly, did it overturn Renaud.

The most recent of the four cases, Combs, was decided in 2003, eight years after Turner. The facts of the case at bar are ***nearly*** identical to those in Combs. There, Ellen Combs died as the result of injuries she received in a car accident. Like the Carters, her late husband Arlie's children wanted to claim for a portion of the wrongful death proceeds. The only difference is that in Combs the step-children were all adults when Ellen and Arlie married. So, unlike Gordon, Ellen did not raise Arlie's children. For purposes of the statute, however, this is irrelevant. The Combs court was asked to determine the meaning of "the children of the decedent's spouse" and whether the children of a spouse who predeceased the decedent should be allowed participate in the distribution of the wrongful death proceeds.

The court's analysis in Combs was entirely different from the approaches taken in, Lindsey, Renaud and Turner.[13] The Combs court did not look to any probate definitions, nor did it even discuss whether it should consider the applicable probate statute (EPIC, which took effect April 1, 2000)[14] to aid in the interpretation of the Wrongful Death Act. Moreover, although the appellees' brief[15] did discuss the House Legislative Analysis, the

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Plaintiff admitted in pleadings in court that the defendant was the son of the deceased. Plaintiff is bound by that admission. Therefore, the trial court's distribution award to the defendant is reinstated. Reported below: 209 Mich App 66. Reconsideration denied June 10, 1997.

[13] The court in Combs did not mention Lindsey, Renaud or Turner in its published opinion.
[14] Out of fairness to the judges in Combs, the litigants did not raise the issue. The litigants framed the issue as whether a widowed person has a spouse. The briefs of the Appellants is attached as Exhibit 2, and the Appellees' brief is attached as Exhibit 3. It is also worth noting that the appellants in Combs filed an application for leave to this Court. That application was denied. 469 Mich 1021; 678 NW2d 440 (2004). In their application for leave, the Appellants did argue, albeit weakly, that EPIC had multiple references to "surviving" spouse. See page 7 of that application for leave, attached as Exhibit 4.
[15] See Exhibit 3.

Combs court did not consider the legislative history of the 1985 amendments to the Wrongful Death Act.

Instead, the court in *Combs* used a dictionary definition[16] and relied on three non-probate cases.[17] The court concluded that a spouse had to be a "married person," and that marriage ended at death. Based on this reasoning, the *Combs* court determined that the step-children whose parent predeceased the decedent were not included in the class of "children of the deceased's spouse" entitled to claim. Significantly, *Combs* was not a unanimous decision. The dissent, by Judge White, was consistent with the Carters' contention here: Judge White believed that the statute was ambiguous, and that the statutory class included the step-children. *Combs*, at 625-626. Although this Court denied leave to appeal, it is well-settled hornbook law that the denial of leave has no precedential significance. *Schooley v Consolidated Roadhouse of Taylor, LLC*, 488 Mich 981, fn 1, 791 NW2d 108 (2010); citing *Tebo v Havlik*, 418 Mich 350, 363 n 2 (1984).

The Carters ask that this Court address the conflicting approaches to defining the terms of the Wrongful Death Act, and to determine whether *Combs* was correctly decided.

THE WRONGFUL DEATH ACT

Ultimately, the issue before this Court is the interpretation of the Wrongful Death Act. Section (3) of the Wrongful Death Act sets forth the class of persons who are entitled to file a claim for a portion of the settlement proceeds arising out of a wrongful death situation:

> (3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following ***who suffer damages and survive the deceased***:

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[16] *Webster's New Collegiate Dictionary (1976)*

[17] *Cornwell v Dep't of Social Services*, 111 Mich App 68, 70; 315 NW2d 150 (1981), citing *Webster's New Collegiate Dictionary* (1976), for the unremarkable proposition that marriage ends at the death of one of the spouses. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997.)

> (a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.
>
> (b) ***The children of the deceased's spouse.***
>
> (c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Michigan law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased. [MCL 700.2922(3) (Emphasis added.)]

In the case at bar, the critical provision is subsection (b). The precise question is what the Michigan Legislature meant by "***children of the deceased's spouse.***" That phrase is awkward at best. It requires no stretch of anyone's imagination, or any great leap of logic, to see that the legislature meant for that phrase to mean "step-children" of the decedent. Indeed, that is undisputed, and even the Combs majority recognized that the issue was whether the step-parent deceased's spouse must be living when the wrongful death occurs. Combs, at 623. Having said this, the Carters readily concede that the term "step-children" is not used in the statute. However, even if the term "step-child" had been used, the issue before this court would still be the same – Did the legislature intend to include only the ***step-children*** who are the children of the decedent's ***surviving*** spouse, or did they intend to include ***all*** of the decedent's step-children, like the Carters, who are the children of the decedent's ***predeceased*** spouse? As the following argument demonstarates, the legislature clearly intended the latter.

GENERAL PRINCIPLES OF STATUTORY CONSTRUCTION

Determining Legislative Intent. The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent as expressed by the language of the statute. Ferguson v. Pioneer State Mut. Ins. Co., 273 Mich App 47, at. 51, 731 NW2d 94 (2006), citing Neal v Wilkes, 470 Mich 661, 665; 685 NW2d 648 (2004). The first criterion in determining legislative intent is the specific language of the statute. House Speaker v

State Administrative Bd, 441 Mich 547, 495 NW2d 539 (1993). The court must look to any definitions contained in the statute being considered. Ferguson, 273 Mich App, at page 52.

One of the problems with the Wrongful Death Act is that it is literally a one-section statute. MCL 600.2922. Not only does it stand alone, ***it contains no definitions,*** and the critical phrase "*children of the deceased's spouse*" is undefined, either by the Wrongful Death Act or anywhere else in the RJA. Nor does the Wrongful Death Act contain any reference to any other statutes to be consulted in discerning the definition of the term "spouse" or "the deceased's spouse." Under these circumstances, how are the courts to determine the meaning of the undefined terms and phrases in the Wrongful Death Act? Should they follow Combs, and simply resort to a dictionary? Or should courts be required to use the *in pari materia* approach employed (although not explicitly discussed) in Renaud and Turner, and consult the relevant probate statutes in conjunction with the legislative history of the Wrongful Death Act for guidance? The Carters contend that the latter analysis is the only appropriate one, because the Wrongful Death Act cannot be interpreted otherwise than in the context to the probate statutes applicable to decedent's estates, with which it is always employed.

