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STATE OF MICHIGAN

IN THE SUPREME COURT

KERAN ERNEST, Individually and,
as Personal Representative,
of the Estate of Maurice Ernest, Deceased,

Plaintiff-Appellant,

vs.

DR. PAUL W. BROWN JR., ELMAHDI M. SAEED,
MCLAREN HEALTH CARE CORPORATION,
CYPRESS CARDIOLOGY PLLC

Defendants-Appellees
and

DR. FAROUK M. BELAL,

Defendant.

Docket No. 168462

Court of Appeals No. 368566

Genesee County Circuit Court
Case No. 23-119425-NH

ORAL ARGUMENT REQUESTED

Defendant-Appellee Cypress Cardiology's Supplemental Brief

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Order Appealed From and Jurisdictional Statement

The Estate of Maurice Ernest appeals the trial court's October 23, 2023 order granting summary disposition in defendants' favor.[1]

The Estate filed a claim of appeal with the Court of Appeals on November 10, 2023, naming only defendants Dr. Brown, Dr. Saeed, McLaren, and Cypress Cardiology PLLC as appellees.[2] The Estate did not name defendant Dr. Belal as an appellee.[3]

On March 20, 2025, the Court of Appeals issued its opinion affirming the trial court's grant of summary disposition.[4] On May 1, 2025, the Estate timely applied for leave at this Court to appeal the Court of Appeals' decision.[5] MCR 7.305(C)(2).

On September 26, 2025, this Court directed its clerk to schedule oral argument on the Estate's application.[6] This Court also directed the parties to file supplemental briefs on the following questions presented:

(1) Whether *Waltz v Wyse*, 469 Mich 642 (2004), correctly held that MCL 600.5856(c) does not toll the additional period permitted for filing wrongful-death actions provided in MCL 600.5852?

(2) If *Waltz* was incorrectly decided, whether it should nonetheless be retained under principles of stare decisis, *Robinson v City of Detroit*, 462 Mich 439, 463-468 (2000)?[7]

---

[1] AT Appx. 4-5, Trial court order.

[2] Cypress Cardiology Appendix ("Cypress Appendix") 2-3, Claim of appeal (excerpt).

[3] *Id.*

[4] Saeed Appx., 80-83, *Estate of Ernest v Brown*, unpublished per curiam opinion of the Court of Appeals, issued March 20, 2025 (Docket No. 368566).

[5] See generally The Estate's application for leave to appeal ("Application").

[6] **Cypress Cardiology Supplemental Appendix ("Cypress Supplemental Appendix") 69**, MSC Order granting MOAA.

[7] *Id.*

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Defendant-appellee Cypress Cardiology does not contest this Court's jurisdiction to consider the Estate's application for leave to appeal as to Cypress Cardiology. However, as the Estate did not name Dr. Belal as an appellee in this case, this Court does not have jurisdiction over Dr. Belal.[8]

[8] Cypress Appendix 2, Claim of Appeal, p 1.

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Statement of Questions Presented

I.

> Did this Court in *Waltz v Wyse*, 469 Mich 642 (2004) correctly hold that the notice tolling provision of MCL 600.5856 does not apply to MCL 600.5852, the wrongful death savings statute, when the savings statute (1) is an *exception* to the medical-malpractice statute of limitations and (2) expressly references a *separate* "period of limitations"?

Plaintiff-appellant answers, no.

Defendant-appellee Cypress Cardiology answers, yes.

The trial court did not consider this issue.

The Court of Appeals did not consider this issue.

This Court should answer, yes.

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II.

> When deciding whether to overturn precedent this Court considers (1) "whether changes in the law or facts no longer justify the questioned decision"; (2) "whether reliance interests would work an undue hardship"; and (3) "whether the decision at issue defies 'practical workability.'" *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000).
>
> Even if *Waltz* was wrongly decided (it's not), should this Court retain this precedent when (1) there are no changes to the law or facts relevant to this Court's holding in *Waltz* and (2) there are no workability issues with *Waltz*?

Plaintiff-appellant answers, no.

Defendant-appellee Cypress Cardiology answers, yes.

The trial court did not consider this issue.

The Court of Appeals did not consider this issue.

This Court should answer, yes.

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Introduction

This Court decided *Waltz v Wyse*, 469 Mich 642; 777 NW2d 813 (2004) over twenty years ago. In *Waltz*, this Court held that the tolling provision of MCL 600.5856(c), doesn't apply to the wrongful death savings statute, MCL 600.5852. This Court, among other things, looked to the plain language of both statutes. It reasoned that the notice tolling provision doesn't apply to the wrongful death savings statute because (1) the tolling provision only tolls "[t]he statute of limitations or repose" and (2) the wrongful death savings provision doesn't fit into either of these categories because it expressly refers to a *separate* "period of limitations."

Despite *Waltz*'s long-standing precedent, the Estate in this case didn't mail its notices of intent to sue until *after* the two-year medical-malpractice statute of limitations expired and *twenty-months* after the probate court appointed a personal representative. There's no dispute or argument that the Estate knew about the claim more than six months before it mailed its notices and the Estate has never argued that it didn't or shouldn't have discovered the claim earlier. And the Estate didn't file suit until *after* the two-year wrongful death savings provision expired. Under *Waltz*, the Estate's case is plainly time-barred.

This Court's holding in *Waltz* is consistent with the plain language of the tolling provision and the wrongful death savings statute. It's consistent with this Court's prior precedent. And it's consistent with the broader legislative scheme governing wrongful death and medical-malpractice claims.

Under *Waltz*, estates get the same tolling benefits as living plaintiffs, and more. For a living plaintiff and an estate, the notice tolls the statute of limitations, including the discovery rule, and the statute of repose. Estates, like the one in this case, get the benefit of an *additional* period.

The premise that *Waltz* imposes a hardship isn't true. Here, for example, the Estate had over a year to send a notice that would have tolled the two-year limitation period. After the two-year statute of

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limitations expired, the Estate had an additional five months—that living medical-malpractice plaintiffs don't get—to send a notice under the savings period.

Though not at issue here, an estate that hadn't discovered the claim can rely on the alternative statute of limitations established in the six-month discovery rule. So, *Waltz* doesn't cause estates to lose claims due to an inability to discover them.

Similarly, under the three-year ceiling in the savings statute, the two-year limitation period can pass and a personal representative can *still* timely serve a notice four-and-a-half years after the alleged malpractice. So, a personal representative who knows of a claim from the start can wait additional years to get appointed and *still* timely send notice and file an action. In fact, because their powers relate back in time, a personal representative can send a notice *before* they're appointed to avoid any potential issues with the end point of the savings provision.

Waltz only bars an estate's complaint when a personal representative sits on a claim longer than any living plaintiff could. It imposes no hardship, certainly no more than any other known deadline. This Court should reject the Estate's attempt to overturn this Court's long-standing precedent — particularly when the untimeliness of the Estate's claim is an issue of its own making. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm *Waltz*.

Statement of Facts and Procedural History

A full description of the statement of facts and procedural history is detailed in Cypress Cardiology's answer to the Estate's application for leave to appeal.[9] For this Court's convenience, Cypress Cardiology includes a brief timeline of the underlying events here:

[9] Cypress Cardiology Answer, p 1-4.

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- July 16, 2020 – Maurice Ernest went to the emergency department at the McClaren Regional Medical Center in Flint, Michigan;[10]
- July 17, 2020 – Dr. Belal treats Ernest in the hospital;[11]
- July 17, 2020 – Ernest died while still admitted to the hospital;[12]
- June 7, 2021 – the Genesee county probate court issued letters of authority, appointing Keran Ernest as the Estate's personal representative;[13]
- February 10, 2023 – Ernest's estate mailed a notice of intent to sue to Dr. Belal and Cypress Cardiology;[14]
- August 14, 2023 – the Estate filed this case against Dr. Belal, Cypress Cardiology, and their co-defendants.[15]

Standard of Review

This Court reviews summary-disposition rulings de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court reviews questions of statutory interpretation de novo. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295 (2010).

