



MICHIGAN COURTS NEWS RELEASE

John Nevin, Communications Director

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FOR IMMEDIATE RELEASE

Michigan Supreme Court to convene at 9:30 for oral arguments April 6 -7

LANSING, MI, March 28, 2016 – The Michigan Supreme Court will hear oral arguments on April 6 and 7 on the sixth floor of the Hall of Justice. On Wednesday, April 6, Justices will consider several issues relating to successive motions for relief from judgment in *People v Lorinda Swain*.

Other issues include: the Open Meetings Act, No-Fault Insurance Act, duties of mental health professionals, offense scoring, contributions to group health and insurance trust, habitual-offender offense, claims of intentional infliction of emotion distress, abuse of process and a no-position plea bargain agreement.

Oral arguments are open to the public. Links to the briefs and case summaries are available [here](#).

The Court broadcasts its oral arguments and other hearings [live on the Internet](#). Watch the stream live only while the Court is in session and on the bench. [Streaming](#) will begin shortly before the hearings start; audio will be muted until justices take the bench.

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Michigan Supreme Court Oral Arguments
Wednesday, April 6, 2016

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.

Morning Session

Docket # [151520](#)

SHANNON BITTERMAN,
Plaintiff-Appellant,

Philip L. Ellison
Robin Luce Hermann

v (Appeal from Ct of Appeals)
(Saginaw – Kaczmarek, R.)

CHERYL D. BOLF,
Defendant-Appellee.

Mary Massaron

Plaintiff Shannon Bitterman sued the Village of Oakley Clerk, Cheryl Bolf, under the Open Meetings Act. Bitterman alleged that Bolf violated the Open Meetings Act when she altered the minutes of a village council meeting after the minutes had been approved by the village council. Section 13(1) of the Open Meetings Act states that a “public official who intentionally violates this act shall be personally liable in the civil action.” MCL 15.273(1). Bolf argued that she was not a “public official” within the meaning of the Open Meetings Act. The circuit court agreed, and ruled in Bolf’s favor. The Court of Appeals affirmed in an unpublished per curiam opinion. Bitterman filed an application for leave to appeal to the Supreme Court. On November 25, 2015, the Supreme Court ordered oral argument on the application, to consider how the term “public official” is defined under Section 13(1) of the Open Meetings Act.

Docket # [150919](#)

LALE ROBERTS and JOAN ROBERTS,
Plaintiffs-Appellees,

Zachary C. Kemp

v (Appeal from Ct of Appeals)
(Houghton – Solka, T.)

KATHRYN SALMI, LPC, d/b/a SALMI CHRISTIAN
COUNSELING,
Defendant-Appellant.

Beth A. Wittmann

Plaintiffs Lale and Joan Roberts sent their 17-year-old daughter to defendant Kathryn Salmi for counseling. During the therapy sessions, the daughter claimed to remember that her father physically and sexually abused her. Salmi reported these allegations to Children’s Protective Services. During the ensuing investigation, the daughter also accused her mother of molesting her. No criminal charges were ever brought. The plaintiffs sued Salmi for medical malpractice,

alleging among other things that she improperly implanted or reinforced false memories of abuse in their daughter's mind. The trial judge held that Salmi did not owe a duty of care to the plaintiffs, and dismissed their lawsuit. But the Court of Appeals reversed in a split published opinion. The majority held that Michigan's common law recognizes a duty of care to third parties who might foreseeably be harmed by a mental health professional's use of techniques that cause a patient to have false memories of sexual abuse. The dissenting judge concluded that whether a mental health professional owes a duty to a patient's parents under these circumstances is a policy decision best left to the Legislature. Salmi appealed to the Supreme Court. On September 16, 2015, the Supreme Court granted leave to appeal to consider "whether a mental health professional has a duty of care to third parties who might foreseeably be harmed by the mental health professional's use of techniques that cause a patient to have false memories of sexual abuse."