Liberal Construction. Finally, the Wrongful Death Act is part of the Revised Judicature Act. (the RJA) MCL 600.101 *et seq.* By its own terms, the RJA, including the Wrongful Death Act, is required to be ***construed liberally***.

> This act is remedial in character, and shall be liberally construed to effectuate the intents and purposes thereof. [MCL 600.102]

It is well settled in Michigan that all remedial statutes, such as the Wrongful Death Act, are to be construed liberally in favor of the persons intended to be benefited. Turner v Auto Club Ins Ass'n, 448 Mich 22, 28; 528 NW2d 681 (1995), citing Gobler v Auto-Owners Ins Co, 428 Mich 51, 61; 404 NW2d 199 (1987) (interpreting the No-Fault Act. MCL 500.3101 *et seq.*); *see also* Empson-Laviolette v Crago, 280 Mich App 620, 629; 760 NW2d 793 (2008) (interpreting the Veterans Preference Act (VPA), MCL 35.401 *et seq.*)

Consequently, this Court must construe any ambiguities in the statute in favor of ***including*** the Carters, ***not excluding*** them.

Stare Decisis. The Carters concede that the Allegan County Probate Court (despite its expressed reluctance to do so) and the Court of Appeals were obligated to follow *Combs.* Even if *Combs* was wrongly decided, MCR 7.215(C)(2), rendered it controlling. Although *Renaud* and *Turner* also deal with interpreting the Wrongful Death Act, The Carters concede that *Combs* is the only published decision dealing with the rights of step-children under the Wrongful Death Act. That concession does not mean that The Carters agree that *Combs* was correctly decided, however. Quite to the contrary. Close examination leads inescapably to the conclusion that *Combs* was incorrectly argued and wrongly decided, and that it therefore should be overturned.

SPECIFIC ANALYSIS

The issue on application before this Court is to determine which approach should be taken to interpret the Wrongful Death Act. Should courts look to the probate statutes, i.e. EPIC, and the legislative history, or should courts rarely resort to ordinary dictionary definitions and non-probate case law. The Carters contend that the former analysis is appropriate. With respect to the case at bar, the analysis can be broken down into five inter-related issues:

First, this Court must determine whether the term "spouse" is an ordinary word, subject to a dictionary definition, or whether the term "spouse" as used in the probate and wrongful death context, has a technical meaning, in which case, the Court apply that technical meaning.

Second, this Court must determine whether, in determining which approach to employ, a court should consider other uses of the term "spouse" within both the Wrongful Death Act and the Revised Judicature Act, including its use in such phrases as "surviving spouse" and "former spouse."

Third, this Court must determine whether, because the Wrongful Death Act comes into play only when death has occurred, a court is required to read the Wrongful Death Act *in pari materia* with the decedent's estate provisions of the Estate and Protected Individuals Code in order to interpret the term "spouse."

Fourth, assuming this Court finds that the Wrongful Death Act and EPIC should be read *in pari materia*, this Court must determine whether the reading of those statutes together renders the undefined term "spouse" ambiguous, as it is used in the Wrongful Death Act. To do this, the Court must conclude EITHER (1) that those statutes irreconcilably conflict with one another, OR (2) that the term "spouse" is equally susceptible to more than one meaning.

Finally, if this Court finds that the term "spouse" is ambiguous, this Court must determine whether it is appropriate to consider the legislative history of the 1985 amendment to the Wrongful Death Act. If so, this Court must determine whether that legislative history clearly and convincingly demonstrates that the legislature intended to give ***all*** of a decedent's step-children the right to file claims, regardless of whether their biological parent predeceased the step-parent who died in an accident.

Which analysis is correct? The Carters respectfully ask this Court to determine the proper manner in which courts should interpret the Wrongful Death Act. Specifically, the Carters ask this court to determine the proper manner for determining the meaning of the phrase "children of the deceased's spouse."

A. "Spouse" as used in the Wrongful Death Act, is a technical term that should be accorded its technical meaning, rather than a mere dictionary definition.

The Court in <u>*Combs*</u> treated "spouse" as an ordinary word, not as a technical term. "Spouse" is <u>**not**</u> an ordinary word: It is a technical legal term. One cannot be a "spouse" without first engaging in the legal act of marriage. MCL 551.2 (abolishing common law marriage.)

Under Michigan law, technical words and phrases do not lend themselves to dictionary definitions:

> **MCL 8.3a Approved usage; technical words and phrases.**
>
> All words and phrases shall be construed and understood according to the common and approved usage of the language; ***but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.*** [MCL 8.3a (Emphasis added)]

Over the years, the term "spouse" has evolved into a technical term of art, and as such is not properly definable for purposes of statutory interpretation by resorting to the common understanding of that term reflected in ordinary dictionary definitions. For example, less than a month ago, the United States Supreme Court changed the meaning fo "spouse" quite significantly, by legalizing same-sex marriages as a constitutional right. Obergefell v. Hodges, 576 U.S. __ (2015).

When a term has acquired a unique legal meaning in Michigan law, the court should interpret the term in accordance with its meaning in legal dictionaries and at common law. In re AJR, 496 Mich 346, 358; 852 NW2d 760 (2014); Ford Motor Co v City of Woodhaven, 475 Mich 425, 439; 716 NW2d 247 (2006). Accordingly, this Court should not consult an ordinary "layperson's" dictionary, as the court did in Combs. Rather, this Court should look to Black's Law Dictionary or other legal dictionary.