[10] AT Appx. 37, Complaint, p 3 ¶ 10.
[11] AT Appx. 38, Complaint, p 4 ¶ 14.
[12] AT Appx. 38, *Id.* at p 4 ¶ 15.
[13] AT Appx. 32, Letters of authority.
[14] Cypress Appendix 5-15, Notice of intent.
[15] See generally AT Appx. 35-64, Complaint; Cypress Appendix 33, Register of actions, p 17 (attached to the Estate's claim of appeal) (showing that the Estate filed its complaint on August 14, 2023).

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Argument[16]

A. This Court in *Waltz* correctly held that MCL 600.5852 is a savings provision, not a statute of limitations.

Medical-malpractice claims, generally, have a two-year statute of limitations. MCL 600.5805(8).[17] MCL 600.2912b requires would-be plaintiffs in a medical-malpractice action to give would-be defendants notice before filing suit. After giving notice, plaintiffs must wait 182 days to file their complaint, unless a shorter period enumerated in MCL 600.2912b applies. See generally *Id.*

MCL 600.5856(c) tolls "[t]he statutes of limitations or repose" if it would expire during the notice period:

> The statutes of limitations or repose are tolled in any of the following circumstances:
>
> ***
>
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of

---

[16] Cypress Cardiology limits its arguments in its supplemental brief to the issues in this Court's September 2025 order. Cypress Supplemental Appendix 69, MSC Order granting MOAA. Cypress Cardiology refers this Court to its Answer regarding its arguments that (1) the Estate's claims are time-barred under *Waltz* and (2) this Court does not have jurisdiction over Dr. Belal.

[17] Medical-malpractice claims also have an alternative statute of limitations based on when a plaintiff discovers or should have discovered their claim. *Miller v Mercy Mem Hosp Corp*, 466 Mich 196, 202; 644 NW2d 730 (2002). This brief discusses the discovery rule in the next subsection.

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> days remaining in the applicable notice period after the date notice is given.

The statute of limitations or repose is tolled up to the number of days required in the applicable notice period under MCL 600.2912b — that is, 182-days. *Waltz v Wyse*, 469 Mich 642, 649; 677 NW2d 813 (2004).

MCL 600.5852, the wrongful death savings statute, provides, in pertinent part, that if a medical-malpractice plaintiff dies before the limitation period expires, the first personal representative of their estate may file suit within two years of the probate court's issuing letters of authority "although the period of limitations has run":

> (1) If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.
>
> (2) If the action that survives by law is an action alleging medical malpractice, the 2-year period under subsection (1) runs from the date letters of authority are issued to the first personal representative of an estate. . . [MCL 600.5852(1), (2).]

The statute further provides that the latest an estate may file suit is three years after the "period of limitations has run." MCL 600.5852(4).

In *Waltz*, this Court reviewed the plain language of MCL 600.5852 to determine that, because the statute expressly referenced a separate "period of limitations," it was not a statute of limitations or repose. *Id.* at 651, 655; *Maples v State*, 507 Mich 461, 470; 968 NW2d 446 (2021) ("The most reliable indicator of intent is usually the statute's text."); *Miller v Mercy Mem Hosp Corp*, 466 Mich 196, 201; 644 NW2d 730 (2002) ("We first

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review the language of the statute itself. If it is clear, no further analysis is necessary or allowed to expand what the Legislature clearly intended to cover."). Rather, this Court held that MCL 600.5852 was a savings statute — that is, that MCL 600.5852 is a grace period and an *exception* to the statute of limitations. *Waltz*, 469 Mich at 650, 650 n 12.

Further, this Court held that the three-year period described in MCL 600.5852(4) is a *ceiling* as to when an estate may file a wrongful-death claim. See *Id.* at 651-652 ("As we have explained, the three-year ceiling provided in the wrongful death saving provision was not 'tolled' following plaintiff's provisions of the notices of intent."); *Id.* at 651 ("[MCL 600.5852] clearly provides that it is an *exception* to the limitation period, allowing the commencement of a wrongful death action *as many as* three years after the applicable statute of limitations has expired.") (emphasis altered). So, MCL 600.5852(4) isn't a separate period of time under which an estate may file suit. See *Miller*, 466 Mich at 200 n 3 (referencing a "*maximum* three-year cutoff for personal representatives to bring a surviving cause of action under § 5852"); *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 573 n 16, 575; 703 NW2d 115 (2005) (explaining that "the three-year ceiling in the [wrongful-death savings provision, MCL 600.5852,] does not establish an independent period during which a personal representative may bring suit," but, rather, "it is only a limitation on the two-year saving provision itself.").

As explained in the following sections, this Court's holdings in *Waltz* fit with this Court's prior precedent. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm *Waltz*.

1. *Lindsey* and *Miller* support this Court's holding in *Waltz*.

In *Waltz*, this Court looked to its prior precedent in *Lindsey v Harper Hosp*, 455 Mich 56; 564 NW2d 861 (1997) and *Miller v Mercy Mem Hosp Corp*, 466 Mich 196; 644 NW2d 730 (2002), in addition to the text of the statute, to hold that MCL 600.5852 was a savings statute or a grace period, *not* a separate statute of limitations. *Waltz*, 469 Mich at 650, 650 n 12.

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In *Lindsey*, this Court held that MCL 600.5852 began to run when the probate court issued plaintiff letters of authority as *temporary* personal representative. *Lindsey*, 455 Mich at 58. In so holding, this Court explained that MCL 600.5852, the wrongful death savings provision, "has the effect of extending" the medical-malpractice statute of limitations. *Id.* at 64, citing MCL 600.5805. And this Court explained that MCL 600.5852 was a "statute of limitations saving provision," an "exception to the statute of limitations," and operated to "suspend the running of the statute [of limitations] until a personal representative is appointed to represent the interests of the estate." *Id.* at 58, 60, 61, 64, 65.

In *Miller*, this Court considered whether the reference to the "period of limitations" in MCL 600.5852, the wrongful death savings statute, incorporated the six-month discovery rule codified in MCL 600.5838a(2). *Miller*, 466 Mich at 197. This Court held that the wrongful death savings statute incorporated the six-month discovery rule because the six-month discovery rule is one of two statutes of limitations applicable to medical-malpractice actions. *Id.* at 200, 202. This Court stated that "[t]he plain language of § 5838a(2) provides *two* distinct periods of limitation: two years after the accrual of the cause of action and six months after the existence of the claim was or should have been discovered by the medical malpractice claimant." *Id.* at 202, citing MCL 600.5805(8) and MCL 600.5838a(2) (emphasis added).[18]

In so holding, this Court reasoned that "*as a saving statute*, § 5852 applies to whatever period of limitation is or may be applicable in a given case, be it professional malpractice or a breach of contract action." *Id.* at 202 (emphasis added). The *Miller* Court further reasoned that holding that the six-month discovery rule is an alternative statute of limitations does not violate this Court's understanding in *Lindsey* that MCL 600.5852 is an

[18] At the time this Court decided *Miller*, the two-year malpractice statute of limitations was codified in MCL 600.5805(5), not MCL 600.5805(8). See, e.g., *Miller*, 466 Mich at 199, citing MCL 600.5805(5). For consistency, this brief will refer to the two-year medical-malpractice statute of limitations as codified in MCL 600.5805(8).

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exception to the statute of limitations and must be narrowly construed. *Id.* at 203; See, e.g., *Lindsey*, 455 Mich at 65 ("As an exception to the statute of limitations, the saving provision should be strictly construed.").