Docket # [150994](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Jennifer Kay Clark

v (Appeal from Ct of Appeals)
(Calhoun – Sindt, C.)

LORINDA IRENE SWAIN,
Defendant-Appellant.

Caitlin Plummer

Following a jury trial in 2002, defendant Lorinda Swain was convicted of four counts of first-degree criminal sexual conduct for sexually assaulting her adopted son when he was under the age of 13. This appeal concerns a successive motion for relief from judgment that Swain filed in 2009. The trial court granted the motion, concluding that Swain made a successful "claim of new evidence," as required by MCR 6.502(G)(2), and that she was entitled to a new trial. The trial court also ruled that a new trial was warranted due to the strength of Swain's claim of actual innocence, and in the interests of justice. The Court of Appeals reversed in an unpublished per curiam opinion. It relied on the test for "newly discovered evidence" set forth in *People v Cress*, 468 Mich 678 (2003), and found that Swain's new evidence – a potentially exculpatory witness – did not satisfy the test. The appeals court concluded that, because Swain and her attorney knew at the time of trial that the witness had information concerning the allegations against Swain, the evidence was not "newly discovered," and the trial court erred in granting her successive motion.

On September 30, 2015, the Supreme Court granted leave to appeal to consider several issues relating to successive motions for relief from judgment under MCR 6.502(G), including (1) whether the test set forth in *People v Cress*, 468 Mich 678, 692 (2003), for determining whether a defendant is entitled to a new trial based on newly discovered evidence, applies in determining whether a second or subsequent motion for relief from judgment is based on "a claim of new evidence" under MCR 6.502(G)(2); (2) by what standard(s) Michigan courts consider a defendant's assertion that the evidence demonstrates a significant possibility of actual innocence in the context of a motion brought pursuant to MCR 6.502(G); (3) whether the Michigan Court Rules provide a basis for relief where a defendant demonstrates a significant possibility of actual innocence; and (4) whether, if MCR 6.502(G) does bar relief, there is an independent basis on

which a defendant who demonstrates a significant possibility of actual innocence may nonetheless seek relief under the United States or Michigan Constitutions.

Afternoon Session

Docket # [151134](#)

TAMIKA HARRELL,
Plaintiff-Appellee,

Mark M. Grayell

v (Appeal from Ct of Appeals)
(Wayne – Allen, D.)

TITAN INSURANCE COMPANY,
Defendant-Appellant.

Ronald M. Sangster, Jr.

Plaintiff Tamika Harrell was injured while driving an uninsured vehicle titled in the name of her husband, Arville Livingston. After Harrell’s claim was assigned to defendant Titan Indemnity Company, Titan rejected the claim, concluding that Harrell was an uninsured owner of the vehicle she was driving, and was therefore ineligible for benefits under the No-Fault Act. Harrell sued. Titan filed a motion for summary disposition, arguing that Harrell was not eligible for the benefits she sought because she was an owner of the uninsured vehicle in question. Under the No-Fault Act, an “owner” includes a person “having the use” of a motor vehicle “for a period that is greater than 30 days.” MCL 500.3101(2)(k)(i). The trial court denied Titan’s motion, finding that a question of material fact existed. After trial, the trial court ruled that Harrell was not an owner of the vehicle. The trial court concluded that Harrell’s use of the vehicle was “sporadic and intermittent” and that she had to first obtain Livingston’s permission. Titan appealed to the Court of Appeals, which affirmed the trial court in an unpublished per curiam opinion. Titan filed an application for leave to appeal to the Supreme Court. On September 23, 2015, the Supreme Court ordered the parties to appear for oral argument and address whether Tamika Harrell is an “owner” under the No-Fault Act, MCL 500.3101(2)(k)(i).

Docket # [152111](#)

PEOPLE OF THE STATE OF MICHIGAN,

Adam M. Dreher

Plaintiff- Appellant,

v (Appeal from Ct of Appeals)
(Ionia – Hoort, D.)

DAMACENO RICHARD ABREGO,
Defendant-Appellee.