Black's Law Dictionary supports the Carters' argument that "spouse" is a technical term of art ***and*** their argument that the term "spouse," standing alone, is ambiguous in the context of the Wrongful Death Act. (See argument below.) For example, Black's contains ***separate entries*** and definitions for "spouse" and "surviving spouse." It defines "spouse" as "*one's wife or husband,*" Black's Law Dictionary., pg. 1258 (5th Edition, 1979) [18], and "surviving spouse" as '*[t]he spouse who outlives the other spouse. Term commonly found in statutes dealing with probate, administration of estates and estate and inheritance*

[18] The 5th Edition (1979) of Black's is used in this brief. Here, the amendment dates to 1985. So, the 1979 quotation is the most appropriate. A contemporaneous version of the legal dictionary should be consulted when using it to assist in determining for legislative intent. In re AJR, 496 Mich 346, 358; 852 NW2d 760 (2014).

taxes." Id, pg. 1297. Likewise, Garner's Dictionary of Legal Usage[19] contains comparable, separate entries for "spouse" and "surviving spouse."[20] Edition If, as the Combs court thought, the term "spouse" unambiguously requires survival, as the court in Combs held, why does Black's have two separate entries for "spouse" and "surviving spouse"? The reason is simple - the term "spouse" does NOT inherently require survival – "spouse" alone could mean a surviving spouse, a predeceased spouse, and even a former spouse.

B. The Court should consult other uses of the term "spouse" in the RJA to determine its meaning

The Wrongful Death Act is part of the RJA. The RJA uses the word "spouse," either alone ***or together with a defining term***, in at least ***thirteen*** different sections, including MCL 600.2922. Most of those sections use the word "spouse" on its own, and the meaning of "spouse" in those sections is clear from the context, without the need for further interpretation. However, sections 1060, 1090, 1200 and 5805 refer to a "former spouse," and section 5451 of the RJA refers to a decedent's "surviving spouse":

> (o) If the owner of a homestead dies, leaving a ***surviving spouse*** but no children, the surviving spouse before his or her remarriage, unless the ***surviving spouse*** is the owner of a homestead in his or her own right, may exempt the homestead and the rents and profits of the homestead. [MCL 600.5451, West Publishing 2015]

The legislature's use of "former spouse" and "surviving spouse" in the RJA clearly demonstrates that the legislature understood that "spouse" can have more than one meaning, depending on the terms that precede it. That the RJA uses the phrases "former spouse" and "surviving spouse" indicates that when the RJA was promulgated, the legislature was aware of the various statuses that a "spouse" can have. When a statute contains a specific phrase ("surviving spouse") in one section of a statute, but uses a general phrase ("spouse") in another section, a court can presume that the legislature intended **not** to use the more specific phrase. In re AJR, *supra,* at. 358-364 (discussing the differences between "custody" "physical custody," "joint custody," "legal custody" and "joint legal

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[19] Garner's Dictionary of Legal Usage, 8th Edition, 2004.

[20] In Garner's, "spouse" is defined as "one's husband or wife by lawful marriage, and "surviving spouse" is defined as "a spouse who outlives the other "spouse." Garner's, pp. 1438-1439 (emphasis added).

custody.") Thus, had the legislature intended to limit the class of wrongful death claimants to the "children of the deceased's ***surviving*** spouse," it could easily have done so by including the word "surviving." It did not.

On the contrary, the Combs court actually ignored the fact that when the legislature amended the Wrongful Death Act in 1985, it ***removed*** "surviving spouse" ***from the prior version*** of the Wrongful Death Act! "Courts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute." Bush v. Shabahang, 484 Mich 156; at 167; 772 NW2d 272 (2009).

In fairness to the majority in Combs, it appears that the litigants failed to raise this point. Nevertheless, by using the word "spouse" alone, without including ad\jectives to define "surviving," it must be presumed that the legislature did so purposefully and intentionally, implicitly demonstrating an intent ***not*** to limit the class of claimants to step-children whose parent survived until the death of the decedent.

No published cases considered the definition of the term "surviving spouse" in the pre-1985 Act. This should come as no surprise, because "surviving spouse" is clear and unambiguous. The same cannot be said of the term "spouse." If the unmodified word "spouse" was clear and unambiguous, why did the legislature use "surviving spouse" in the pre-1985 version of the statute? Was the word "surviving" mere surplusage? More importantly, why did the legislature take the term "surviving" out of the new statute? The presumption is that they intended to broaden the class beyond the children of a "surviving spouse" to include the children of any "spouse" of the deceased.

C. In the interpretive quest for the meaning of "spouse," the Court should consult EPIC, which applies whenever a wrongful death occurs.

Five times since January 2014,[21] the last time being less than one month ago, this Court has been asked to apply the well-settled doctrine of *in pari materia*, which states that

[21] Krusac v Covenant Med Ctr, Inc., Docket No. 149270 (2015); IBM Corp v Department of Treasury, 496 Mich 642, 852 NW2d 865 (2014); People v McKinley, 496 Mich 410, 852

when two statutes relate to each other, or share a common purpose, both statutes should be read together to ensure statutory harmony. Mazur, supra; citing People v Harper, 479 Mich 599, 621; 739; NW2d 523 (2007). In addition, this Court has held that when two statutes are read *in pari materia*, ***each statute is to be given force and effect.*** Malcolm v East Detroit, 437 Mich 132, 145; 468 NW2d 479 (1991). This Court has also held that it is not optional to read the statutes together, ***it is mandatory.*** "It is elementary that statutes *in pari materia* are to be taken together in ascertaining the intention of the legislature, and that courts will regard all statutes upon ***the same general subject matter*** as part of 1 system." Dearborn Twp Clerk v Jones, 335 Mich 658, 662; 57 NW2d 40 (1953) (emphasis added); see People v McKinley, 496 Mich 410, at fn. 11, 852 NW2d 770 (2014). It is important to highlight the fact that the purposes do not need to be identical. This Court has held that in order for the doctrine to apply, the statutes must have "the same ***general subject matter.***" Duffy v Department of Natural Res, 490 Mich 198, 805 NW2d 399 (2011) citing Dearborn, supra.

Mazur did provide an example of a situation where two statutes do ***not*** share a common purpose. In Mazur, this Court was asked to determine the definition of "marihuana paraphernalia" under the Michigan Medical Marihuana Act (MMMA) MCL 333.26421 *et seq.* The MMMA does not define that term. However, the Public Health Code ("PHC"), MCL 333.1101, *et seq.*, does define "drug paraphernalia." The prosecuting attorney wanted this Court to apply the PHC definition to the MMMA. This Court refused, holding that the two statues could NOT be read together because those two statutes are "diametrically opposed" to one another: The MMMA affirmatively ***permits*** the use of marijuana, whereas the PHC ***criminalizes*** it.