Nowhere in *Miller* or *Lindsey* did this Court describe MCL 600.5852 as a statute of limitations. In fact, this Court in *Miller* and *Lindsey* expressly distinguished between a savings statute and a period of limitations. *Miller*, 644 Mich at 202 ("Following these principles of statutory construction, we conclude that the six-month discovery rule is a '*period of limitation*' within the meaning *of the saving statute*.") (emphasis added); *Lindsey*, 455 Mich at 61 ("The *period of limitation* for a medical malpractice action is two years from the time a claim accrues. . . However, where a potential claimant dies within thirty days after the statute of limitations has run or within the two-year period of limitation, *the statute of limitation saving provision* operates to suspend the running of the statute until a personal representative is appointed to represent the interests of the estate.") (emphasis added).

Accordingly, this Court's pre-*Waltz* precedent supports its holding in *Waltz* that MCL 600.5852 is a savings statute, *not* a statute of limitations. Overturning *Waltz* to categorize the wrongful death savings statute as a statute of limitation would require this Court to, implicitly and in part, overturn both *Miller* and *Lindsey*. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm *Waltz*.

2. The wrongful death savings provision is not a statute of limitations under MCL 600.5838a.

The Estate argues that this Court's analysis in *Miller* doesn't meaningfully distinguish between considering the six-month discovery rule a statute of limitations and considering the wrongful death savings statute as a savings statute.[19] The Estate also argues that the text of MCL 600.5838a treats the wrongful death savings provision as a period of limitations.[20] These arguments fail.

[19] Application, p 12.
[20] Application, p 12; The Estate's Supplemental Brief, p 6.

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MCL 600.5856 tolls the "statute of limitations or repose." The terms statute of limitations and statute of repose are legal terms of art. This Court must understand these terms in accordance with the meaning they've acquired in the law. See *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008) ("A legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning."); MCL 8.3a (stating, in pertinent part, "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").

Black's Law dictionary defines both "statute of limitations" and "statute of repose." A statute of limitations is "[a] law that bars claims after a specified period; [specifically], a statute establishing a time limit for suing in a civil case, *based on the date when the claim accrued* (as *when the injury occurred* or was *discovered*)." *Black's Law Dictionary* (12th ed) (emphasis added). A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." *Id.*

This Court's holding in *Miller* conforms to the Black's Law dictionary definition of a statute of limitations. In *Miller*, this Court considered the text of MCL 600.5838a(2), *including the statute's reference to the wrongful death savings provision*, when concluding that there are *two* statutes of limitations relevant to medical-malpractice claims: two years after the accrual of the cause of action, and six months after the existence of the claim was or should have been discovered by the medical malpractice claimant. *Miller*, 466 Mich at 199, 202. MCL 600.5838a(2) provides, in pertinent part, that:

> Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should

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> have discovered the existence of the claim, whichever is later. [*Id.*].

The Estate focuses on the reference to "sections 5851 to 5856" to argue that MCL 600.5852 is a statute of limitations, not a savings provision.[21] The Estate's argument fails to consider the definition of a statute of limitations. And it fails to consider the substance of the referenced statutes.

Sections 5851 to 5856 do not establish a time for filing suit based on when the claim accrued or when the claim was discovered. These statutes establish exceptions to the statute of limitations or provide relief from the statute of limitations under specific factual circumstances. MCL 600.5851 (governing, generally, the commencement of an action when various disabilities are at issue); MCL 600.5852 (wrongful death savings statute); MCL 600.5853 (commencement of a claim when a person is absent from the state when a claim accrues against them); MCL 600.5854 (commencement of an action in times of war); MCL 600.5855 (commencement of an action when fraudulent concealment is at issue); MCL 600.5856 (notice tolling provision).

MCL 600.5838a(2)'s reference to MCL 600.5856, the notice tolling provision, particularly highlights the issues with the Estate's reference argument. Under the Estate's own logic, because MCL 600.5838a(2) references the notice tolling provision of MCL 600.5856, the tolling statute should be a statute of limitations. It's not. It's a tolling provision that

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[21] Application, p 12; The Estate's Supplemental Brief, p 6. The Estate also asserts that MCL 600.5838a(3) establishes a separate statute of limitations for medical-malpractice claims involving fraudulent concealment and reproductive injury. The Estate's Supplemental Brief, p 10. But, the language of MCL 600.5838a(3) is nearly identical to MCL 600.5838a(2). The only difference between these two subsections is that MCL 600.5838a(3) *eliminates* the application of the six-year statute of repose for claims involving fraudulent concealment and reproductive injury. So, despite the Estate's assertion to the contrary, MCL 600.5838a(3) doesn't establish a separate statute of limitations for medical-malpractice claims involving these circumstances.

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affects the statute of limitations. This conflation of concepts is the entire basis for the Estate's flawed argument.

The Estate argues that because MCL 600.5838a(1) excludes the time of discovery from the definition of when a claim accrues, that the Black's Law definition of statutes of limitation does not support distinguishing the six-month discovery rule as a statute of limitations and MCL 600.5852 as a savings provision.[22] But, reading MCL 600.5838a(1) and (2), *together* demonstrates that the six-month discovery period provides an *alternative* time for accrual to that established in MCL 600.5838a(1). See *Miller*, 466 Mich at 202. And this understanding conforms with the Black's Law definition of a statute of limitations, which provides that discovery of an injury is an example of when a plaintiff's claim accrues. *Black's Law Dictionary* (12th ed).

The Estate also looks to the Court of Appeals decision in *Vanslembrouck ex rel Vanslembrouck v Halperin*, 277 Mich App 558; 747 NW2d 311 (2008) to argue that the wrongful death savings provision is a statute of limitations, *not* a savings statute.[23] In *Vanslembrouck*, the Court of Appeals held that MCL 600.5851(7) is a period of limitations, rather than a savings statute. *Id.* at 569. In turn, the *Vanslembrouck* court held that the notice tolling provision of MCL 600.5856 applied to MCL 600.5851(7). *Id.* at 570.

MCL 600.5851(7) provides that a medical-malpractice claimant who was younger than eight-years old when their claim accrued has until their tenth birthday or the "period of limitations set forth in section 5838a," whichever is later, to commence suit. MCL 600.5851(7) must be read in the context of MCL 600.5851(1), which extends the time for filing suit when a person's claim accrues when they are under 18 years old or insane. Together the statutes read as follows:

> (1) *Except as otherwise provided in subsections (7) and (8)*, if the person first entitled to make an

[22] The Estate's Supplemental Brief, p 11-12.
[23] See, e.g., The Estate's Supplemental Brief, p 7, 10-13.

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> entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry to bring the action *although the period of limitations has run*.
>
> ***
>
> (7) Except as otherwise provided in subsection (8), if, at the time a claim alleging medical malpractice accrues to a person under section 5838a the person has not reached his or her eighth birthday, a person shall not bring an action based on the claim unless the action is commenced on or before the person's tenth birthday *or within the period of limitations set forth in 5838a, whichever is later*. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her eighth birthday, he or she is subject to the period of limitations set forth in section 5838a. [MCL 600.5851(1), (7) (emphasis added)].

In holding that MCL 600.5851(7) is a period of limitations, the *Vanslembrouck* court reasoned that this subsection, read with MCL 600.5838a(2), creates *three separate* statutes of limitations: "(1) before the child's tenth birthday; (2) two years after the claim accrued; or (3) six months after the child discovered or should have discovered the claim." *Vanslembrouck*, 277 Mich App at 569.