David L. Zoglio

Defendant Damaceno Abrego drove while intoxicated, with his 6-year-old daughter and her 9-year-old half-sister in his vehicle. He pleaded guilty to operating while intoxicated, second offense, with a passenger under 16, and another charge. On appeal, Abrego argued, among other things, that the trial court erred in scoring Offense Variable 8, MCL 777.38, at 15 points on the theory that he moved, or asported, the victims to a place or situation of greater danger. In an

unpublished per curiam opinion, the Court of Appeals agreed, ruling that the asportation was incidental to the offense of which defendant was convicted. The prosecutor appealed to the Supreme Court. On November 25, 2015, the Supreme Court ordered oral argument on the application. The parties have been directed to address whether the Court of Appeals erred in holding that OV 8 should not have been scored where the movement was “incidental” to the offense of operating while intoxicated, second offense, with a passenger under 16.

Docket # [151717](#)

BOARD OF TRUSTEES OF THE CITY OF PONTIAC
POLICE & FIRE RETIREE PREFUNDED GROUP
HEALTH & INSURANCE TRUST,
Plaintiff-Appellee,

Ronald S. Lederman

v (Appeal from Ct of Appeals)
(Oakland – O’Brien, D.)

CITY OF PONTIAC,
Defendant-Appellant.

Stephen Jay Hitchcock

Plaintiff Pontiac Police & Fire Retiree Prefunded Group Health & Insurance Trust was organized to pay healthcare benefits for retirees from the Pontiac fire and police departments. The trust agreement required the defendant City of Pontiac to make annual contributions to the trust. This case concerns Pontiac’s contribution to the trust for the fiscal year July 1, 2011 to June 30, 2012 in the amount of \$3,473,923. Pontiac, which was in financial straits and operating under an emergency manager, did not make the payment by June 30, 2012. Rather, the emergency manager issued Executive Order No. 225 (EO 225) that amended the trust agreement to remove Pontiac’s obligation “to continue to make contributions” to the trust. The plaintiff trust promptly sued. The circuit court granted summary disposition to Pontiac and dismissed the case. In a published per curiam opinion, the Court of Appeals reversed, holding that the language of the EO did not change Pontiac’s obligation to contribute to the trust for the 2011-2012 fiscal year. Pontiac appealed to the Supreme Court, arguing that the Court of Appeals misinterpreted EO 225 and did so based on an argument that the plaintiff trust never advanced. On September 30, 2015, the Supreme Court ordered oral argument on the application, to address the meaning and applicability of the language “to continue to make contributions” in EO 225.

Thursday, April 7, 2016

Morning Session

Docket # [151843](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Linus R. Banghart-Linn

v (Appeal from Ct of Appeals)
(Ionia – Hoort, D.)

FLOYD PHILLIP ALLEN,
Defendant-Appellee.

John W. Ujlaky

Defendant Floyd Phillip Allen was convicted by jury of failing to comply with the Sex Offender Registration Act (SORA), as a second offender, MCL 28.729(1)(b). SORA authorizes a sentence for a second-time offender, like Allen, of “not more than 7 years” (or 84 months) in prison. The trial court sentenced Allen as a second-offense habitual offender, MCL 769.10(1)(a), imposing an enhanced sentence of 2 years to 126 months in prison. Allen appealed to the Court of Appeals, arguing, among other things, that his sentence was improperly enhanced twice. The Court of Appeals agreed. It held, in a published opinion, that Allen was properly convicted as a second-time SORA offender, but that his sentence could not be further enhanced under MCL 769.10. It vacated Allen’s sentence and remanded for resentencing. On November 4, 2015, the Supreme Court granted leave to appeal, directing the parties to address whether the second-offense habitual-offender enhancement set forth under MCL 769.10 may be applied to the sentence prescribed under MCL 28.729(1)(b).

Docket # [150882](#)

CYNTHIA HARDY, Personal Representative of
the ESTATE OF MARGARET MARIE ROUSH,
Plaintiff-Appellee,

Matthew T. Nelson

v (Appeal from Ct of Appeals)
(Montcalm – Kreeger, S.)