That is not the case here. The Wrongful Death Act and EPIC are NOT diametrically opposed to one another. On the contrary, the main purpose of the Wrongful Death Act provides for the orderly coordination of lawsuits on behalf of decedents' estates and the distribution of the proceeds from those lawsuits, to the decedent's family members in the probate proceedings. Indeed, the general purposes of EPIC are very similar to those of the Wrongful Death Act and are summarized in EPIC at Section 1201:

NW2d 770 (2014); Fradco, Inc v Department of Treasury, 495 Mich 104, 845 NW2d 81 (2014); and Mazur, infra.

> This act shall be ***liberally construed*** and applied to promote its underlying purposes and policies, which include all of the following:
>
> (a) ***To simplify and clarify the law concerning the affairs of decedents***, missing individuals, protected individuals, minors, and legally incapacitated individuals.
>
> (b) To discover and make effective a decedent's intent in distribution of the decedent's property.
>
> (c) To promote a speedy and efficient system for liquidating a decedent's estate ***and making distribution to the decedent's successors.***
>
> (d) To make the law uniform among the various jurisdictions, both within and outside of this state. [MCL 700.1201 (Emphasis added).]

It is abundantly clear that the Wrongful Death Act and EPIC both have among their general purposes the orderly administration of decedents' estates. Not only do the Wrongful Death Act and EPIC "relate" to each other ***and*** have "a common purpose," they also share a considerable amount of common terminology, ***including the term "spouse."*** The two statutes expressly refer to each other at least three times.[22] In point of fact, a non-judicial settlement of a wrongful death claim cannot be achieved without complying with both the Wrongful Death Act and EPIC.[23] In the context of a wrongful death claim, like the one involved in this case, the two statutes are literally inextricably connected.

Section 2922(3) of the Wrongful Death Act allows those who suffer damages ***and survive*** the deceased, to file claims:

> a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then ***those persons to whom the estate of the deceased would pass under the laws of intestate succession*** determined as of the date of death of the deceased.
>
> (b) The children of the deceased's spouse.

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[22] 600.2922(3) refers to Section 2802 to 2805 of EPIC. 600.2922(9) refers to Section 3924 of EPIC. 700.3924 outlines the procedure for court approval of a non-judicial settlement of a wrongful death claim, and makes reference to 600.2922 five times.

[23] This was also true under the Revised Probate Code, under sections 700.221 and 700.222.

> (c) Those persons who are ***devisees under the will of the deceased***, except those whose relationship with the decedent violated Michigan law, including ***beneficiaries of a trust under the will***, those persons who are designated in the will as persons who may be entitled to damages under this section, and ***the beneficiaries of a living trust*** of the deceased if there is a devise to that trust in the will of the deceased.
>
> [(MCL 600.2922(3) Emphasis added).]

To determine the identity of any of these claimants, EPIC must be consulted.[24] For example, in order to determine "those persons to whom the estate of the deceased would pass under the laws of intestate succession," requires cross-reference to Article II, Sections 2101-2114 of EPIC. Similarly, whether a "relationship with the decedent violated Michigan law" can be determined only by consulting EPIC. If the interrelationship between the Wrongful Death Act and EPIC is at all in doubt, consider that the RJA contains an entire chapter dedicated to the orderly operation of Probate Courts in Michigan. See MCL 600.801-899.

This is ***not*** the first time this Court has been asked to read the RJA (of which the Wrongful Death Act is a part) and the probate laws together, *in pari materia.* As discussed earlier, in Lindsey v Harper Hospital, 455 Mich 56, 564 NW2d 861 (1997), this Court held that the Revised Probate Code (RPC) MCL 700.101, *et seq.* (repealed and replaced with EPIC in April 2000) and the RJA should be read together, *in pari materia.*

Following this Court's holding in Lindsey, The Carters respectfully ask this Court find that the Wrongful Death Act and EPIC should be read together, *in pari materia.* In his dissent in Mazur, Justice Markman summarized the rationale behind the doctrine of *in pari materia* concisely:

> [*In pari materia*] "rests on two sound principles: (1) that the body of the law should make sense, and (2) that it is the responsibility of the courts, within the permissible meanings of the text, to make it so." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St Paul Thomson-West, 2012), p 252. "Statutes," Justice Frankfurter once wrote, "cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes." *Id.* (citation and quotation marks omitted) Mazur, ___ Mich ___, at. ___, fn 2.

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[24] Or the Revised Probate Code, was in effect when the Wrongful Death Act was amended in 1985, but which was repealed, effective April 1, 2000, when EPIC became the probate law of the state.

Reading the Wrongful Death Act and EPIC together makes sense of the phrase "children of the deceased spouse," and this Court has the power to make sure they are read together.

The mere absence of a statutory definition of a term does not automatically give license to delve into legislative history. A court must first determine that the statute is ambiguous. Ferguson, 273 Mich App, at 51-52, citing People v Borchard-Ruhland, 460 Mich 278, 284; 597 NW2d 1 (1999). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." Id., quoting Griffith v State Farm Mut Auto Ins Co, 472 Mich 521, 697 NW2d 895 (2005); Koontz v Ameritech Services, Inc, 466 Mich 304, 312; 645 NW2d 34 (2002). For over a decade, the Michigan law has been clear that a provision of the law is ambiguous only if it "irreconcilably conflict[s] with another provision . . . or when it is equally susceptible to more than a single meaning." Mayor of the City of Lansing v Michigan Pub Serv Comm'n,470 Mich 154, at 167, 680 NW2d 840 (2004), citing Klapp v United Ins, 468 Mich 459, 467; 663 NW2d 447 (2003).

The phrase "children of the deceased's spouse" is ambiguous, because "spouse" is equally susceptible to more than one meaning, and because the use of "spouse" in the Wrongful Death Act irreconcilably conflicts with the use of that word in other parts of the RJA, and in several parts of EPIC. That Black's Law Dictionary has separate entries for "spouse" and "surviving spouse" is an indication that "spouse" may mean surviving spouse or a non-surviving spouse. Likewise, the use of "surviving spouse," "deceased spouse" and "spouse" in the RJA indicates that the word "spouse" standing on its own is ambiguous regarding whether the person is living or deceased. However, it is reading the Wrongful Death Act and EPIC *in pari materia* that really solidifies the Carters' position that the two statutes are irreconcilably at odds with one another with respect to the meaning of the unmodified term "spouse."

