

**Michigan Supreme Court
Community Connections Program
Oral Argument Preview and Study Guide**

SHEILA WOODMAN, as Next Friend of Trent Woodman, a minor

v

KERA, LLC, d/b/a Bounce Party

Michigan Supreme Court Case No. 137347

At issue: A five-year-old boy broke his leg when he jumped off a slide at a play facility that his parents had rented for his birthday party. Before the party, the boy’s father signed a release provided by the play facility. The release stated in part that, by signing the release, the parent was waiving claims against the play facility for “personal injury, property damage or wrongful death caused by participation in this activity.” Is the pre-injury waiver valid and enforceable? Can parents waive their children’s potential legal claims against a business, school, community group, or other organization that provides children’s activities?

Background: Sheila Woodman rented “Bounce Party” – an indoor inflatable play facility owned by Kera, L.L.C., a Michigan corporation – for her son Trent’s fifth birthday party. Bounce Party provided invitations for Ms. Woodman to send to the party guests’ families. The invitation included a release for each child’s parent or legal guardian to sign. The release read in part:

THE UNDERSIGNED, by his/her signature herein affixed does acknowledge that any physical activities involve some element of personal risk and that, accordingly, in consideration for the undersigned waiving his/her claim against BOUNCE PARTY, and their agents, the undersigned will be allowed to participate in any of the physical activities.

By engaging in this activity, the undersigned acknowledges that he/she assumes the element of inherent risk, in consideration for being allowed to engage in the activity, agrees to indemnify and hold BOUNCE PARTY, and their agents, harmless from any liability for personal injury, property damage or wrongful death caused by participation in this activity. Further, the undersigned agrees to indemnify and hold BOUNCE PARTY, and their agents, harmless from any and all costs incurred including, but not limited to, actual attorney’s fees that BOUNCE PARTY, and their agents, may suffer by an action or claim brought against it by anyone as a result of the undersigned’s use of such facility.

On the day of the party, Trent’s father, Jeffrey Woodman, signed the release on Trent’s behalf. At the beginning of the party, a Bounce Party employee gave the standard “safety talk,” in which the employee told the guests that no one should jump from the top of the slide. There were also written rules posted on the slide and on the wall, instructing guests not to jump from the slide. After going down the slide about four times, Trent jumped from the

top of it and broke his leg.

Ms. Woodman sued Bounce Party as Trent's next friend; her complaint included claims of gross negligence, negligence, and violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901, *et seq.* In particular, Ms. Woodman alleged that Bounce Party knowingly failed to provide supervision of the children, ignored the slide's manufacturer's safety instructions, failed to equip the slide with available safety devices, and failed to properly monitor the slide. The lawsuit was filed in Kent County Circuit Court.

In its answer to her complaint, Bounce Party noted that Mr. Woodman had signed a release on Trent's behalf and asserted the release as a defense against Ms. Woodman's lawsuit. After a period of discovery, which included taking the depositions of the Woodmans, Bounce Party asked the circuit court to dismiss the lawsuit. Bounce Party argued that

- all of Trent's potential claims against Bounce Party were waived by the release Mr. Woodman signed;
- the Woodmans could not prove that Bounce Party was grossly negligent;
- the dangers of jumping from the top of the slide were open and obvious;
- Bounce Party had no duty to supervise Trent because his parents were present at the party; and
- the MCPA claims should be dismissed.

Ms. Woodman also moved for summary disposition, arguing that the release was invalid as a matter of law because a parent may not waive, release, or compromise claims by or against her child.

The circuit court judge held two hearings on the parties' motions. During one of the hearings, the judge expressed his concerns about the practical implications of the Woodmans' argument that parental releases are invalid. The judge suggested that if he ruled in the Woodmans' favor on this issue, he would "have every school superintendent in the county and the superintendent of all the parochial schools in this county and every other organization banging on [his] desk and hollering and shouting, and then the next thing that's going to happen is all school sporting events will be at an end and all school field trips will be at an end, and we'll all be hermetically sealed up in our houses with our children."