But, the court failed to consider that MCL 600.5851(7) is an express *exception* to MCL 600.5851(1). MCL 600.5851(1) ("Except as otherwise provided in subsections (7) and (8) . . ."). And the court failed to consider

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that, under its plain language, MCL 600.5851(1) is itself a savings provision to the statute of limitations. Compare *Id.* (" . . . the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry to bring the action *although the period of limitations has run*.") (emphasis added) with MCL 600.5852(1) (" . . . an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued *although the period of limitations has run*.") (emphasis added). Because MCL 600.5851(7) is an exception to a savings provision, it is *not* a statute of limitations. It does not establish a time for filing suit based on when the claim accrued or when the claim was discovered. *Black's Law Dictionary* (12th ed).

In holding that MCL 600.5851(7) is a period of limitations, the *Vanslembrouck* court also looked to this Court's statement in *Miller* that the six-month discovery rule was a statute of limitations because "[i]t is a 'statutory provision that requires a person who has a cause of action to bring suit within a specified time.'" *Vanslembrouck*, 277 Mich App at 569, quoting *Miller*, 466 Mich at 202. But *Miller* did not hold that every statute referring to a period of time and filing a lawsuit is a statute of limitation. It expressly recognized the difference between a statute of limitation and a savings provision. *Miller*, 466 Mich at 202 ("Following these principles of statutory construction, we conclude that the six-month discovery rule is a 'period of limitation' within the meaning of the saving statute."); *Id.* ("As a saving statute, § 5852 applies to whatever period of limitation is or may be applicable in a given case . . .").

Selective quotation cannot wipe away the fundamental differences between statutes of limitations, savings statutes, and statutes of repose. Each of these statutory provisions necessarily addresses a timeframe for filing a suit. But, they each serve a different purpose:

- A statute of limitation establishes a time limit for filing suit "based on the date when the claim accrued (as when the injury occurred or was discovered)." *Black's Law Dictionary* (12th ed);

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- A savings provision is an *exception* to the statute of limitations. *Lindsey*, 455 Mich at 65 (describing the wrongful death savings provision as an *exception* to the statute of limitations); *Waltz*, 469 Mich at 655 (describing the wrongful death savings provision as a grace period); *Miller*, 466 Mich at 202 (explaining that savings statute "appl[y] to whatever period of limitation is or may be applicable in a given case"); *Ligons v Crittenton Hosp*, 490 Mich 61, 75; 803 NW2d 271 (2011) ("A saving statute is neither a statute of limitations providing a limitations period nor a statute of repose; rather, it is an *exception* to the statute of limitations that allows commencement of a wrongful death action as many as three years after the applicable statute of limitations has expired.") (internal quotations and citations omitted) (emphasis in original); see also *Black's Law Dictionary* (12th ed) (defining a saving clause as "[a] statutory provision exempting from coverage something that would otherwise be included."); [24]

- A statute of repose sets a ceiling on when a potential plaintiff may bring a claim, regardless of whether the potential plaintiff's claim has accrued. *Black's Law Dictionary* (12th ed) (defining a statute of repose as "[a] statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury"); *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 42 n 7; 709 NW2d 589 (2006) ("A statute of repose limits the liability of a party by setting a fixed time after . . . which the party will not be held liable for . . . injury or damage . . . .Unlike a statute of limitations, a statute of repose may bar a claim before an injury or damage occurs.") (internal quotations and citations omitted); *Nortley v Hurst*,

[24] Despite the Estate's assertion to the contrary, this Court has consistently defined a savings statute as an *exception* to the statute of limitations. The Estate's Supplemental Brief, p 10-11. There is no ambiguity in this Court's jurisprudence.

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> 321 Mich App 566, 572; 908 NW2d 919 (2017) ("Unlike a statute of limitations, a statute of repose bars a claim after a fixed period of time from the defendant's act or omission and may prevent accrual of a claim even if the injury happens after the statutory period has expired.").

Statutes of limitations, savings statutes, and statutes of repose are different provisions in the law. These statutes serve different purposes. And this Court must give them their recognized, unique meanings. *Brackett*, 482 Mich at 276; MCL 8.3a.

Ultimately, the Court of Appeals decision in *Vanslembrouck* is not binding on this Court. See *Catalina Marketing Sales Corp v Dept of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004) ("A Court of Appeals opinion published after November 1, 1990 is binding precedent not only on *lower courts*, but on subsequent panels of the Court of Appeals.") (emphasis added). And this Court's denial of leave to appeal in *Vanslembrouck* holds no precedential value either. *Vanslembrouck ex rel Vanslembrouck v Halperin*, 483 Mich 965; 763 NW2d 919 (2009);[25] *Haksluoto v Mt Clemens Regional Med Ctr*, 500 Mich 304, 313 n 3; 901 NW2d 577 (2017) ("[D]enials of leave to appeal do not establish a precedent."); *Frishett v State Farm*, 378 Mich 733 (1966) (When denying leave to appeal, "the Supreme Court expresses no present view with respect to the legal questions dealt with in the opinion of the Court of Appeals"); See MCR 7.301(E) ("The reasons for denying leave to appeal . . . are not to be regarded as precedent.").

Nonetheless, to the extent that this Court believes that the Court of Appeals decision in *Vanslembrouck* is correct, its analysis regarding MCL 600.5851(7) does not extend to MCL 600.5852. Despite the Estate's assertions to the contrary,[26] the text of MCL 600.5851(7) is distinguishable from that of MCL 600.5852. Unlike MCL 600.5851(7), MCL 600.5852(1)

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[25] This Court granted the defendants-appellants' application for leave to appeal before later denying leave to appeal. *Vanslembrouck ex rel Vanslembrouck v Halperin*, 483 Mich 965; 763 NW2d 919 (2009), vacating *Vanslembrouck ex rel Vanslembrouck v Halperin*, 481 Mich 918; 750 NW2d 591 (2008).

[26] The Estate's Supplemental Brief, p 7, 17.

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makes an express reference to an expired, *separate* period of limitations. MCL 600.5852(1) (". . . although the period of limitations has run."). As this Court noted in *Waltz*, this language squarely indicates that MCL 600.5852 is an *exception* to the applicable statute of limitations. *Waltz*, 469 Mich at 651.

The Estate's arguments that MCL 600.5838a's reference to MCL 600.5852 converts it from a savings provision to a statute of limitations fail. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm *Waltz*.

3. This Court's holding in *Waltz* does not conflict with *Hardy* and *Omelenchuk*.

The Estate further argues that understanding MCL 600.5852 as a savings statute conflicts with this Court's prior precedent in *Hardy v Maxheimer*, 429 Mich 422; 416 NW2d 299 (1987) and *Omelenchuk v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000).[27] These arguments fail. In *Hardy*, this Court considered whether the wrongful death savings statute applied to survival-type actions brought under MCL 600.2922, the wrongful-death statute. *Hardy*, 429 Mich at 425. This Court held that the wrongful death savings statute "operates to toll the statute of limitations in both survival-type actions and death-type actions." *Id. Hardy* did not involve a medical-malpractice claim. *Hardy* did not involve the application of MCL 600.5856(c), the notice tolling provision. And this Court in *Hardy* did not hold that MCL 600.5852 is a statute of limitations or repose. In fact, this Court in *Hardy* repeatedly described MCL 600.5852 as a "saving provision." See, e.g., *Id.* at 425, 428-429.

Nonetheless, the Estate asserts that this Court's holding in *Hardy* is in conflict with its holding in *Waltz*, arguing that the language in *Hardy* that the wrongful death savings provision "toll[s] the statute of limitations" somehow saves the Estate's claim.[28] *Hardy* was a bit loose with its language. A tolling statute "'interrupts the running of a statute of

[27] Application, p 16-18; See The Estate's Supplemental Brief, p 19-20.

[28] *Id.* at p 17.