EPIC uses the word "spouse" in at least ***fifty-four different sections***. As with the RJA examples cited above, EPIC's use of the word "spouse," both alone and in conjunction with other descriptive words, such as "surviving," "deceased" and "former," clearly establishes that "spouse" is a technical term, and that a spouse may have several different

statuses, depending on the words that precede it. In the absence of modifying terms, "spouse" is ambiguous.

Two particular EPIC provisions warrant consideration here: MCL 700.2601 and 700.2708 each contain definitions of "stepchild":

> MCL 700.2601 (e): "Stepchild" means ***a child of the surviving, deceased, or former spouse of the testator*** or of the donor of a power of appointment, who is not the testator's or donor's child. (Emphasis added)
>
> MCL 700.2708 (e): "Stepchild" means ***a child of the decedent's surviving, deceased, or former spouse***, and not of the decedent. (Emphasis added)

In the two sections quoted above, it is obvious that the legislature expressly understood that there could be THREE kinds of spouses - surviving, deceased, and former spouses. It follows logically that the term "spouse" is equally susceptible to at least three meanings. Yet the *Combs* court held, based on nothing more than a dictionary definition, that the phrase "decedent's spouse" unambiguously requires that the spouse be a surviving spouse. Why, then, did the Michigan legislature deem it necessary to use the phrase "surviving spouse" in Sections 2601 and 2708, above? Is "surviving" merely superfluous? Of course not. A "surviving spouse" would be redundant, just as "deceased spouse" and "former spouse" would both be oxymoronic.

It is well settled that "[t]his Court 'must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.'" *People v Cunningham*, 496 Mich 145, 154; 852 NW2d 118 (2014), quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Accordingly, if the legislature uses the phrase "surviving spouse" in one part of the statute, but then uses "spouse" without the word "surviving" preceding it, in another provision of that statute, it must be presumed that the legislature intended ***not to limit that other provision to "surviving spouses."*** This is exactly the case here.

Having established that "spouse" standing alone is ambiguous, the Court is now permitted to explore other avenues of statutory construction – including an examination of the legislative history.

D. The legislative history of the Wrongful Death Act shows clearly and convincingly that the legislature intended to include the step-children who are the children of a decedent's predeceased spouse.

The legislative history of 600.2922 shows clearly and convincingly that the legislature intended for the Wrongful Death Act to ***include*** step-children who are children of the decedent's predeceased spouse, and the legislative history does NOT include House and Senate Legislative Analyses. Not only do those analyses fail to address the issue at bar here, but the Carters recognize that in this Court's view, such analyses are of questionable value in determining legislative intent. *In re Certified Question (Kenneth Henes Special Projects Procurement, Marketing & Consulting Corp v Cont'l Biomass Indus, Inc)* 468 Mich 109, 115 (fn 5) 659 NW2d 597 (2003)

Legislative History

A statute's legislative history, including an examination of prior statutes and an examination of the changes in the language of the drafts of a statute prior to passage, is an important tool in ascertaining legislative intent. *Bush v. Shabahang*, 484 Mich 156; at 167-8; 772 NW2d 272 (2009). However, not all legislative history is of equal value:

> Clearly of the highest quality is legislative history that relates to an action of the Legislature from which a court may draw reasonable inferences about the Legislature's intent with respect to an ambiguous statutory provision. Examples of legitimate legislative history include actions of the Legislature intended to repudiate the judicial construction of a statute, see, e.g., *Detroit v Walker*, 445 Mich 682, 697; 520 NW2d 135 (1994), ***or actions of the Legislature in considering various alternatives in language in statutory provisions before settling on the language actually enacted.*** See, e.g., *Miles ex rel Kamferbeek v Fortney*, 223 Mich 552, 558; 194 NW 605 (1923). From the former, a court may be able to draw reasonable inferences about the Legislature's intent, even when the Legislature has failed to unambiguously express that intent. ***From the latter, by comparing alternative legislative drafts, a court may be able to discern the intended meaning for the language actually enacted.***
>
> *In re Certified Question (Kenneth Henes Special Projects Procurement, Marketing & Consulting Corp v Cont'l Biomass Indus, Inc)* 468 Mich 109, 115 (fn 5) 659 NW2d 597 (2003) (Emphasis added.)

The Carters have attached several drafts of 1985 House Bill No. 4487, which ultimately became PA 93 of 1985: The First Draft (Exhibit 5), the Revised Draft (H-1) (Exhibit 6) and the Final (enacted) Version of the House Bill (Exhibit 7). These exhibits reflect the changes that the legislature made in the various drafts of the statutory language, including the removal of the phrase "surviving spouse." In addition, Exhibit 8, a copy of the transcript of the testimony given at one of the House Judiciary Committee meetings in 1985, taken together with Exhibits 5-7, make it clear that the legislature intended to include ***all of the decedent's step-children, even those whose biological parent had predeceased the step-parent.***

PA 93 of 1985

Before digging into that legislative history, some historical background behind the 1985 amendment may be somewhat helpful to put things into context. Before 1985, the Wrongful Death Act provided that only a decedent's "surviving spouse" and "next of kin" who suffered injury were entitled to any portion of the wrongful death settlement proceeds. That pre-1985 Act, which was itself the product of an overhaul back in 1939, provided, in pertinent part, as follows:

> . . .
>
> Such person or persons entitled to such damages shall be of that class who, by law, would be entitled to inherit the personal property of the deceased had he died intestate. The amount recovered in every such action shall be distributed to ***the surviving spouse and next of kin*** who suffered injury and in proportion thereto.
>
> . . . .
>
> [MCL 600.2922 (1985) (Emphasis added.)]

In reading the pre-1985 version of the Wrongful Death Act, it is particularly important to note that the word "spouse" is ***never*** used alone. Instead, the phrase "surviving spouse" is ***always*** used. Yet, before 1985, inconsistent application of the Wrongful Death Act was widespread, and the case law was inconsistent regarding who the interested persons were in a wrongful death case.

