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STATE OF MICHIGAN
IN THE SUPREME COURT

KERAN ERNEST, Personal Representative of the ESTATE OF MAURICE ERNEST,

Plaintiff-Appellant,

v

PAUL W. BROWN, JR., M.D., ELMAHDI M. SAEED, M.D., CYPRESS CARDIOLOGY, PLLC, McLAREN HEALTH CARE CORPORATION,

Defendants-Appellees,

And,

DR. FAROUK M. BELAL,

Defendant.

Case No. 168462
COA Case No. 368566

Genesee County Circuit
No. 23-119425-NH
Hon. Celeste Bell

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DEFENDANTS-APPELLEES McLAREN HEALTH CARE CORPORATION AND PAUL W. BROWN, JR., M.D.'S SUPPLEMENTAL BRIEF

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Respectfully Submitted,

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STATEMENT OF QUESTIONS PRESENTED FOR SUPPLEMENTAL BRIEFING

In an Order dated September 26, 2025, this Court asked the parties to file supplemental briefing addressing the following questions:

(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.

Plaintiff-Appellant answers "No."

Defendants-Appellees McLaren & Dr. Brown answer "Yes."

This Court should answer "Yes."

The Court of Appeals did not answer this question.

The Trial Court did not answer this question.

(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).

Plaintiff-Appellant answers "No."

Defendants-Appellees McLaren & Dr. Brown answer "Yes."

This Court should answer "Yes."

The Court of Appeals did not answer this question.

The Trial Court did not answer this question.

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STATUTES INVOLVED

MCL 600.5856(c)

The statutes of limitations or repose are tolled in any of the following circumstances:

(a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.

(b) At the time jurisdiction over the defendant is otherwise acquired.

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

MCL 600.5852

(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. Except as provided in subsection (3), the issuance of subsequent letters of authority does not enlarge the time within which the action may be commenced.

(3) If a personal representative dies or is adjudged by a court to be legally incapacitated within 2 years after his or her letters are issued, the successor personal representative may commence an action alleging medical malpractice that survives by law within 1 year after the personal representative died or was adjudged by a court to be legally incapacitated.

(4) Notwithstanding subsections (1) to (3), an action shall not be commenced under this section later than 3 years after the period of limitations has run.

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review Plaintiff-Appellant's Application for Leave to Appeal under MCR 7.305. Defendants-Appellees McLaren Health Care Corporation and Paul W. Brown, Jr., M.D. (collectively, "McLaren") submit their Supplemental Brief in accordance with this Court's September 26, 2025 Order.

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INTRODUCTION

Plaintiff-Appellant Keran Ernest, as Personal Representative of the Estate of Maurice Ernest, asserts on the very first page of her Supplemental Brief that this Court's decision in Waltz v Wyse, 469 Mich 642; 677 NW2d 813 (2004), is "unworkable, inequitable and inconsistent with the language of the statutes it purports to interpret." Over the following twenty pages of supplemental briefing, however, Mrs. Ernest fails to substantiate any of the three criteria on which she believes Waltz should be overturned.

Waltz is workable. This Court's decision in Waltz has been good law for twenty-one years, providing a predictable framework for patients, medical providers and their attorneys. Overturning Waltz would interject confusion into an otherwise straightforward analysis for assessing the timeliness of medical malpractice complaints.

Waltz is fair. Mrs. Ernest's view that Waltz is inequitable is both wrong and inappropriate in the context of statutory interpretation. On the former point, Mrs. Ernest, and other similarly situated medical malpractice claimants have ample time to file a claim, up to a full five years to file a complaint. See MCL 600.5852(4). Compared to other claims, five years is an exceedingly long time to file suit and cannot reasonably be characterized as inequitable or unfair. Mrs. Ernest's request to extend the time for filing even further on grounds of equity should be rejected.

Waltz is faithful to legislative intent. Most importantly, the Waltz opinion faithfully implemented legislative intent as expressed by the plain language of the statute, MCL 600.5852, which unambiguously functions as a saving provision rather

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than a limitations period. § 5852 creates an exception that allows a claim to proceed despite being filed after the applicable limitations period expired. The statute's premise, that the limitations period has already run, confirms that § 5852 does not itself establish a limitations period. Instead, the governing limitations period is found elsewhere. For a medical malpractice claim like this one, the limitations period is found under MCL 600.5805, thereby disqualifying § 5852 itself as a limitations period.

Accordingly, this Court should answer question one in the affirmative by denying leave to appeal and declining peremptory relief. The same affirmative response is appropriate for question two, but as argued below, the Court need not address the stare decisis question if the Court agrees, as it should, that Waltz was correctly decided.

Mrs. Ernest has not identified any plain error or glaring defect in the initial analysis of Waltz. Nor has there been any intervening legislative change that calls Waltz's continued viability into question. At most, Mrs. Ernest points to an alleged lack of pristine clarity regarding whether MCL 600.5852 should be labeled as a saving provision or a limitations period because the Legislature did not expressly define the term "saving provision." That observation carries little weight in a party's request to upset twenty-one years of jurisprudential stability. Michigan's appellate courts have correctly and historically treated § 5852 as a saving provision, not a statute of limitations. Reversing course now would be unwarranted based on the merits and under the principles of stare decisis.

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Any ambiguity in terminology should weigh in favor of preserving the status quo rather than unsettling more than two decades of unbroken precedent. Existing precedent strikes a balance between a generous limitations period of up to five years and the settled reliance interests of various stakeholders in the medical malpractice realm, including patients, medical providers and their respective agents and fiduciaries.