Ultimately, the judge found that the release was valid, and he dismissed the ordinary negligence claim against Bounce Party. By signing the release, Mr. Woodman had waived any claims Trent might have had for ordinary negligence, the judge concluded. A jury would need to determine whether Bounce Party had been grossly negligent, the judge said. He rejected Bounce Party's argument that it had no duty to supervise and also held that the open and obvious doctrine did not apply to the case. Although the judge tentatively agreed with Bounce Party that the MCPA did not apply, he declined at that time to dismiss those claims.

In a published opinion, the Court of Appeals reversed and remanded the case to the circuit court, holding that the Woodmans' negligence claim must be reinstated. Under Michigan common law, a parent may not waive or release claims by or against his or her child, the three-

judge panel held. The judge who wrote the opinion for the panel noted that parents have an inherent and fundamental right to make decisions about the care, custody, and control of their children until the children become adults under the law. But the state has an interest in protecting children that can sometimes conflict with a parent's authority, the judge said. Some states, such as Colorado and Florida, "have used these precepts regarding the dominance of parental authority to validate pre-injury waivers to preclude liability," the judge wrote, while other states, such as New Jersey, have invalidated the agreements on the basis of "wider public policy concerns and the *parens patriae* duty to protect the best interests of children." Some states allow parental waivers for some purposes – medical care, insurance, or participation in school or community activities – but not others, he explained. In addition, some states uphold waivers if they involve public, nonprofit, or voluntary organizations.

The judge also discussed Michigan court decisions. In Michigan, as a general rule, a parent has no authority to waive or release his or her child's rights, he noted. And while Michigan may have statutory exceptions to this common law rule, "nothing has been discovered in the current statutory scheme, which would permit a parent to release the property rights of their child in the circumstances comprising this litigation. [I]n the absence of a clear or specific legislative directive, we can neither judicially assume nor construct exceptions to the common law extending or granting the authority to parents to bind their children to exculpatory agreements. Thus, the designation or imposition of any waiver exceptions is solely within the purview of the Legislature." The court was aware that different public policies might support waivers in some circumstances, but, in the absence of legislation, the court was "precluded from defining or implementing any such divergence from the common-law preclusion regarding the validity of any form of waiver by a parent on behalf of their minor child," the judge wrote. He added, "While this ruling has significant and far-reaching implications regarding practices routinely engaged in by organizations and businesses providing valuable services and activities for minor children and has the potential to increase litigation and affect the availability of programs to younger members of the community, I have no alternative but to recognize the current status of our law and follow its precepts."

The other two judges wrote opinions concurring in the ruling, but they too expressed concern about the impact of the decision. One of the judges said that the court's decision would have "far-reaching implications" because entities that provide educational, recreational, and entertainment opportunities for minors will now "do so at great risk of having to defend an expensive lawsuit, meritorious or not." He said that the Supreme Court or the Legislature should take up the issue. The other judge noted that many youth activities "run and operate on release and waiver of liability forms for minor children," and stated that the Legislature would have to act in this area.

As to the remaining issues, the Court of Appeals held that the circuit court erred by not dismissing the Woodmans' gross negligence and MCPA claims against Bounce Party. The Court of Appeals agreed with the circuit court that the open and obvious doctrine did not apply and that Bounce Party had a duty to protect the party invitees from dangerous conditions.

Both parties appealed to the Michigan Supreme Court on various issues, with Bounce Party appealing the Court of Appeals ruling on the waiver issue. In granting leave to appeal, the Supreme Court instructed the parties to address only the issue of “whether the parental pre-injury liability waiver was valid and enforceable.”

LEGAL TERMS

Circuit Court – The court that handles civil cases in which the amount at stake is \$25,000 or more. The circuit’s court’s jurisdiction also includes family cases, felonies and certain serious misdemeanors, and cases in which a party seeks an equitable remedy – for example, to restore property to the rightful owner instead of a money award.

Common law - Law arising from tradition and judicial decisions rather than statutes passed by the Legislature. In Michigan, common law is in effect except where it has been modified or repealed by statute.

Concurrence/concurring opinion -- An opinion written by an appellate judge who agrees with the decision reached in the case, but would base the decision on different reasons than those expressed in the majority opinion. A judge may also write a concurring opinion to express concerns about the result, about the existing law, or to suggest that a higher court, or the Legislature, should review the matter.