Crystal v. Hubbard

All of the confusion came to a head in 1979 with *Crystal v. Hubbard*, 92 Mich App 240; 285 NW2d 66 (1979); *rev'd* 414 Mich 297; 324 NW2d 869 (1982). In that case, Jackie Hubbard died in an auto accident, leaving a (surviving) spouse, both parents, and several siblings, but no children. There was no question whether her husband could file a claim: He was her "surviving spouse." However, Jackie's parents and siblings also wanted a portion of the wrongful death proceeds. The court of appeals interpreted the Wrongful Death Act ***narrowly*** and held that only the "surviving spouse" and Jackie's "nearest" next-of-kin could file claims.

In an attempt to define "next of kin," the Appellate Court ***looked to the laws of intestacy***, namely MCL 700.106 of the Revised Probate Code, although it did not discuss the concept of reading the Wrongful Death Act and the RPC *in pari materia*. The court held that because the decedent's wife and parents were the takers under the laws of intestacy they could file claims. Jackie's five siblings, who were relatives of the "second degree," were precluded from filing claims.

On further appeal, the Supreme Court ***reversed*** the appellate court. As the Carters urge here, the court explored the intent of pre-1985 statute by looking to the pre-1939 case law, including, most notably, *In re Venneman's Estate* , 286 Mich 368; 282 NW 180 (1938), and the changes made by the legislature in response to that case law, in 1939 PA 297. Using those resources, the *Crystal* Court inferred that the legislature intended that the statute was to be interpreted ***very broadly***. *Crystal*, at 310-311. Citing the remedial nature of the statute (see discussion at pp 19-20above) the Court held that the Wrongful Death Act should be interpreted ***broadly***, which meant that ***all potential heirs*** could file claims:

> We are convinced that the statutory language in question, construed in the light of its legislative history and read against the illuminating background of this Court's decisions, means that the "class" entitled to seek damages includes ***at least*** the "surviving spouse and next of kin" to whom distribution was ordered in this case.
>
> We conclude, first of all, that the Legislature intended that the term "class" includes *at least* "the surviving spouse and next of kin who suffered injury" as a result of the wrongful death of another. We think that much is plain from the Legislature's reaction in 1939 to the decision in *In re Venneman's Estate* , 286 Mich 368; 282 NW 180 (1938), in amending the death act, 1939

> PA 297, in a way clearly designed to authorize the distribution of an award to the individual who actually suffered a pecuniary loss as a result of the wrongful death. [Crystal v. Hubbard, 414 Mich 297, at 309-311 (1982) (emphasis in original).]

Perhaps just as interesting, and more relevant to the case at bar, the Crystal Court held that the term "next-of-kin" was ambiguous on the basis that the statute did not clearly define ***when*** the determination of "next-of-kin" was to be made. "[The statute] provides no enlightenment to determine *when* that class is to be identified." Crystal v. Hubbard, at 308. Reading the statute ***broadly,*** the Court held anyone who might ever have been the decedent's next of kin and their descendants were permitted to file claims. Crystal v. Hubbard, at 316-317:

> We are convinced that the Legislature never intended, in a case such as this one, to limit the right to seek damages for wrongful death to the ***actual "heirs at law"*** by which is meant those persons who are the nearest of kin ***actually surviving decedent*** who would be entitled to inherit pursuant to our law of descent and distribution. [Crystal v. Hubbard, at 307. (Emphasis added.)]

Following that holding and rationale, the current version of MCL 600.2922 is likewise ambiguous since the phrase "children of the deceased's spouse" fails to indicate ***when*** the determination of whether the decedent had a spouse is to be made. Is it when the decedent died, or does it depend on whether he was married at any time during his lifetime? The Combs court assumed, without any analysis other than consulting a dictionary, that the determination of whether the decedent had a spouse was to be made at the time of death. Yet the statute contains no indication that the decedent had to have had a spouse "***at the time of his death***." Adding that language to the statute would have certainly clarified the legislature's intent had it so intended. After all, the legislature added similar language to (3)(a) of the statute:

> (a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined ***as of the date of death of the deceased.*** [MCL 600.2922(3)(a) (Emphasis added.)]

It is well settled that a court should not speculate about the legislative intent beyond the statute's actual words. In re Schnell, 214 Mich App 304, 310; 543 NW2d 11 (1995).

"[The court] may not read anything into an ***unambiguous statute*** that is not within the Legislature's manifest intent as derived ***from the words used in the statute itself***." People v Breidenbach, 489 Mich 1, 10; 798 NW2d 738 (2011); Mich Ed Ass'n v Secretary of State (On Rehearing), 489 Mich 194, 218; 801 NW2d 35 (2011). (Emphasis added.)

Here, it is uncontroverted that Gordon and Betty Cliffman were married for nearly 20 years. Following the holding in Crystal, this Court could find that the statute is ambiguous, and examine the legislative history for the same reasons cited in Crystal.

In any event, the Supreme Court's holding in Crystal opened a veritable "Pandora's box" whereby ***any*** potential heir-at-law of the decedent had the right to file a claim. In the wake of that decision, it became extremely difficult for personal injury attorneys to identify all existing and potential next-of-kin, which literally consisted of the decedent's entire family tree, in order to serve them with the required notice. Such an interpretation of the statute was unworkable. In response, the Michigan Trial Lawyers Association lobbied the legislature to provide a workable statute clarifying who would and would not be entitled to file claims for a portion of the wrongful death proceeds, and prescribing the various notice and venue requirements, resulting in the enactment of PA 93 of 1985. Although that statute is often referred to as an amendment to the Wrongful Death Act, in reality it entirely restated it.