Even assuming arguendo that Waltz contained an analytical error, this case bears no resemblance to Kandil-Elsayed v F & E Oil, Inc, 512 Mich 95; 1 NW3d 44 (2023), where a common-law decision of this Court concerning the open and obvious doctrine proved to be unworkable and unfair, considerations that prompted the Court to overturn common-law precedent. Nor is this case akin to recent decisions in which this Court corrected intermediate appellate decisions that had departed from binding precedent based on a failure to faithfully implement statutory text. E.g., Daher v Prime Healthcare Servs.-Garden City, LLC, 515 Mich 254; --- NW3d --- (2024) (overruling Court of Appeals opinions that conflicted with existing MSC precedent).

Instead, with this appeal, Mrs. Ernest asks this Court to overturn its own precedent – precedent that the lower courts have faithfully and consistently applied for more than two decades. That posture warrants continuity, not the bringing of chaos to order that would result from a reversal.

Mrs. Ernest has failed to carry her stated burden of showing that Waltz is unworkable, inequitable and inconsistent with statutory language. Leave to appeal should be denied and the Court should leave long-standing precedent undisturbed.

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STATEMENT OF FACTS

The Statement of Facts supplied by Defendants-Appellees McLaren Health Care Corporation and Paul W. Brown, Jr., M.D. (collectively, "McLaren") focuses on the critical timeline and specific statutory deadlines for purposes of this Supplemental Brief that are necessary to address the Court's questions. The merits of the Complaint were not addressed in the lower courts because the Complaint was dismissed under MCR 2.116(C)(7) in lieu of an answer and no discovery was conducted. For purposes of the Supplemental Brief, the well-pleaded allegations are accepted as true under El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152; 934 NW2d 665 (2019), even though McLaren denies the allegations of professional negligence found in Mrs. Ernest's Complaint.

The Alleged Malpractice and Decedent's Death

On July 16, 2020, the decedent, Maurice Ernest, presented to the Emergency Department at McLaren Regional Medical Center in Flint with complaints of chest pain and diaphoresis (excessive sweating, typically the result of a separate health condition) (Complaint, lower court file). While in the Emergency Department, he was seen by Dr. Paul Brown, Jr., a McLaren physician who is board-certified in emergency medicine (Id.)

Mr. Ernest advised that his chest pains began two days earlier and that the pain registered as a six out of ten (Id.) Mr. Ernest was discharged from the Emergency Department and was transferred to the cardiac unit for observation (Id.) An X-ray, EKG, and other diagnostic tests were performed (Id.)

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Mr. Ernest died in the cardiac unit the day after his admission, July 17, 2020 (Complaint, lower court file). The medical examiner indicated that the cause of death was pulmonary emboli (blood clots in the lungs) (Id.) In the Complaint and supporting documents, Mrs. Ernest claimed that Dr. Brown was professionally negligent for failing to diagnose and treat Mr. Ernest's pulmonary emboli and that McLaren was vicariously liable for Dr. Brown's alleged negligence (Id.), allegations that McLaren denies.

Appointment of the Personal Representative and Statutory Deadlines

Nearly one year after Mr. Ernest's death, the Genesee County Probate Court issued Letters of Authority to his wife, Keran Ernest, appointing her as the Estate's personal representative on June 7, 2021 (Ex B, Letters of Authority). Based on these dates, Mrs. Ernest had two distinct statutory windows to file suit:

1. **Statute of Limitations for a Medical Malpractice Claim**: Under MCL 600.5805(8), medical malpractice claims have a two-year statute of limitations. Under MCL 600.5838a(1), a claim accrues "at the time of the act or omission that is the basis for the claim." Accordingly, the two-year statute of limitations for Mrs. Ernest's claim expired on July 16, 2022, two years after the alleged negligence.

2. **The Wrongful Death Saving Provision**: Under MCL 600.5852, Mrs. Ernest was allowed an additional period of time to file suit - two years after the Letters of Authority were issued. That saving period expired on June 7, 2023.

Mrs. Ernest's complaint was not timely filed within either window. As discussed more fully below, McLaren filed a motion for summary disposition in lieu of an answer to the Complaint on grounds that the claims are time-barred. The Trial

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Court agreed, and so did the Court of Appeals in a unanimous unpublished opinion (Ex A, COA Opinion, Judges Cameron, Garrett and Mariani).

Mrs. Ernest's Untimely Notice of Intent to Sue and Complaint

Mrs. Ernest did not serve her statutorily required Notice of Intent until February 10, 2023, roughly seven months after the statute of limitations under MCL 600.5805(8) had already expired (Ex C, NOI); see MCL 600.2912b(1) ("a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced.")

MCL 600.2912b(7) requires that a defendant respond to a notice of intent within 154 days of receipt. If no written response is provide within that period, the plaintiff may file suit after the expiration of the 154-day period. MCL 600.2912b(8). And while the statute permits an earlier filing if a defendant affirmatively states it does not intend to settle, that option exists only if "the claim is not barred by the statute of limitations." MCL 600.2912b(9).

Mrs. Ernest argues that these provisions give defendants an edge because a defendant can wait out the notice period and defeat otherwise meritorious claims (Supplemental Brief, pp 15-16). That argument is mistaken. The Notice of Intent statute does not govern the length of limitations or saving period, it only governs when a plaintiff is permitted to file suit within those periods. Nothing in MCL 600.2912b saves a claim that is already time-barred.

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Mrs. Ernest ultimately filed her medical malpractice Complaint on August 14, 2023, which was more than one year after expiration of the limitations period under MCL 600.5805(8).

Because the Complaint was not filed within the two-year limitations period, Mrs. Ernest sought to invoke a saving provision applicable to wrongful death claims that allows an untimely claim to be pursued even though it is time-barred. But even that saving provision has a deadline and is not an open-ended extension of time. Under the saving provision of MCL 600.5852(1), Mrs. Ernest could still pursue a claim despite being filed after the limitations period if the Complaint had been filed within two years of her appointment as personal representative. See MCL 600.5852(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.")