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limitations.'" *Carter v DTN Mgmt Co*, 515 Mich 61, 79; __ NW3d __ (2024), quoting *Black's Law Dictionary* (11th ed). The wrongful death savings provision doesn't interrupt the limitation period; it extends the time to file. Here, for example, the probate court issued letters of authority before the limitation period expired, so the limitation period and the savings period overlapped. The wrongful death savings provision gave the Estate *additional* time to file. But, even if the savings provision were accurately described as "tolling" the limitation period, it wouldn't help the Estate. The notice-tolling statute applies to "statutes of limitations or repose," not other tolling statutes. MCL 600.5856.

The point remains: the Estate did not file suit within two years after the probate court issued letters of authority.[29] MCL 600.5852(1). And, despite the probate court issuing letters of authority *one year* before the statute of limitations expired, the Estate did not mail its notices of intent until *after* the statute-of-limitations ran.[30]

The Estate's arguments involving *Omelenchuk* are similarly misplaced. In *Omelenchuk*, this Court considered whether the notice tolling provision of MCL 600.5856 tolled the statute of limitations for a full 182-days or 154-days when a medical-malpractice claimant doesn't receive a response to their notice of intent under MCL 600.2912b(7). See *Omelenchuk*, 461 Mich at 575. This Court held that the notice tolling provision tolls the statute of limitation for a full 182 days, regardless of whether medical-malpractice defendants respond to the notice of intent. *Id.*

Like *Hardy*, *Omelenchuk* did not involve applying the notice tolling provision to the wrongful death savings statute. Nonetheless, the Estate argues that the passing reference to a "limitation period" in *Omelenchuk* is at odds with this Court's holding in *Waltz*.[31] But, this Court in *Waltz* addressed, and rejected, this exact argument. *Waltz*, 469 Mich at 652-654.

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[29] AT Appx. 32, Letters of authority (showing the probate court issued letters of authority on June 7, 2021); Cypress Appx. 33, Register of actions (showing the Estate filed suit on August 14, 2023).

[30] See Cypress Appx. 5-15, Notice of intent.

[31] Application, p 17; The Estate's Supplemental Brief, p 11.

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This Court in *Waltz* expressly overruled any language in *Omelenchuk* that "might be viewed as sanctioning application of the notice tolling provision to the wrongful death saving provision." *Waltz*, 469 Mich at 655. Further, because the description of MCL 600.5852 was not necessary to this Court's holding in *Omelenchuk*, this Court's description of MCL 600.5852 in *Omelenchuk* is nonbinding dicta. *Rayford v American House Roseville I, LLC*, __ Mich __; __ NW3d __ (2025) (Docket No. 163989); slip op 12 ("'Dictum is a judicial comment that is not necessary to the decision in the case.'"), quoting *Pew v Mich State Univ*, 307 Mich App 328, 334; 859 NW2d 246 (2014); *Wold Architects and Engineers v Strat*, 474 Mich 223, 232 n 3; 713 NW2d 750 (2006) ("Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand, are, however illuminating, but *obiter dicta* and lack the force of an adjudication.") (internal quotations and citations omitted).

The Estate acknowledges that this Court overruled *Omelenchuk* to the extent that it described MCL 600.5852 as a limitation period.[32] Yet, the Estate asks this Court to *again* reverse its position and overrule language it overruled twenty years ago.[33] This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm *Waltz*.

4. MCL 600.5852 is not a statute of repose.

The Estate also seemingly asserts that MCL 600.5852 is, alternatively, a statute of repose under MCL 600.5856.[34] The Estate does not support this assertion and, accordingly, it is not preserved for this Court's review. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his

[32] Application, p 17; The Estate's Supplemental Brief, p 11.
[33] Application, p 17-18; The Estate's Supplemental Brief, p 11.
[34] Application, p 12, 15.

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position. The appellant must first adequately prime the pump; only then does the appellate well begin to flow."). This assertion also fails.

A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury." *Black's Law Dictionary* (12th ed). Medical-malpractice claims have a six-year statute of repose, which starts on "the date of the act or omission." MCL 600.5838a(2). It's a definitive end point or cap for provisions that would otherwise extend the time to file.

MCL 600.5852 does not limit or reduce a personal representative's time to file a claim. This Court in *Waltz*, *Miller*, and *Lindsey*, properly considered MCL 600.5852 as a *savings* statute because, under its plain language, it is an *exception* to the statute of limitations. MCL 600.5852(1) (". . . although the period of limitations has run."); *Lindsey*, 455 Mich at 65 (stating that a savings provision is an exception to a statute of limitations). In short, the wrongful-death savings provision *extends* the time to file. It's not a statue of repose.

This Court correctly held in *Waltz* that MCL 600.5852 is a savings statute, *not* a statute of limitations or repose. *Waltz*, 469 Mich at 655. In turn, this Court correctly held that the notice tolling provision of MCL 600.5856(c) does not apply to MCL 600.5852 because the notice tolling provision only tolls "[t]he statutes of limitations or repose." *Id.* This Court should deny the Estate's application for leave to appeal.

B. Understanding MCL 600.5852 as a savings provision, not a statute of limitations, fits within the greater statutory scheme.

Despite the Estate's assertions to the contrary, understanding MCL 600.5852 as a savings provision, not a statute of limitations or repose, fits within the context of the greater statutory scheme.[35]

[35] See, e.g., Application, p 16-18; The Estate's Supplemental Brief, p 4-10.

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The wrongful-death act, generally, allows a decedent's estate to bring a claim when the decedent's death or injuries resulting in death would have allowed the decedent to bring their own claim. MCL 600.2922(1), (2). The wrongful-death act and the wrongful death savings statute apply to claims based in more than just medical-malpractice. See *Miller*, 466 Mich at 202; *Wesche v Mecosta Co Road Comm*, 480 Mich 75, 88; 746 NW2d 847 (2008) (stating "the wrongful-death act is essentially a 'filter' through which the underlying claim may proceed"). And the governing statute of limitations in a wrongful-death action is the statute of limitations for the underlying claim. *Waltz*, 469 Mich at 642, citing *Larson v Johns-Manville Sales Corp*, 427 Mich 301, 314; 399 NW2d 1 (1986).

MCL 600.5805(8) establishes the two-year statute of limitations for a medical-malpractice claim. MCL 600.5838a(1) establishes when medical-malpractice claims accrue. And MCL 600.5838a(2) provides an alternative accrual date and statute of limitations based on when a plaintiff discovered or should have discovered their claim. See *Miller*, 466 Mich at 202.

Holding that MCL 600.5852 is a statute of limitations rather than a savings or grace period would undermine the two-year statute of limitations for medical-malpractice actions that MCL 600.5805 creates and would undermine the six-month discovery statute of limitations that MCL 600.5838a creates. Interpreting MCL 600.5852 as a statute of limitations essentially moves the accrual date of a medical-malpractice claim from the time the act or omission that is the basis of the claim occurred, as provided under MCL 600.5838a(1), or when the claim was or should have been discovered, as provided under MCL 600.5838a(2), to the date that a personal representative is first appointed to an estate. MCL 600.5852(1), (2); *Waltz,* 469 Mich at 654 (noting that, in *Omelenchuk*, this Court mistakenly calculated the date of accrual from the date the personal representatives were appointed, instead of the date of the decedent's death). If the Legislature intended for MCL 600.5852 to be a statute of limitations, as opposed to a savings provision, the Legislature could have included the language of MCL 600.5852 as a subsection to MCL 600.5805. But it didn't.