Court of Appeals – The intermediate appellate court for the state of Michigan.

Defendant – In civil cases, the individual or organization that is being sued. In criminal cases, the person who is being prosecuted for allegedly committing a crime.

Deposition – An oral statement made under oath before a person authorized by law to administer oaths. Before trial, such statements are often taken to examine potential witnesses and to obtain information. Often a deposition involves an attorney asking questions of a potential witness, with the witness answering under oath.

Michigan Supreme Court – The state’s highest court, the Supreme Court hears and decides cases that pose important but unclear questions of law, or that have great public significance.

Minor child/Minor – A person under the age of 18; one who is legally a child.

Next friend – A person, usually a relative, who appears in court on behalf of a minor child or a person who is not competent (because of mental illness, for example), but who is not a party to the lawsuit. Children are often represented in court by their parents as next friends.

Parens patriae – A Latin term meaning “parent of his or her country,” to describe the state in its role as provider of protection to those unable to care for themselves.

Plaintiff – In civil cases, the individual or organization that brings a lawsuit against another. In criminal cases, the plaintiff is the “People of the State of Michigan,” represented by the prosecutor.

Stare decisis -- The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to future cases where the facts are substantially the same.

CASE LAW

Troxel v Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). United State Supreme Court decision holding that parents have a constitutional right to raise their children. In *Troxel*, the Court struck down a Washington state law that allowed any third party, such as a grandparent, to petition state courts for child visitation rights over a parent’s objections. Justice Sandra Day O’Connor, writing for the majority, stated that “[t]he liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court." In addition, a presumption exists that “fit parents act in the best interests of their children.” Consequently, “so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”

Reliance Ins Co v Haney, 54 Mich App 237 (1974). A parent or guardian of a minor child “may not consent to the surrender of life insurance which has been taken out for the benefit of the child.” The Court of Appeals said its ruling reflects public-policy concerns regarding the need to protect the rights of minor children as predominant to the inherent rights of their parents, at least to the extent that a “guardian has no authority to do any act which is detrimental to his ward.” A detrimental act is construed as one that effectively abandons or compromises any right or interest belonging exclusively to the minor child.

Tuer v Niedoliwka, 92 Mich App 694 (1979). “[I]n Michigan a parent has no authority merely by virtue of the parental relation to waive, release, or compromise claims of his or her child. Generally speaking, the natural guardian has no authority to do an act which is detrimental to the child.”

Benson v Granowicz, 140 Mich App 167 (1984). “Because the common law may be abrogated by statute, a child can be bound by a parent’s act when a statute grants that authority to a parent.”

ABOUT SUPREME COURT PROCEDURE:

Like *Woodman v Bounce Party*, most cases that come to the Michigan Supreme Court start out in a trial court. A party who disagrees with the trial court's decision can appeal to the Michigan Court of Appeals. The party who is unsuccessful in the Michigan Court of Appeals can then appeal to the Michigan Supreme Court, the "court of last resort" in the state of Michigan. In fact, most cases come to the Michigan Supreme Court on appeal from the Michigan Court of Appeals.

The Court of Appeals and Supreme Court are both appellate courts. That means that those courts do not try cases, or decide disputed facts, have juries or witnesses. Instead, they review the *record* of cases decided in the lower courts and determine if a *legal error* occurred that warrants a retrial or some other change in the original outcome. But unlike the Court of Appeals, the Supreme Court considers appeals in a relatively small number of cases. Most appeals to the Supreme Court are by "leave only," meaning that the Court is not obligated to hear and decide those cases. When a case comes to the Court on an application, the Court will grant leave only if the Court is persuaded that the case involves legal issues of great significance to Michigan.

The disappointed party in the lower courts who appeals to the Supreme Court, called an *appellant*, must file an *application for leave to appeal*. In the application, the appellant tries to persuade the Supreme Court that the decision of the lower court was incorrect and ought to be overturned.

Other parties to the case, called the *appellees*, have an opportunity to file written responses to the application. The appellees usually argue that the lower court made the correct decision and that the Supreme Court should let the lower court's ruling stand – in other words, deny leave to appeal.