Mrs. Ernest was appointed as personal representative on June 7, 2021, which would have allowed her to file a claim pursuant to the statutory saving provision by June 7, 2023. Mrs. Ernest's Complaint was not filed until August 14, 2023, however, more than two months after the two-year cutoff for the saving provision. She instead sought to use a tolling mechanism to not extend the statute of limitations but to essentially "toll" the saving provision, a legal non-sequitur. A saving provision allows a time-barred claim to be filed despite its untimeliness. There is nothing to toll.

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Upon Receipt of the Complaint, McLaren Moved to Dismiss Under Time-Honored Supreme Court Precedent

On September 14, 2023, McLaren filed a Motion for Summary Disposition in lieu of an answer, asserting that Mrs. Ernest's claim was time-barred. On October 23, 2023, the Trial Court granted McLaren's dispositive motion as well as the other co-defendants' motions, dismissing Mrs. Ernest's Complaint. In its ruling, the Trial Court specifically relied on this Court's decision in Waltz v Wyse, 469 Mich 642; 677 NW2d 813 (2004), finding that the Notice of Intent tolling provision (MCL 600.5856(c)) does not apply to MCL 600.5852(1), which is a saving provision and not a limitations period.

Appellate Proceedings Following the Trial Court's Dismissal

Mrs. Ernest appealed the Trial Court's Order, by filing a Bypass Application for Leave to Appeal under MCR 7.305(C), which was rejected by this Court on March 29, 2024. Mrs. Ernest also vested the Court of Appeals with jurisdiction over the Trial Court's dismissal order by filing a claim of appeal. Just like the Trial Court, the Court of Appeals was able to implement this Court's controlling precedent.

On March 20, 2025, the Court of Appeals issued an unpublished opinion affirming the Trial Court's dismissal (Ex A, COA Opinion). There was no dissenting opinion or concurring opinion. Instead, the Court of Appeals unanimously upheld the Trial Court's dismissal, agreeing that Mrs. Ernest's claims were untimely. Mrs. Ernest sought leave to appeal to the Supreme Court, and now this Court has requested supplemental briefing to address the questions raised in its September 26, 2025 Order.

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ARGUMENT

I. WALTZ WAS CORRECTLY DECIDED BECAUSE THE OPINION FAITHFULLY INTERPRETED THE UNAMBIGUOUS LANGUAGE OF THE STATUTES AT ISSUE AND HONORED LEGISLATIVE INTENT. AFTER SUPPLEMENTAL BRIEFING AND ORAL ARGUMENT ON THE APPLICATION, THE SUPREME COURT SHOULD DENY LEAVE TO APPEAL AND DECLINE TO ISSUE ANY PEREMPTORY RELIEF.

Introduction

McLaren's Supplemental Brief addresses a narrow statutory question with far-reaching consequences: whether the Notice of Intent tolling provision under MCL 600.5856(c) applies not only to statutes of limitation, but also to the wrongful death saving provision under MCL 600.5852.

This Court answered that question "no" in Waltz v Wyse, holding that submission of a notice of intent under § 5856 does not toll the additional filing period created by the saving provision of § 5852. That holding follows directly from the structure and language of the Revised Judicature Act, which create three analytically distinct timing mechanisms – statutes of limitation or repose, saving provisions and tolling provisions – each serving a different function.

§ 5852 does not define when a claim becomes time-barred – instead, it provides an exception that allows a claim to proceed *even if it is time barred*. Stated another way, § 5852 does not define when a claim expires, it assumes expiration and then permits the filing anyway. That is a saving provision, not a limitations period.

Because § 5856(c) tolls only statutes of limitation or repose, it cannot be read to toll a saving provision without collapsing these distinct statutory functions into one and rewriting the Legislature's framework. The text, structure and interpretive

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principles governing these statutes confirm that Waltz was correctly decided and should remain undisturbed.

Standard of Review

Issues of statutory interpretation are questions of law that this Court reviews de novo. Spectrum Health Hosps. v Farm Bureau Mut Ins Co of Michigan, 492 Mich 503, 515; 821 NW2d 117 (2012).

The goal of statutory interpretation is to give effect to the intent of the Legislature by applying unambiguous statutes as written. McCormick v Carrier, 487 Mich 180, 191-192; 795 NW2d 517 (2010). This Court has explained its approach to statutory interpretation:

> We interpret statutes to discern and give effect to the Legislature's intent, and in doing so we focus on the statute's text. Undefined terms are presumed to have their ordinary meaning, unless they have acquired a peculiar and appropriate meaning in the law, in which case we accord them that meaning. The statute must be considered as a whole, reading individual words and phrases in the context of the entire legislative scheme. Unambiguous statutes are enforced as written. [Clam Lake Twp v Dep't of Licensing & Regulatory Affairs, 500 Mich 362, 373; 902 NW2d 293 (2017) (quotation marks and citations omitted).]

"A statute's history—the narrative of the statutes repealed or amended by the statute under consideration—properly form[s] part of [its] context..." Daher, supra, 515 Mich at 263, quoting Dep't of Talent & Economic Dev./Unemployment Ins. Agency v Great Oaks Country Club, Inc., 507 Mich 212, 227; 968 NW2d 336 (2021).

As further recognized by this Court, "a court 'should not casually read anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute." McCormick, supra, 487 Mich at 209, quoting

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Kreiner v Fischer, 471 Mich 109, 157; 683 NW2d 611 (2004) (CAVANAGH, J., dissenting). "When considering the correct interpretation [of a statute], the statute must be read as a whole." Potter v McLeary, 484 Mich 397, 411; 774 NW2d 1 (2009). And when "a statute contains a general provision and a specific provision, the specific provision controls.'" TOMRA of N Am, Inc v Dept of Treasury, 505 Mich 333, 350; 952 NW2d 384 (2020), quoting Jones v Enertel, Inc., 467 Mich 266, 270; 650 NW2d 334 (2002).