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The Legislature also could have included accrual language in MCL 600.5852, the wrongful death savings statute. But, it didn't. Again, a statute of limitations "establish[es] a time limit for suing . . . based on when the claim accrued (as when the injury occurred or was discovered)." *Black's Law Dictionary* (12th ed.). The Legislature expressly discusses accrual in MCL 600.5805 and in MCL 600.5838a. But, there is no reference to accrual in MCL 600.5852. This Court cannot assume that MCL 600.5852 is a statute of limitations, when, under its plain language, MCL 600.5852 makes no reference to accrual. *People v Peltola*, 489 Mich 174, 185; 803 NW2d 140 (2011) (stating "'[c]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there.'"), quoting *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993).

The Legislature's actions (and inactions) support this Court's holding in *Waltz*. This Court decided *Waltz* in 2004. The Legislature amended MCL 600.5852 in 2013. This amendment, generally, clarified that the two-year savings period under the statute begins to run in a medical-malpractice case when letters of authority are issued to the *first* personal representative of an estate. 2012 SB 1118; Cf. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 33; 658 NW2d 139 (2003) (holding that the *prior* version of MCL 600.5852 "*does not* provide that the two-year period is measured from the date letters of authority are issued to the *initial* personal representative") (emphasis added). The amendment also provided a one-year extension of the saving period if a personal representative of an estate dies or becomes legally incapacitated. *Id.* The Legislature didn't take this amendment process as an opportunity to state that MCL 600.5852 was a statute of limitations or that MCL 600.5856 applies to MCL 600.5852. *GMAC LLC v Treasury Dept*, 286 Mich App 365, 373; 781 NW2d 310 (2009) ("When statutory provisions are construed by the court and the Legislature reenacts the statute, it is assumed that the Legislature acquiesced to the judicial interpretation."), citing *Smith v Detroit*, 388 Mich 637, 650-651; 202 NW2d 300 (1972).

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The Legislature's amendments (and lack of amendments) to MCL 600.5856 also support this Court's holding in *Waltz*. In *Waltz*, this Court looked, in part, to its 1997 decision in *Lindsey* when holding that MCL 600.5856 did not apply to MCL 600.5852 because it was a savings provision, not a statute of limitations or repose. See, e.g., *Waltz*, 469 Mich at 650, 655. In *Lindsey*, this Court described MCL 600.5852 as a savings provision and an exception to the statute of limitations. See, e.g., *Lindsey*, 455 Mich at 65.

In 2004, post-*Lindsey* and post-1993 tort reform,[36] the Legislature amended MCL 600.5856. This amendment, generally, removed the 90-day tolling for when a plaintiff files a complaint pending service. 2004 SB 990. The Legislature didn't include that MCL 600.5856 applies to savings provisions along with statutes of limitations or repose. The Legislature's omission supports this Court's conclusion in *Waltz* that MCL 600.5856 doesn't apply to MCL 600.5852. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506; 475 NW2d 704 (1991) ("It is a well-established principle of statutory construction that the Legislature is presumed to act with knowledge of statutory interpretations by the Court of Appeals and this Court."); *Walen v Dept. of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993) ("It is a well-known principle that the Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws.").

The Estate argues that *Waltz*'s holding that the tolling provision of MCL 600.5856 doesn't apply to MCL 600.5852, the wrongful death savings provision undermines the purpose of the wrongful death savings statute.[37] But, again, the wrongful death savings statute applies to a broad variety of claims, not only medical-malpractice claims. If there is tension (there's not) between the tolling provision of MCL 600.5856(c), the notice requirement of MCL 600.2912b, and the wrongful death savings statute of MCL 600.5852, that is for the Legislature to address. But, it has declined to do so.

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[36] See The Estate's Supplemental Brief, p 8-9.
[37] Application, p 13.

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Here, the probate court issued letters of authority on June 7, 2021, over a year *before* the statute of limitations expired on July 17, 2022.[38] MCL 600.5805(8); MCL 600.5838a(1). But, the Estate didn't mail its notice of intent to sue to Dr. Belal and Cypress Cardiology until February 10, 2023, six-months *after* the statute of limitations expired.[39] *Waltz*, 469 Mich at 650 n 12 ("Plaintiff's claim is not time-barred under the *saving* provision. Rather, it is barred by the two-year statute of limitations for medical malpractice actions. The saving provision simply does not *save* plaintiff's claim because she did not file her complaint after the *grace period* provided in the saving provision had expired.") (emphasis in original). The Estate's arguments that this Court wrongly decided *Waltz* fail. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm this Court's holding in *Waltz*.

C. Stare decisis favors upholding *Waltz*.

Stare decisis means "[t]o abide by, or adhere to, decided cases." *Robinson v City of Detroit*, 462 Mich 439, 463 n 20; 613 NW2d 307 (2000) (internal citations and quotations omitted). "Stare decisis is generally the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Id.* at 463 (internal quotations and citations omitted). While stare decisis "is not to be applied mechanically," this Court must still carefully consider whether stare decisis supports overturning precedent. *Id.*; *Peterson v Magna Corp*, 484 Mich 300, 314; 773 NW2d 564 (2009) ("Stare decisis attempts to balance two competing considerations: the need of the community for stability in legal rules and decisions and the need of courts to correct past errors.").

"[O]verturning precedent requires more than a mere belief that a case was wrongly decided." *Lansing School Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 368; 792 NW2d 686 (2010). When deciding whether to overturn

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[38] AT Appx. 32, Letters of authority; AT Appx. 37, Complaint, p 3 ¶ 10 (stating that Ernest died on July 17, 2020).

[39] Cypress Appx. 5-15, Notice of intent.

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precedent this Court considers (1) "whether changes in the law or facts no longer justify the questioned decision"; (2) "whether reliance interests would work an undue hardship"; and (3) "whether the decision at issue defies 'practical workability." *Robinson*, 462 Mich at 464.

Here, although the reliance interest at issue in *Robinson* is likely not invoked, there are no changes to the law or facts relevant to this Court's holding in *Waltz*. And there are no workability issues with *Waltz*. Balancing the *Robinson* factors should lead this Court to uphold *Waltz*. This Court should deny the Estate's application for leave to appeal.

1. There are no changes in the law or facts relevant to this Court's holding in *Waltz*.

Here, as discussed earlier in this brief, this Court correctly decided *Waltz*. This Court's holding in *Waltz* adheres to this Court's prior precedent. And this Court's holding in *Waltz* fits within the broader statutory scheme. There's no change in the law or facts that justifies overturning *Waltz*. In fact, the Legislature has amended the relevant statutes — MCL 600.5852, the wrongful death savings provision, or MCL 600.5856, the tolling statute—without doing anything that would undermine or abrogate *Waltz*'s analysis and holding. So, the first *Robinson* factor supports upholding *Waltz*.

2. Reliance interests would not work an undue hardship.

This Court decided *Waltz* over twenty years ago. In the years since, this Court and the Court of Appeals have consistently applied this Court's holding in *Waltz*. See, e.g., *Ligons*, 490 Mich at 76, 90 (applying *Waltz*, among other authority, to a medical-malpractice case involving defective affidavits of merit); *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 575; 703 NW2d 115 (2005) (holding that the plaintiff's filing their notice of intent "did not toll the two-year period in which to file suit under the wrongful death saving provision"); *Ousley v McLaren*, 264 Mich App 486, 492-495; 691 NW2d 817 (2004) (holding that *Waltz* applied retroactively and that, under *Waltz*, the plaintiff's issuing a notice of intent didn't toll their claim). And because *Waltz* is settled precedent,

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the plaintiffs' bar is aware of the relevant interplay among the medical-malpractice statute of limitations, notice of intent requirements, the notice tolling provisions, and the wrongful death savings statute. MCL 600.5805(8); MCL 600.5838a; MCL 600.2912b; MCL 600.5856(c); MCL 600.5852.