One of the main changes to the statute involved redefining the list of eligible claimants entitled to receive wrongful death proceeds. It is critical to understand that amendment both ***curtailed and expanded*** the class of claimants. On the one hand, the amendment significantly ***curtailed*** the class of blood relatives entitled to file claims by limiting that class to the decedent's spouse, descendants, grandparents, parents and siblings. In so doing, it ***excluded*** the decedent's aunts, uncles, nieces, nephews, cousins and other distant relatives.[25]

On the other hand, that amendment also ***expanded*** the class of claimants by adding step-children, devisees of the decedent's will, and beneficiaries of the decedent's trust. In an attempt to include step-children, the legislature used the inartful and awkward phrase "children of the decedent's spouse." Why was that phrase added? What did the legislature

[25] Unless there are no spouse, descendant, grandparent, parents or sibling, in which case the decedent's other intestate heirs would be permitted to file claims. MCL 600.2922(3)(a.)

intend by adding that phrase? Fortunately, the legislative history provides a clear and unambiguous answer.

First Draft of HB 4487

As alluded to earlier in this brief, like the (pre-1985) statute it amended, the ***first draft*** of the bill (HB 4487) included the phrase "children of the deceased's ***surviving*** spouse." (See page 2, line 24 of Exhibit 5) This was not surprising. This use of "surviving spouse" was consistent with the pre-1985 version of the Wrongful Death.

Second Draft of HB 4487

However, in the ***second draft*** of the 1985 legislation, Representative Ernest Nash, one of the co-sponsors of the bill, amended the bill to ***remove the word "surviving."*** (See bottom of page 1, Exhibit 6.) The implication of the legislature's removal of the word "surviving" from the drafts of the bill seems clear: the legislators did not want or intend to limit the class of claimants to the children of the decedent's "surviving spouse." However, mere implications can be misleading - one can still be left wondering ***why*** that word was removed. That question was answered on May 16, 1985 by testimony given at a house judiciary committee hearing.

House Judiciary Committee Meeting Transcript.

If there is any doubt as to what the legislature intended when it removed the word "surviving" from HB 5587, that doubt is removed by reading the transcript of the testimony given at the House Judiciary Committee Meeting, held on May 16, 1985 (Exhibit 8). At that hearing, attorney Joseph Buttiglieri testified on behalf of the Michigan Trial Lawyers Association. The relevant portion of Mr. Buttiglieri's testimony is as follows:

> MR. BUTTIGLIERI: As indicated, my name is Joseph Buttiglieri. I'm here today on behalf of MTLA, who supports both pieces of these [sic] legislation. We are pleased that this legislation has been introduced. We think it will solve problems that I think have been discussed both by the judges and Mr. Hudeman and by [Mr.] Miles. . . .
>
> . . .
>
> We did have one suggestion, and it's already been addressed by Representative Nash, ***and that was to strike the word "surviving" in House Bill 4487 on page 2, line 24.*** I would like to briefly indicate that the reason we

> feel that should be struck is that ***since you're including stepchildren, you should treat all stepchildren equally and not treat them differently if you have a situation where your wife has predeceased you.*** Specifically and the issue that I raised with Representative Nash was that if you marry someone that has relatively young children that become part of your family, it's possible that your wife would predecease you and that you would still have those stepchildren under your care and guidance. ***If the word "surviving" is left in and then you died as a result of a wrongful death, those stepchildren would be barred from taking.*** Conversely, if you married a woman that had adult [sic]stepchildren and you died with her surviving you, stepchildren that might have never lived with you would have an opportunity to come forward and claim. ***We're suggesting that by striking the word "surviving," we don't hurt anybody else, and we take care of the possible class of stepchildren that might be left out.***
>
> . . . .
>
> [Transcript of the Michigan House Judiciary Committee Meeting, May 16, 1985 (emphasis added)]

Mr. Buttiglieri's testimony makes it "crystal" clear that the Michigan legislature intended for ***all step-children*** to have the right to file claims. From that legislative history, it becomes obvious that Combs was wrongly decided, and needs to be overturned.

COMBS SHOULD BE OVERTURNED

The analysis and holding in Combs were erroneous for at least three reasons. First, the court in Combs did not consider the legislative history of the Wrongful Death Act, which clearly shows that the legislature intended to include all step-children and not just those whose parent is living when the step-parent dies. Second, that court ignored a Supreme Court decision, Lindsey, *supra,* which read the RJA and the probate statutes *in pari materia*. Third, the court in Combs ignored two prior published court of appeals cases, Renaud, *supra,* and Turner, *supra,* both of which looked to the probate statutes to define terms in the Wrongful Death Act, and effectively applied the *in pari materia* analysis this Court prescribed in Lindsey.

The Carters contend that Combs was required to follow Lindsey, Renaud and Turner. Instead of following those cases, the Combs majority interpreted "children of the deceased's spouse" by relying on a common dictionary, two divorce cases, and a Social Services benefits case. Using those sources, the court in Combs determined that a "spouse"

was defined as a "married person," and that marriage ends at the death of one of the spouses.[26]

If the court in Combs had followed Lindsey, Renaud and Turner, or if it had looked to the legislative history of the Wrongful Death Act, or if it had looked at the myriad other uses of the term "spouse" in the RJA and EPIC, it would have concluded that it was clear what the legislature intended when it used the unmodified term "spouse," and the case would have been decided differently. Combs should be overturned, and the erroneous result below reversed.

One parting note regarding policy concerns – in their respective appellate briefs, the appellees, both here[27] and in Combs[28], argued that opening the class of claimants to ***all*** step-children would create an unworkable situation if the decedent had been married and widowed numerous times. In other words, when attempting to distribute any wrongful death proceeds, notice would have to be given to all children from the decedent's first, second, third and fourth pre-deceased spouses. This argument conflicts with the intent of the legislature, and the remedial nature of the Wrongful Death Act, which requires a broad interpretation, and conflicts with MCL 600.102, which requires a liberal construction (see argument at page 20, above.)

It is obvious that sending notice to all step-children from all previous marriages would certainly require some investigation into identifying those persons, and that more notices would need to be sent. However, one of the primary reasons that the legislature amended the Wrongful Death Act in 1985 was to ensure that the people closest to the decedent had an opportunity to participate in the distribution of the settlement proceeds.

In addition, both of those briefs cleverly cloud the fact that being part of the class does not automatically entitle any such class member to any portion of that distribution, it only grants the opportunity to file a claim. If a class member files a claim, they must then

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[26] *Cornwell v Dep't of Social Services*, 111 Mich App 68, 70; 315 NW2d 150 (1981), citing *Webster's New Collegiate Dictionary* (1976); *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997.)