For each application, a lot of research and discussion takes place among members of the Court. Only after that occurs do the seven justices decide whether to grant or deny leave.

In most of the over 2,000 applications the Court receives each year, the Supreme Court *denies* leave because the appellant has not convinced a majority of justices that they need to change or overturn the lower court ruling.

In a few cases, when the legal issue is clear, the Supreme Court will enter an order affirming, reversing or modifying the lower court's decision without granting leave. The Court may also send the case back to the lower court for further consideration. This is known as *remanding* the case.

In cases where the Court does grant leave to appeal, it does so because a majority of the justices is persuaded that there is a substantial legal issue at stake. It might be a point of law that is not very clear and is causing problems in a lot of cases in lower courts, or it might involve an issue of great public interest. Such an issue might involve interpreting a new statute or a

provision of the Michigan Constitution. In cases where leave is granted, the Court asks the appellant and appellee to submit written arguments (called “briefs” but they are rarely *brief!*), which set out the facts and legal arguments in support of the parties’ positions.

The Court also schedules oral arguments in the cases when the Court grants leave. Beginning in October and generally ending in May, several days each month the Court hears oral arguments. Unlike the United States Supreme Court, the Michigan Supreme Court televises its oral arguments. Michigan Government Television broadcasts the Court’s oral arguments, and the video is also archived on the State Bar of Michigan’s web site for later online viewing. The oral argument is an opportunity for the attorneys to emphasize and clarify the arguments they already presented in their written briefs. More important, oral argument assists the justices in reaching a decision. Each side has 30 minutes for argument.

As the justices prepare for oral argument, each justice reads the briefs and researches the legal issues. As part of that process, questions and concerns arise; oral argument helps the justices address those questions and concerns with the parties’ attorneys.

When the arguments are concluded for the day, the justices go to their conference room to discuss the cases and register their tentative votes. One of the justices in the majority will be assigned the job of writing the majority opinion.

Once the initial opinion has circulated, one or more of the justices may write a *conurrence*, meaning an opinion that agrees with the majority but makes additional points, or a *dissent*, meaning an opinion that disagrees with the majority opinion. Sometimes a justice will concur as to the majority’s legal conclusions but dissent from their application to the facts in that case. Alternatively, you can have a justice who concurs in the result but disagrees as to the law.

A justice can, and frequently does, change his or her tentative vote as the various draft opinions are circulated and revised. When the justices are finally satisfied with the opinion, it is released to the public. The Court’s opinions are on the Court’s web site and are also published in hardback books.

SUGGESTED DISCUSSION QUESTIONS

- 1) What is “common law”? How is it developed? What is its relationship to statutory law? When the two conflict, which takes precedence? Why?
- 2) What is *stare decisis*? Why do courts look to past court rulings for guidance?
- 3) Under the law, a parent has the right to raise his or her child without government intervention so long as the parent is “fit.” When can/should the state intervene in family life?
- 4) The Court of Appeals judges expressed concerns about the impact of their ruling while indicating that they were bound by the law to rule as they did. Should a judge make decisions based on the law or on the impact for society? Should a judge take both issues into consideration? Why or why not?
- 5) The parties in this case appealed the circuit judge’s decision to the Michigan Court of Appeals and the Michigan Supreme Court. What is the process for getting a higher court to review a decision?
- 6) What role does the Michigan Court of Appeals play in the state’s justice system? How is that role different from the role of the Michigan Supreme Court?
- 7) If the Supreme Court allows the Michigan Court of Appeals ruling to stand, what might happen? What would the impact be? How might individuals and organizations change their behavior? For the better or for the worse?
- 8) If a school group offers an activity for its students but requires students’ parents to first sign a waiver, should students be allowed to participate if their parents refuse to sign? Why or why not?
- 9) If you were the judge hearing this case, how would you rule and why? What would you say in your written opinion? How would you support your ruling? What would you need to know?
- 10) In *Woodman v Kera*, the boy’s mother serves as his “next friend” in bringing the lawsuit for him. Is there a conflict between allowing a parent to file a lawsuit on a child’s behalf, but not allowing a parent to waive a child’s right to sue? What kinds of actions may a parent take on behalf of a child?