Legal Analysis

Under MCL 600.5838a(1), a medical malpractice claim accrues at the time of the act or omission that forms the basis of the claim. This accrual provision for medical malpractice claims aligns with the general accrual statute, which similarly provides that, "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when the damage results." MCL 600.5827. From the date of accrual, a two-year statute of limitations generally applies to medical malpractice actions. MCL 600.5805(8). Here, these general rules mean that Mrs. Ernest's claim accrued on July 16, 2020 under § 5838a(1) and the time for filing a medical malpractice lawsuit expired on July 16, 2022 under § 5805.[1]

When the injured person dies before or shortly after the limitation period expires, the Legislature provides a saving provision tied to the date on which a personal representative is appointed. See MCL 600.5852(1) ("If a person dies before

[1] MCL 600.5838a(2) provides for a discovery rule for medical malpractice claims, but the discovery rule is not at issue in this appeal.

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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**.") (all emphasis supplied by counsel unless noted). The fact that § 5852(1) allows a claim to be filed under limited circumstances even after the limitations period has already expired confirms that § 5852(1) is not itself a limitations period.

For medical malpractice claims, the two-year saving period under § 5852(1) runs from the date the first personal representative of the estate is appointed. MCL 600.5852(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.") However, MCL 600.5852(4) limits the total time to commence a wrongful-death action to no more than three years after the expiration of the limitations period, establishing a maximum five-year window from the accrual to commence a wrongful-death suit based on alleged medical malpractice.

Separately, the Legislature requires the plaintiff in a medical malpractice action to give written notice to the medical provider of an intent to sue at least 182 days before a suit is filed. MCL 600.2912b(1). Compliance with the Notice of Intent provision tolls the statute of limitations, but only as expressly provided in MCL 600.5856(c). Giving notice under § 2912b tolls the statute of limitations "not longer

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than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given." MCL 600.5856(c).

Applying these provisions to the present case, Mrs. Ernest's claim accrued on July 16, 2020, and the two-year limitations period expired on July 16, 2022. Because Mr. Ernest passed away before expiration of the limitations period, the wrongful death saving provision, MCL 600.5852(2), extended the filing period to June 7, 2023, two years after the date Mrs. Ernest was appointed as the personal representative of the Estate, June 7, 2021.

Mrs. Ernest's Complaint, however, was not filed until August 14, 2023, more than one year after the limitations period under MCL 600.5805(8) expired. Further, Mrs. Ernest is not able to avail herself of the saving provision under § 5852(2) because the claim was filed more than two years after Mrs. Ernest was appointed as the personal representative of the Estate. That timing precludes invocation of the saving provision under MCL 600.5852(1), which allows for an action to "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."

Mrs. Ernest seeks to extend the time for filing suit beyond the limits of MCL 600.5852 by applying Notice of Intent tolling not to the statute of limitations under MCL 600.5805, but to the saving provision itself. Because MCL 600.5856 applies only to statutes of limitations or repose, not saving provisions, the filing cannot be saved as it was filed more than two years after Mrs. Ernest was appointed as the personal representative of the Estate.

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This statutory sequence demonstrates that the Legislature intentionally addressed accrual, limitations, saving and tolling in distinct provisions, each serving a different function and each operating at a different stage in the litigation process. MCL 600.5852 creates a defined exception to allow limited claims to proceed despite being time-barred; MCL 600.5856(c) addresses tolling of limitations periods and MCL 600.5838a established when a claim is timely in the first place. Reading these provisions as interchangeable would ignore the Legislature's intended statutory structure.

A. The Plain Language of MCL 600.5852 Confirms it is a Saving Provision

More than 20 years ago, this Court addressed the central issue in this case and held that the statutory enactment of MCL 600.5852 is a saving provision rather than a limitations period and therefore, a Notice of Intent does not toll or extend the saving provision. See Waltz, supra, 469 Mich at 644:

> Specifically, we must determine whether § 5856(d), the medical malpractice notice tolling provision, tolls the additional period permitted for filing wrongful death actions under the wrongful death saving provision, § 5852. **We conclude that § 5856(d) does not apply to the wrongful death saving provision** and that, therefore, plaintiff's action was not timely filed.

The plain language of MCL 600.5852 confirms that this Court absolutely got it right in Waltz. As this Court recently reiterated, "the plain and unambiguous language of a statute must be applied as written." Stokes v Swofford, 514 Mich 423, 442; 22 NW3d 97 (2024), quoting Nowell v Titan Ins Co, 466 Mich 478, 482; 648 NW2d 157 (2002).

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In Stokes, this Court reaffirmed that courts may not expand statutes or distort legislative intent by inserting terms the legislature deliberately omitted. The Court rejected the reading of MCL 600.2169 under Woodard v Custer, 476 Mich 545; 719 NW2d 842 (2006) because it added a "subspecialty" requirement not found in the statutory texts, which changed the statute's meaning. Stokes, 514 Mich at 447. Here, the Legislature's word choice matters. By adding a requirement that the statute did not contain, Woodard changed the statute's intended meaning, which is something courts are not permitted to do. Id.

That same principle governs here. Courts must apply statutory language as written, not rewrite it to extend its reach or add words to make the statute applicable to circumstances not provided for. Adding the saving provision under § 5852 as yet another statute subject to tolling would negate the legislative intent to not include § 5852.

MCL 600.5856 provides, in part:

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

The phrases "saving clause" or "saving provision" are not found in § 5856. Instead, the Legislature only saw fit to provide for tolling of "the statute of limitations or repose." The Court followed the above-cited principles of statutory interpretation

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in Waltz, and nothing in the text of MCL 600.5856 justifies application of tolling to a saving provision and would require a judicial re-write.

B. The Plain Language of § 5852 Validates the Conclusion in Waltz

The Court in Waltz was also correct to interpret § 5852 as constituting a saving provision and not a limitations period. MCL 600.5852 provides, in part, that:

> (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. Except as provided in subsection (3), the issuance of subsequent letters of authority does not enlarge the time within which the action may be commenced.
>
> * * *
>
> (4) Notwithstanding subsections (1) to (3), an action shall not be commenced under this section later than 3 years **after the period of limitations has run**.