[27] See Appellees' brief on appeal, at pages 10-11.

[28] See Appellees' brief, Exhibit 3, at page 11.

prove a loss by demonstrating the nature and extent of their relationship with the decedent. MCL 600.2922:

> Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following ***who suffer damages and survive the deceased***: . . . [MCL 600.2922(3)]

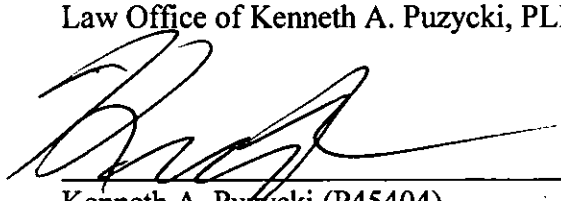
Recall that in *Combs*, when Arlie and Ellen Combs married, all of their children were adults, and none of them were raised after the marriage. That case pitted Ellen's biological children with her step-children who were not raised by her. The timing of the marriage, and the age of the step-children is ***irrelevant*** in the language of the statute. The Appellees' brief in *Combs* made a lengthy argument about the fact that Ellen Combs did not raise Arlie's children, and that his children did not have much contact with Ellen following their father's death. Although the court did not mention that fact in its decision, it did make note of the fact that Ellen Combs' will left her estate to her children, and nothing to her step-children. Those facts were irrelevant as to whether Arlie's children could bring claims. The irony, if not the reality, is that had they been allowed to bring claims, it is highly unlikely that the court would likely have awarded them nothing, given that they did not have contact with Ellen, and given she did not name them in her will. However, because they were never given an opportunity to file claims, we will never know.

CONCLUSION AND REQUEST FOR RELIEF

The legal effect of this case extends far beyond the current litigants, satisfying the requirements of MC 7.302(B)(3) and (5). The outcome will clearly affect step-children who lose a step-parent in an accident after the death of their biological parent. However, it will also extend to other family members whose status is not clearly defined by the Wrongful Death Act. Under a dictionary definition, many those individuals may not be able to file claims. By overturning *Combs*, reading the Wrongful Death Act and EPIC *in pari materia*, and looking to the legislative history of the statute, all of these terms, including "spouse," can be defined in a way which is consistent with the intent of the legislature.

Based on the foregoing discussion, the Carters respectfully request leave to appeal this Honorable Court.

Respectfully,
Law Office of Kenneth A. Puzycki, PLLC



7-17-15
Date

Kenneth A. Puzycki (P45404)
Attorney for the Appellants

SUPREME COURT OF THE

STATE OF MICHIGAN

In re Estate of CLIFFMAN.

Elmer Carter, Philip Carter, David Carter and Doug Carter

Appellants

vs.

Betty Woodwyk and Virginia Wilson

Appellees

Court of Appeals No. 321174
Allegan County Probate Court
File No. 13-58358-DE

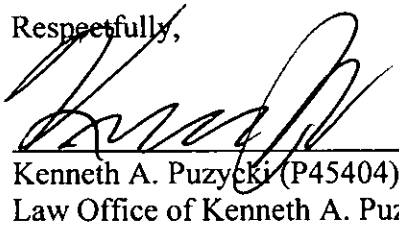
NOTICE OF HEARING

RECEIVED
JUL 17 2015
CLERK SUPREME COURT

TO: **Kenneth B. Breese** (P27177)
Attorney for Appellees
321 Settlers Drive
Holland, Michigan 49423
616.392.1821

TAKE NOTICE that the attached Appellants' Application for Leave to Appeal will be brought on for hearing on Tuesday, August 11, 2015, at the State of Michigan Supreme Court, whose address is 925 West Ottawa Street, Lansing, MI 48915, or at a time and date to be set by the Court.

Respectfully,



7-15-15
Date

Kenneth A. Puzycki (P45404)
Law Office of Kenneth A. Puzycki, PLLC
Attorney for Appellants
380 Garden Avenue
Holland, Michigan 49424
616.738.8800

SUPREME COURT OF THE

STATE OF MICHIGAN

In re Estate of CLIFFMAN.

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Appellees

Court of Appeals No. 321174
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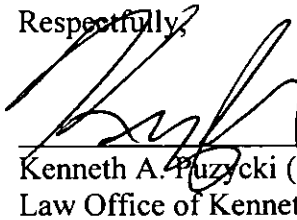
JUL 17 2015
CLERK SUPREME COURT

PROOF OF SERVICE

Kenneth A. Puzycki states that on July 17, 2015, he mailed a copy of Appellants' Application for Leave to the Supreme Court, a Notice of Hearing regarding the same, and this Proof of Service, to attorney Kenneth B. Breese, at 321 Settlers Road, Holland, Michigan 49423, and attorney Richard Persinger, at 503 Century Lane, Holland, Michigan 49423, by placing the documents in the U.S. mail, properly addressed, with first-class postage fully prepaid.

Respectfully,



7-17-15
Date

Kenneth A. Puzycki (P45404)
Law Office of Kenneth A. Puzycki, PLLC
Attorney for Appellants
380 Garden Avenue
Holland, Michigan 49424
616.738.8800

LAW OFFICE OF KENNETH A. PUZYCKI, PLLC

380 Garden Avenue
Holland, Michigan 49424
(616) 738-8800 (616) 738-8801(FAX)
kapuzycki@puzycki.com

July 14, 2015

Clerk of the Court
Michigan Supreme Court
Hall of Justice
925 W. Ottawa Street
Lansing, Michigan 48913

Re: In re Estate of Cliffman
COA No. 321174

Dear Clerk:

Enclosed for filing are an original and eight copies of Elmer Carter, Philip Carter, David Carter and Doug Carter's Application for Leave to Appeal, Notice of Hearing, and a Proof of Service regarding the above-captioned matter. Also enclosed is our filing fee in the amount of $375.00. Please file the above in accordance with your standard practice.

Thank you for your attention to this matter.

Respectfully,
Law Office of Kenneth A. Puzycki, PLLC

Kenneth A. Puzycki
Attorney for Appellants

RECEIVED
JUL 17 2015
CLERK SUPREME COURT

cc: Kenneth B. Breese, Esq.
Richard Persinger, Esq.