While it is unlikely that overturning *Waltz* would result in the "practical real-world dislocations" or "chaos" that trigger the reliance interest at issue in a stare decisis analysis, *Waltz* also isn't causing any chaos. *Robinson*, 462 Mich 439, 466, 466 n 26.

Indeed, here, the untimeliness of the Estate's claim is an issue of the Estate's own making. The probate court issued letters of authority on June 7, 2021.[40] The two-year statute of limitations expired on July 17, 2022. [41] MCL 600.5805(8); MCL 600.5838a(1). So, the Estate had over a year to send a notice of intent that would have tolled the statute of limitations. MCL 600.5856(c). But, it didn't.

After the two-year statute of limitations expired in July 2022, the Estate had five months (until December 2022) to send a notice of intent and subsequently timely file suit within the wrongful death savings period. But, it didn't. Simply put, the Estate's inaction created its own need for tolling.[42]

3. *Waltz* doesn't defy practical workability.

Applying *Waltz* doesn't, as the Estate argues, put the timeliness of a plaintiff's claim in the defense's hands.[43] If a plaintiff serves their notice of

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[40] AT Appx. 32, Letters of authority.

[41] AT Appx. 38, Complaint, ¶ 15 (stating that Ernest died on July 17, 2020).

[42] The ceiling period under MCL 600.5852(4) only recently passed in this case. Here, ceiling date expired on July 17, 2025. MCL 600.5852(4); MCL 600.5805(8). The fact that this date only recently passed further demonstrates that the untimeliness of its complaint is a problem of the Estate's own making.

[43] See, e.g., Application, p 12, 14; The Estate's Supplemental Brief, p 15-16.

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intent before the statute of limitations expires (including when it's based on the discovery rule), the plaintiff's claim is tolled for a full 182-days under MCL 600.5856. *Omelenchuk*, 461 Mich at 575; See *Waltz*, 469 Mich at 655.

Here, the probate court issued letters of authority on June 7, 2021, over a year *before* the statute of limitations expired on July 17, 2022.[44] MCL 600.5805(8); MCL 600.5838a(1). But, the Estate didn't mail its notice of intent to sue to Dr. Belal and Cypress Cardiology until February 10, 2023, six-months *after* the statute of limitations expired.[45]

The Estate argues that a defendant's answer (or lack of answer) to a notice of intent dictates when a plaintiff can sue.[46] It's an irrelevant argument in this case. And it's a misguided argument for others.

The Estate mailed its notice of intent on February 10, 2023—twenty months after the probate court appointed the personal representative on June 7, 2021.[47] Cypress Cardiology didn't respond to the Estate's notice of intent. So, the Estate could've chosen to file suit 154-days after mailing its notice of intent. The 154-day period expired on July 14, 2023. This date is *still* after the wrongful death savings provision expired on June 7, 2023.

Also, it's not a defendant's responsibility to ensure that a plaintiff timely serves their notices of intent—just like it's not a defendant's responsibility to ensure that a plaintiff timely files a complaint.

The medical-malpractice notice provision requires defendants to respond to a plaintiff's notice "[w]ithin 154 days after receipt of notice." MCL 600.2912b(7). If a plaintiff doesn't receive a written response from a defendant within the 154-day time period, the plaintiff "may commence an action alleging medical malpractice upon the expiration of the 154-day

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[44] AT Appx. 32, Letters of authority; AT Appx. 37, Complaint, p 3 ¶ 10 (stating that Ernest died on July 17, 2020).

[45] Cypress Appx. 5-15, Notice of intent.

[46] See, e.g., Application, p 13, 14-15; The Estate's Supplemental Brief, p 15-16.

[47] Cypress Appx. 5-15, Notice of intent; AT Appx. 32, Letters of authority.

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period." MCL 600.2912b(8). Further, the notice provision allows a plaintiff to immediately file suit if a defendant informs them that they do not intend to settle "so long as the claim is not barred by the statute of limitations." MCL 600.2912b(9).

The notice provision doesn't, as the Estate suggests defendants should, *require* defendants to affirmatively inform plaintiffs that they do not intend to settle a claim.[48] And the notice provision expressly provides that upon learning that a defendant does not intend to settle, a plaintiff may immediately file their claim *so long as the statute of limitations doesn't bar the plaintiff's claim*. MCL 600.2912b(9).

Again, *Waltz* is established precedent. Anyone relying on the savings provision knows or should know that the notice-tolling provision won't extend it. So, for those relying on the savings provision, the deadline to send a notice of intent is a known commodity. The only difference is that an estate gets more time to send the notice than a living plaintiff, who cannot rely on the savings provision. A plaintiff's failure to file a notice of intent within the two-year statute of limitations, within the six-month discovery rule, *and* six months before the end of the additional savings period doesn't warrant interpreting MCL 600.5852 as a separate statute of limitations.

Here, the probate court issued letters of authority on June 7, 2021, over a year *before* the statute of limitations expired on July 17, 2022.[49] MCL 600.5805(8); MCL 600.5838a(1). But, the Estate didn't mail its notice of intent to sue to Dr. Belal and Cypress Cardiology until February 10, 2023, six-months *after* the statute of limitations expired.[50] The issue of the timeliness of the Estate's complaint is of the Estate's own making. The Estate doesn't dispute that it discovered or knew about the claim in time to file it. But it sat on its claim for *twenty* months after the probate court

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[48] See, e.g., Application, p 13; The Estate's Supplemental Brief, p 16.

[49] AT Appx. 32, Letters of authority; AT Appx. 37, Complaint, p 3 ¶ 10 (stating that Ernest died on July 17, 2020).

[50] Cypress Appx. 5-15, Notice of intent.

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issued letters of authority. The Estate alone controlled when it could file its complaint. Its blame-shifting argument is misguided.

The Estate next seemingly argues that this Court's holding in *Waltz* is unworkable because a personal representative bringing a claim under the six-month discovery rule, MCL 600.5838a(2), would not be able to issue notices of intent to sue within the six-month discovery period.[51] So, according to the Estate, this Court wrongly decided *Waltz* because the notice tolling provision of MCL 600.5856 should apply to the wrongful death savings period, MCL 600.5852, to give a personal representative more time in discovery-rule cases to file suit.

The Estate's grievance is misplaced. The Estate's hypothetical does not demonstrate the unworkability of *Waltz*. *Waltz* applies evenly in claims brought under the two-year statute of limitations or the six-month discovery rule. In either case, under *Waltz*, a plaintiff's serving a notice of intent does not toll the two-year wrongful death savings statute. See, e.g., *Waltz*, 469 Mich at 655. If, as the Estate argues, a personal representative bringing a claim under the six-month discovery rule would not be able to issue notices of intent before the six-month period expires, that is an issue for the Legislature — not this Court.

The crux of the Estate's argument on this point is that six-months is too short for a decedent's personal representative to initiate a medical-malpractice, wrongful-death action.[52] But, the Legislature has determined that in circumstances where a medical-malpractice action is based on a discovery issue, six-months is an appropriate time to file suit. And under MCL 600.5852(1), when the alleged medical-malpractice results in a person's death, the decedent's personal representative has two-years after the probate court issues letters of authority *to file suit*, subject to the ceiling provision in MCL 600.5852(4). If it is trying for a personal representative to carry out the notice provision of MCL 600.2912b within six-months, so that the tolling provision applies, the redress to the Estate's argument lies with the Legislature to extend the statute-of-limitations associated with

[51] See The Estate's Supplemental Brief, p 16-17.
[52] See The Estate's Supplemental Brief, p 16-17.