The statutory text shows, in two independent ways, that § 5852 is a saving provision. First, § 5852 presupposes that the limitations period has already expired. Its operative phrase, "although the period of limitations has run," only has meaning if the statute is understood to save a claim that would otherwise be time-barred. In other words, if § 5852 were itself a limitations period, it would not function to preserve a claim after the limitations period had already expired.

Second, § 5852 directs the reader elsewhere to locate "the period of limitations" for the particular legal theory underlying the wrongful death claim, making clear that

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the limitations period is found in a separate provision and is not found in § 5852 itself. As Waltz emphasized, those referrals to outside statutory text would be unnecessary if § 5852 were itself a statute of limitations. Instead, the structure of the statute confirms that § 5852 operates only *after* the applicable limitations period has been identified and has expired.

The additional window of time provided by § 5852 also reflects practical implications the Legislature accounted for in light of how estates are administered. When a person dies, no one has legal authority to file a claim on the decedent's behalf until a personal representative is appointed. A personal representative is a fiduciary, bound by duties of care, loyalty and prudence under the Estates and Protected Individuals Code. MCL 700.1212; MCL 700.3703(1),(4); MCL 700.3704. Upon appointment, the personal representative must administer the estate, gather information and evaluate potential claims. Id. The additional two years provided by § 5852 allow the personal representative time to perform those duties before deciding whether litigation is appropriate.[2]

Because § 5852 is a saving statute rather than a limitations period, it lies outside the group of statutes subject to Notice of Intent tolling. Michigan courts do not imply statutory exceptions or extensions the Legislature did not include. When a statute specifies the circumstances in which it applies, the omission of others is presumed intentional. In re MCI Telecom Complaint, 460 Mich 396, 415; 596 NW2d

[2] In contrast, a notice of intent to sue can be sent by any "person" and need not wait for letters of authority and appointment of a personal representative. Halton v Fawcett, 259 Mich App 699, 704; 675 NW2d 880 (2003).

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164 (1999) ("The express mention of one thing in a statute implies the exclusion of other similar things."); see also Kaufman v Carter, 952 F Supp 520, 529 (WD Mich, 1996) ("Where '[e]xceptions to [a statute's] sweeping language are carefully enumerated…[t]he express enumeration indicates that other exceptions should not be implied.'")

MCL 600.5856(c) reflects that principle because it tolls only "statutes of limitations or repose." That limitation is reinforced by settled rules of statutory construction. "When a statute uses a general term followed by specific examples included within the general term … the general term is restricted to only things of the same kind, class, character, or nature as those specifically enumerated." Hugett v Dept of Nat Res, 464 Mich 711, 718-719; 629 NW2d 915 (2001); see also Belanger v Warren Bd of Ed, 432 Mich 575, 583-584; 443 NW2d 372 (1989).

Both "statutes of limitations" and "repose" are timing provisions that define when a claim becomes barred. A saving statute, in contrast, operates after a claim is already barred and permits it to proceed despite the claim's untimeliness. Because MCL 600.5852 serves a completely distinct purpose compared to the specific enumerated scenarios under MCL 600.5856(c), § 5852 falls outside the scope of tolling. The Legislature did not include saving statutes, like MCL 600.5852, within the scope of tolling and the Court should refrain from applying § 5856(c) where it was not intended to apply.

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C. Secondary Sources and Appellate Decisions Confirm § 5852 is a Saving Provision

The Revised Judicature Act does not supply a definition of "limitations period" or "saving provision." As a result, the Court is guided by MCL 8.3a, which provides, "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning."

This Court has applied MCL 8.3a as requiring the use of a lay dictionary when interpreting a common word or phrase that does not have a unique legal meaning while, "[a] legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning." Brackett v Focus Hope, Inc, 482 Mich 269, 276; 753 NW2d 207 (2008); see also, In re Lange, --- Mich---; --- NW3d --- (2025), MSC Docket No. 166509, 2025 WL 1108082, at *6 (Mich, April 14, 2025). Where both the lay dictionary and a legal dictionary define terms similarly, the Court need not decide which secondary source to resort to. See Brackett, supra, 482 Mich at 276 (explaining that the Court did not need to decide whether the statutory phrase was "a common phrase or a legal term of art, because the terms in the phrase are similarly defined in both a lay dictionary and a legal dictionary.")

Here, lay and legal dictionaries provide consistent definitions that reinforce the distinction between a "statute of limitations" and "saving clause" or "saving provision". Merriam-Webster defines "statute of limitations" as "a statute establishing a period of time from the accrual of a cause of action (as upon the

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occurrence or discovery of an injury) within which a right of action must be exercised" or "a period of time established by a statute of limitations for commencing an action or prosecution." Merriam-Webster's Collegiate Dictionary (12th ed). Black's Law Dictionary similarly defines it as "[a] law that bars claims after a specified period; specif., 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).

These dictionaries likewise agree on the meaning of a "saving clause." Merriam-Webster defines it as, "a clause in a statute exempting something from the statute's operation," and Black's Law Dictionary defines it as "[a] statutory provision exempting from coverage something that would otherwise be included." Merriam-Webster's Collegiate Dictionary (12th ed); Black's Law Dictionary (12th ed).