THE LAURELS OF CARSON CITY, LLC,
Defendant-Appellant.

Ronald S. Lederman

In 2012, Margaret Marie Roush was admitted to defendant Laurels of Carson City. Two physicians documented their opinion that she was unable to make medical treatment decisions, which triggered her patient advocate designation. At one point, Roush’s family sought to have her discharged. Despite the fact that this also appeared to be Roush’s wish, Laurels of Carson City refused, believing that it was bound by the instructions of the patient advocate that Roush remain at the facility. Although Roush signed a written revocation of her patient advocate designation, Laurels of Carson City expressed concern as to its validity, and urged the family to obtain guidance from the probate court. Roush was eventually discharged, and the plaintiff filed a civil lawsuit, alleging claims of false imprisonment, intentional infliction of emotional distress, abuse of process, and civil

conspiracy. Laurels of Carson City moved for summary disposition pursuant to MCR 2.116(C)(10), which the circuit judge granted, dismissing all of the plaintiff's claims. The circuit judge held that, because there were competing opinions regarding Roush's ability to make treatment decisions while she was in the defendant's facility, the defendant had complied with its legal obligations. The Court of Appeals reversed in an unpublished per curiam opinion. Laurels of Carson City filed an application for leave to appeal in the Supreme Court. On September 18, 2015, the Supreme Court ordered oral argument, directing the parties to address issues including: (1) whether the Court of Appeals erred in reversing the trial court's grant of summary disposition on the plaintiff's false imprisonment claim based on its conclusion that genuine issues of material fact remained whether Margaret Roush's patient advocate designation became effective and whether Roush subsequently revoked her patient advocate designation, see MCL 700.5510(1)(d); and (2) whether the Court of Appeals erred in addressing the plaintiff's remaining claims of intentional infliction of emotional distress, abuse of process, and civil conspiracy, where the plaintiff did not challenge that portion of the trial court's order granting summary disposition as to those claims.

Docket # [151680](#)

PILGRIM'S REST BAPTIST CHURCH, a/k/a PILGRIM REST Bernard C. Schaefer
MISSIONARY BAPTIST CHURCH, NATHAN MAYFIELD,
and STEPHON BLACKWELL,
Plaintiffs/Counter-Defendants-Appellees,

v (Appeal from Ct of Appeals
 (Kent – Leiber, D.)

ARTHUR PEARSON, SR., Jerry L. Ashford
Defendant/Counter-Plaintiff- Appellant.

Defendant Arthur Pearson, Sr., the pastor of Pilgrim's Rest Baptist Church, was accused of misappropriating church funds. After the church's membership voted to retain Pearson as pastor, an accounting firm hired to examine the church's finances determined that more than \$237,000 had been removed from the church's bank accounts through questionable transactions. Consequently, the church's board of trustees voted to suspend Pearson with pay. The plaintiffs then sued Pearson, seeking injunctive relief as well as reimbursement of the misappropriated funds. The church subsequently terminated Pearson's employment. In a separate criminal case, Pearson pled no contest to embezzlement of between \$50,000 and \$100,000. He was sentenced to four years of probation and was ordered to pay restitution of \$167,452.81 to the church. After entering the plea in the criminal case, Pearson filed counterclaims against the plaintiffs, seeking damages in excess of \$1,000,000. The trial court dismissed the entire case as non-justiciable because the dispute was between a church and entities within the church's body. The Court of Appeals, in a published opinion, affirmed the dismissal of Pearson's counterclaims as non-justiciable under the "ecclesiastical abstention" doctrine. But it remanded the case to the trial court for further proceedings on the plaintiffs' claims. Pearson appealed to the Supreme Court, arguing that the Court of Appeals erred in upholding the dismissal of his counterclaims. On December 9, 2015, the Supreme Court ordered oral argument on Pearson's application for leave to appeal.