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discovery claims. Again, the Estate's redress is not with this Court. *Rouch World, llc v Dept of Civil Rights*, 510 Mich 398, 432-433; 987 NW2d 501 (2022) ("Should the Legislature disapprove of an application of a statute's enacted language, the Legislature remains free to amend the statute. This Court, however, is bound by the language that the Legislature has enacted, not what the parties or amici believe the Legislature should have enacted or what any individual representative believed was enacted.").

Further, the Estate's contention that this Court's holding in *Waltz* is unworkable because a personal representative's filing a notice of intent would toll the statute of repose, but not the wrongful death savings statute also fails.[53] A statute of repose is a ceiling for when a plaintiff may bring a claim, based on the *defendant's* actions. *Black's Law Dictionary* (12th ed) (defining statute of repose). The medical-malpractice statute of repose serves a different purpose than the wrongful death savings statute. The medical-malpractice statute of repose functions as a cap on the six-month discovery period. See *Ostroth*, 474 Mich at 42 n 7; *Nortley*, 321 Mich App at 572. The wrongful death savings statute, conversely, gives a personal representative a grace period to file suit. *Waltz*, 469 Mich 646. It is an *exception* to the statute of limitations. *Lindsey*, 455 Mich at 65. Any purported tension between the statute of repose and the wrongful death savings statute does not reflect on the purported unworkability of *Waltz*. And, again, the tolling provision of MCL 600.5856(c) expressly applies to statutes of repose.

Finally, this Court in *Waltz* rebutted the dissent's concern that its holding reduces the time a personal representative has to file suit to 18-months. This Court explained that reading the statute of limitations, the wrongful death savings provision, and the tolling provision together, gives a plaintiff five years plus 182-days to file suit. *Waltz*, 469 Mich at 652 n 14, citing MCL 600.5805, MCL 600.5852, and MCL 600.5856. The notion that the tolling effect of a notice of intent detrimentally and differently affects a medical-malpractice plaintiff who dies versus a medical-malpractice plaintiff who lives is incorrect. In both scenarios, the notice of intent tolls the statute of limitations or repose. MCL 600.5856(c). In a

[53] The Estate's Supplemental Brief, p 16-17.

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circumstance where a medical-malpractice plaintiff lives, they must file suit within the two-year statute of limitations or, if applicable, within the six-month discovery period as tolled by MCL 600.5856. But, in a case where a medical-malpractice plaintiff dies, their estate gets all of this time to file suit *plus* two-years from the date the probate court issues letters of authority, subject to the three-year ceiling. MCL 600.5852(1), (4). So, when a plaintiff in a medical-malpractice suit dies, their estate necessarily gets additional time to file suit that a plaintiff who lives does not get.

Further, the argument that this Court's holding in *Waltz* reduces the time a personal representative has to file suit from two-years to 18-months is based on the incorrect premise that a plaintiff in a wrongful-death suit must wait until they receive letters of authority to take action on an estate's behalf.[54] They do not.

MCL 700.3701 provides, in pertinent part, that although a personal representative's powers begin when they are appointed, their powers relate back in time to beneficial acts they took on an estate's behalf before their official appointment, stating:

> A personal representative's duties and powers commence on appointment. A personal representative's powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment . . . [*Id.*]

So, under this statute, a person who will be an estate's personal representative can send out notices of intent (and even file suit) *before* a probate court officially appoints them as personal representative.

In fact, this sequence of events was at issue in *Waltz*. The decedent's mother, before her appointment as personal representative of her son's estate, notified the defendants of her intent to sue. *Waltz*, 469 Mich at 645. The *Waltz* Court recognized that once the decedent's mother became the

[54] See The Estate's Supplemental Brief, p 15.

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estate's personal representative, her actions related back under a predecessor statute to MCL 700.3701. *Waltz*, 469 Mich at 647 n 8.

Ultimately, this Court (correctly) held that the mother's complaint was untimely because she filed it *after* the ceiling provision of the wrongful death savings statute expired, so the savings period did not save her claim. MCL 600.5852(4); *Waltz*, 469 Mich at 650 n 12 ("Plaintiff's claim is not time-barred under the *saving* provision. Rather, it is barred by the two-year statute of limitations for medical malpractice actions. The saving provision simply does not *save* plaintiff's claim because she did not file her complaint after the *grace period* provided in the saving provision had expired.") (emphasis in original) Cf. *Eversole v Nash*, __ Mich App __; __ NW3d __ (2024) (Docket No. 366556); slip op at 1, 6-7 (holding that under MCL 700.3701 the plaintiff's complaint was timely and proper because, although she issued notices of intent and filed suit before becoming personal representative, her powers related back to these actions upon her later appointment).[55]

Because a personal representative's powers relate back to their earlier actions upon their later appointment, a person bringing a claim under the wrongful death statute has a full two-years following their appointment to file suit, MCL 600.5852(1), subject to the ceiling provision

[55] Although not expressly stated in the court's opinion, the court impliedly holds that the statute governing the timeliness of the plaintiff's complaint is the ceiling period in MCL 600.5852(4). The court implies that because letters of authority were not issued before the decedent's wife filed the complaint, the timeliness of the complaint cannot be determined under MCL 600.5852(1). See *Eversole*, __ Mich App at __; slip op at 4-6; *Id.* at __; slip op at 5 ("Thus, the wrongful-death action was not properly commenced by a personal representative, MCL 600.2922(2), within two years *after* issuance of the letters of authority, MCL 600.5852(1)") (emphasis in original); *Id.* at __; slip op at 7 ("We conclude that under MCL 700.3701, the powers granted by the letters of authority related back to the date plaintiff filed the complaint on behalf of the estate . . . as filing that *timely* action was beneficial to the estate.") (emphasis added).

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in MCL 600.5852(4). This Court's holding in *Waltz* does not reduce the Legislature's determination of the "reasonable" time a plaintiff in a wrongful death action has to commence suit. *Lindsey*, 455 Mich at 66 (stating that the wrongful death savings provision "is intended to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions").

Regardless of the application of the relation-back provision of MCL 700.3701, the circumstances here do not demonstrate a timeline where the Estate was rushed to serve its notices of intent within the two-year savings provision of MCL 600.5852(1). Here, the probate court issued letters of authority on June 7, 2021, over a year *before* the statute of limitations expired on July 17, 2022.[56] MCL 600.5805(8); MCL 600.5838a(1). But, the Estate didn't mail its notice of intent to sue to Dr. Belal and Cypress Cardiology until February 10, 2023, six-months *after* the statute of limitations expired.[57] For an unknown reason, the Estate sat on its claim for *twenty* months after the probate court issued letters of authority. This Estate cannot now blame this Court's (correct) holding in *Waltz* for its untimely filing.

Waltz does not pose any workability issues. So, the third *Robinson* factor supports upholding *Waltz*. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm this Court's holding in *Waltz*.

Conclusion and Relief Requested

The Estate didn't mail its notice of intent to sue until *after* the two-year medical-malpractice statute of limitations expired. And the Estate didn't file suit until *after* the two-year wrongful death savings provision expired. So, the Estate's claim is time-barred under this Court's long-standing precedent in *Waltz*.

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[56] AT Appx. 32, Letters of authority; AT Appx. 37, Complaint, p 3 ¶ 10 (stating that Ernest died on July 17, 2020).

[57] Cypress Appx. 5-15, Notice of intent.

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This Court should reject the Estate's attempt to overturn *Waltz*. This Court's holding in *Waltz* is consistent with the plain language of the tolling provision and the wrongful death savings statute. And it's consistent with prior precedent and the broader statutory scheme. Stare decisis also favors upholding *Waltz*. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm this Court's holding in *Waltz*.

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Certificate of Compliance

I certify that Defendant-Appellee Cypress Cardiology, PLLC's Supplemental Brief complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this brief. This brief uses a 12-point proportional font (Book Antiqua), and the word count for this brief is 10,727.

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