These definitions reflect a settled distinction between the two terms: a statute of limitations establishes when a claim is barred, while a saving provision operates to preserve a claim that would otherwise be barred. This is also how Michigan's appellate courts have interpreted the two distinct phrases without conflating them into one. In Lindsey v Harper Hosp, 455 Mich 56, 61; 564 NW2d 861 (1997), this Court held that § 5852 is a "statute of limitations saving provision." Five years later, this Court again referred to § 5852 as "a saving statute" in Miller v Mercy Mem Hosp Corp, 466 Mich 196, 202; 644 NW2d 730 (2002). Waltz confirmed this understanding,

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and no intervening change in the law or circumstances have motivated this Court to reconsider § 5852 as a saving provision.[3]

Mrs. Ernest suggests that a saving clause is indistinguishable from a limitations period and argues for equal treatment of two distinct statutory provisions. But the plain language and structure of § 5852 distinguish it from provisions that function as a limitations period because a limitations period indicates when a claim is time-barred, while a saving clause allows the claim to proceed despite its untimeliness.

Mrs. Ernest argues that § 5852 should be treated the same as the discovery rule governing medical malpractice actions under MCL 600.5838a (Supplemental Brief, pp 6-7: "There is no textual basis to treat the six-month discovery rule in § 5838a(2) any differently than the 'applicable period in section 5805 or sections 5851 to 5856.'") There is, in fact, ample textual basis to treat these two statutes differently.

For one, the discovery rule is located in the same statutory provision that governs claim accrual for medical malpractice actions. MCL 600.5838a(1) establishes the general accrual rule: "For purposes of this act, a claim based on the medical malpractice of a person or entity who is or who holds himself or herself out to be a licensed health care professional . . . . **accrues** at the time of the act or omission that

[3] In Waltz, supra, this Court also clarified a prior decision that inaccurately referred to § 5852 as a limitations period. Id., p 655 ("To the limited extent that the above-quoted portion of [Omelenchuk v City of Warren, 461 Mich 567; 609 NW2d 177 (2000)] might be viewed as sanctioning application of the notice tolling provision to the wrongful death saving provision, it is hereby overruled.")

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is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim."

§ 5838a(2) then creates a narrow exception to that accrual rule by tying timeliness to discovery rather than the date of the wrongful act: "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 have discovered the existence of the claim, whichever is later."

In other words, § 5838a addresses the accrual date for a claim, i.e., the date the clock starts to run. § 5838a does not dictate when a claim expires after it accrues. Plaintiff's position seeks to further blend distinct concepts into one: the discovery rule dictating when a claim accrues for purposes of deciding whether the claim is timely is no different than a statute which overrides the general rule of claim accrual and timeliness.

That difference becomes clearer in § 5838a(3), which expressly defines when a medical malpractice claim is barred:

> An action involving a claim based on medical malpractice under circumstances described in subsection (2)(a) or (b) 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 have discovered the existence of the claim, whichever is later.
>
> A medical malpractice action that is not commenced within the time prescribed by this subsection is barred. MCL 600.5838a(3).

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By identifying a filing deadline and declaring that claims are barred if that deadline is missed, § 5838a operates as a statute of limitations. It sets the period within which a claim must be filed to be timely at the outset.

In contrast, § 5852 presupposes that a claim is *already* time-barred (under the terms of a different statutory provision) but allows the claim to proceed despite acknowledged untimeliness, making it a saving provision, not a limitations period. Although § 5852 applies when death occurs either before or shortly after the limitation period expires, that threshold condition does not transform the statute into a limitations period. The defining feature of a limitations period is that it bars claims after accrual. § 5852 does the opposite – it permits claims to proceed despite acknowledged untimeliness. As this Court emphasized in Waltz, MCL 600.5852 directs the reader elsewhere to locate "the period of limitations" underlying the wrongful death claim, making it clear that § 5852 does not itself define timeliness. The statute's structure grants a personal representative a defined exception to act because of death, rather than creating a new filing deadline.

Similarly, the Court of Appeals has recognized that other provisions with filing deadlines, such as MCL 600.5851(7) governing the timeliness of claims involving minors or mentally incapacitated individuals, are statutes of limitations rather than a saving clause. See Vanslembrouck v Halperin, 277 Mich App 558; 747 NW2d 311 (2008).

In Vanslembrouck, the Court of Appeals majority opinion construed the language of §5851(7) as a limitations period, rather than a savings clause. Id., p 569:

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"[W]e believe that the 10-year provision of MCL 600.5851(7) is a period of limitations rather than a savings provision.") Like § 5838a, MCL 600.5851(7) establishes a filing period tied to age and accrual, without any language indicating that it applies only after a limitations period has expired. The statutory text provides:

> 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 section 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.[4]

Notably absent from § 5851(7) is language presupposing that the claim is already time-barred. Instead, the statute defines the time period within which the claim must be filed to comply with the limitations period and says a claim is timely filed if, for example, it is filed by the plaintiff's tenth birthday. By contrast, § 5852 explicitly saved claims that would otherwise be barred.

Mrs. Ernest's citation to the discovery rule under § 5838a(2) as well as the Court of Appeals' holding in Vanslembrouck actually illustrates why § 5852 is different. The discovery rule and § 5851(7) establish deadlines for initial timeliness, while § 5852 creates a limited *exception* that applies after untimeliness has already occurred. As the law currently stands, three separate statutory provisions (§ 5838a,

[4] Although MCL 600.5851 is not an issue in this case and the Court does not need to address that provision, the Court of Appeals' interpretation of § 5851 in Vanslembrouck is at odds with statements from this Court in Vega v Lakeland Hosps. at Niles & St Joseph, Inc, 479 Mich 243, 247; 736 NW2d 561 (2007) which referred to § 5851 as a "saving provision". That provision is not at issue in this case.

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§ 5851 and § 5852) with distinct language have been interpreted as three analytically distinct legislative enactments. The Court should reject Mrs. Ernest's invitation to treat them as interchangeable.

D. Michigan and Other Jurisdictions Recognize That Not All Timing Statutes are Statutes of Limitation

This Court has recognized that not all timing statutes are statutes of limitation. Some statutes, instead, create conditions precedent or grant limited statutory authority, and this Court has declined to treat those statutes as statutes of limitation that are subject to tolling.

For example, statutes that impose conditions precedent to filing a suit or define the scope of a claimant's authority have not been treated as statutes of limitations. See Fairley v Dep't of Corrections, 497 Mich 290, 292; 871 NW2d 129 (2015) ("The purpose of MCL 600.6431 is to establish those conditions precedent to pursuing a claim against the state"); Rowland v Washtenaw Co Rd Comm, 477 Mich 197, 212; 731 NW2d 41 (2007) (explaining that statutory notice periods serve purposes such as "afford[ing] an opportunity to investigate a claim and to determine the possible liability[,]" "creating reserves," and "reducing the uncertainty of the extent of future demands, or even to forc[ing] the claimant to an early choice regarding how to proceed," rather than defining when a claim becomes time-barred.)

These decisions illustrate the distinction that controls here: § 5852 does not determine when a cause of action accrues or expires. It presupposes that the ordinary statute of limitations has already run, then grants a post-expiration extension for a personal representative to take action after steps necessary for the personal

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representative to be in a position to file a claim, including issuance of the letters of authority, are complete. In this respect, § 5852 is designed to save time-barred claims that due to a death, cannot be pursued except under the Wrongful Death Act, MCL 600.2921 (exclusive remedy), because the statute requires the claim to be pursued in a representative capacity. See MCL 600.2922(2)("Every action under this section shall be brought by, and in the name of, the personal representative of the estate of the deceased.") These actions cannot be brought until the personal representative is appointed, letters of authority are issued, and if these steps push the claim past the limitations period, § 5852 steps in to save the claim.

This understanding also aligns with the rationale underlying tolling statutes. Tolling provisions exist to mitigate the harshness of statutes of limitations in circumstances where extending time does not prejudice the defendant because the defendant already has notice of the claim:

> The tolling statute's attention to when the defendant is notified of the action against him is consistent with the overall purpose of the statute of limitations. Tolling occurs in situations where the extension of time will not disadvantage the defendant as a result of his unawareness of the need to preserve evidence and prepare a defense. Thus, the tolling statute takes away any harshness that might occur if the plaintiff, in good faith, commenced a suit without having the merits adjudicated and later learned that because of that mistake the statute had run. At the same time, it protects the defendant from the very evils that the statute of limitations is intended to do away with. [Carter v DTN Mgt Co, 515 Mich 61, 86; --- NW3d --- (2024), quoting Mair v Consumers Power Co, 419 Mich 74, 83; 348 NW2d 256 (1984).]

That rationale has no application to a saving provision. A saving statute does not soften a limitations bar, instead, it creates a narrow exception to it. And because

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tolling statutes are tailored to statutes of limitation, they do not automatically apply to saving statutes absent express legislative directive – which does not exist here.

Courts in other jurisdictions recognize the same structural distinction. While not binding, these decisions illustrate that saving statutes operate differently from limitations periods because they extend time that would otherwise be barred rather than define when a claim must be filed. See Wilson v Durrani, 164 Ohio St 3d 419, 421; 173 NE3d 448 (2020) ("In contrast to statutes of limitations and statutes of repose, both of which limit the time in which a plaintiff may file an action, saving statutes extend that time"); Richards v Vanderbilt Univ Med Ctr, 706 SW3d 319, 323 (Tenn, 2025) (A saving statute "is not a statute of limitations or a statute of repose… [the Saving Statute] operates independently," and the legislature's omission of the saving statute reinforced that distinction); Davis v State, 267 Or App 264, 271-272; 340 P3d 713 (2014) ("[T]he saving statute is an extension statute [and] under the right circumstances, it offers to extend the time in which to file the claim [, confirming] [t]he saving statute is not a statute of limitation"); Topazio v ACME Co, 186 Ohio App 3d 377, 382; 928 NE2d 469 (2010) ("[E]ven when there is compliance with the saving statute, the statute of limitations would still have technically run, but then the saving statute kicks in to "protect" the plaintiff from the limitations bar. It allows the refiled complaint to relate back to the original timely filing; it is a shield to the limitations bar. It is essentially an exception to the statute of limitations.") (cleaned up.)

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That distinction explains why tolling provisions, which are designed for statutes of limitations and repose, do not apply to saving statutes absent express direction from the Legislature. Saving statutes function as a remedial device that interacts with statutes of limitations, rather than being one itself. Although § 5852 operates within a defined window of time, it does not bar claims after accrual but instead gives a limited grant of authority to a personal representative to bring a claim, placing it outside the class of statutes of limitation where tolling would apply.

Conclusion—Argument I

The statutory framework leaves no room for the extension Mrs. Ernest seeks, above and beyond the extension already provided for by the wrongful death saving provision. MCL 600.5852 presupposes the expiration of limitations period and authorizes a personal representative to act for a defined time despite that untimeliness. MCL 600.5856(c), by contrast, tolls only the statute of limitation or repose, and only in the circumstances the Legislature expressly identified. Treating the wrongful death saving provision as subject to tolling would erase the textual and functional distinctions the Legislature drew by collapsing these analytically distinct provisions into one. Waltz respected those boundaries. It read the statutes as written, harmonized each statute as part of a comprehensive scheme, and supplied a clear administrable rule that has been followed for the past two decades.

For those reasons, Waltz correctly held that MCL 600.5856(c) does not toll the additional period allowed for filing wrongful death actions under MCL 600.5852 and that holding should remain undisturbed by this Court.

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II. THE PRINCIPLES OF STARE DECISIS SUPPORT UPHOLDING WALTZ. EVEN IF THE COURT DISAGREES WITH THE CONCLUSION IN WALTZ, THIS IS NOT THE TYPE OF CASE THAT WOULD WARRANT SETTING ASIDE LONGSTANDING PRECEDENT. AT MOST, THE STATUTORY SCHEME IS NOT PRISTINELY CLEAR AS OPPOSED TO A SITUATION WHERE A PRIOR DECISION IS FOUND TO BE CLEARLY ERRONEOUS. THIS IS ALSO NOT A COMMON LAW DECISION OF THE COURT. ACCORDINGLY, ANY DEFECT IN WALTZ WOULD BE APPROPRIATELY REMEDIED ONLY BY THE LEGISLATURE.

Introduction

The Court need not address question two because the Court should find that Waltz was correctly decided and deny review over this case. Even assuming arguendo that Waltz was incorrectly decided, the decision should nonetheless be retained under the principles of stare decisis. "Stare decisis is short for *stare decisis et non quieta movere*, which means 'stand by the thing decided and do not disturb the calm.'" Petersen v Magna Corp, 484 Mich 300, 314; 773 NW2d 564 (2009) (cleaned up).

The Court has made clear that precedent is not discarded simply because reasonable minds might question its original reasoning: "Under the doctrine of stare decisis, 'principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed.'" McCormick,supra, 487 Mich at 209-210, quoting Brown v Manistee Cnty. Rd Comm'n, 452 Mich 354, 365; 550 NW2d 215 (1996) (cleaned up).

Although stare decisis does not bar correction of clear statutory error, the doctrine reflects a strong presumption in favor of maintaining stability. Petersen, supra, 484 Mich at 314. Overruling precedent requires a compelling justification sufficient to outweigh settled expectations. Id. at 317. Absent that showing, the

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precedent should be maintained. Id: "a stare decisis analysis should always begin with the presumption that upholding the precedent involved is the preferred course of action. The presumption should be retained until effectively rebutted by the conclusion that a compelling justification exists to overturn the precedent." Here, in addition to a lack of error in Waltz, there is no compelling justification to set it aside.

The presumption of status quo makes sense because stare decisis ensures "uniformity, certainty, and stability in the law…" Parker v Port Huron Hosp, 361 Mich 1, 10; 105 NW2d 1 (1960). To evaluate whether a wrongly decided decision should remain undisturbed, Robinson v City of Detroit puts forth a three-part test assessing (1) whether the decision "defies 'practical workability,'" (2) "whether reliance interests would work an undue hardship" if the decision were overturned, and (3) "whether changes in the law or facts no longer justify" the decision. 462 Mich 439, 464; 613 NW2d 307 (2000).

Measured against those principles, Waltz should be upheld. For more than two decades, it has provided a clear and administrable rule governing how statutes of limitation, saving provisions and tolling statutes interact in wrongful-death medical malpractice cases. Litigants, courts and practitioners have oriented their conduct to follow the holding of Waltz. Whatever disagreement may exist about the wisdom of the statutory enactment or the original interpretation in Waltz, stare decisis weighs heavily against unsettling a decision that has long structured this area of law.

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Legal Analysis

McLaren maintains that the statutory text leads to one conclusion: MCL 600.5852 is not a limitations period and cannot be tolled by the filing of a Notice of Intent under MCL 600.5856(c). Mrs. Ernest cannot plausibly claim that Waltz constitutes plain error on an egregious misinterpretation of legislative intent. At most, the statutory text admits of competing interpretations. Even if the Court finds that the statutory scheme is unclear, stare decisis warrants leaving Waltz in place as good law.

As this Court explained in Robinson, stare decisis "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." 462 Mich at 463. See also, Ligons v Crittenton Hosp, 490 Mich 61, 76 n 46; 803 NW2d 271 (2011) (same). Those interests are at their strongest where a rule has governed litigation for years and has shaped how parties assess risk, preserve claims and make decisions before disputes are formally filed.

From the beginning, stare decisis has served to prevent the law from becoming uncertain and subject to the shifting views of individual judges. As the United States Supreme Court recognized more than two centuries ago:

> Shall it be said that all this important and extensive branch of the law is uncertain and fluctuating, dependent on the ever varying opinions and passions of men, and liable to change with every change of times and circumstances? Shall it be said that each individual judge may rightfully disregard the decisions of the court to which he belongs, and set up his own notions, his prejudices, or his caprice, in opposition to their solemn judgment? This is not the principle of our law; this is not the tenure by which we hold our rights and liberties. *Stare decisis* is one

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> of its favourite and most fundamental maxims. [*Ex parte* Bollman, 8 US 75, 87–88; 2 L Ed 554 (1807).]

That concern remains central to this Court's modern stare decisis jurisprudence, particularly when it comes to statutory interpretation.

A. Waltz is Workable and Administrable

The workability factor weighs firmly in favor of retaining Waltz. A precedent is workable when it provides a rule courts and litigants can apply consistently, and Waltz has done that for over two decades. It established a stable framework governing how statutes of limitation, saving provisions and tolling statutes interact in wrongful-death medical malpractice cases.

Trial courts routinely rely on Waltz to resolve timeliness issues at the outset of litigation. That administrability is a hallmark of a workable rule. By contrast, the alternative proposed by Mrs. Ernest would replace a predictable deadline with a fluctuating one that depends on the timing and interaction of multiple statutory provisions, increasing uncertainty and litigation.

Under the existing framework, wrongful-death claimants have up to five years to file suit. Introducing tolling into the saving period would reduce workability by disrupting a regime that has functioned predictably for decades. This is the type of uncertainty that stare decisis is meant to prevent.

B. Waltz has Generated Substantial Reliance Interest

Reliance is a central consideration under Robinson. The question is not whether a precedent is frequently cited, but whether it has "become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce

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not just readjustments, but practical real-world dislocations." Robinson, supra 462 Mich at 466. Waltz meets that standard.

As this Court explained in Robinson:

> [W]hen dealing with an area of the law that is statutory, . . . it is to the words of the statute itself that a citizen first looks for guidance in directing his actions. . . . Thus, **if the words of the statute are clear, the actor should be able to expect, that is, rely, that they will be carried out by all in society, including the courts.** In fact, should a court confound those legitimate citizen expectations by misreading or misconstruing a statute, it is that court itself that has disrupted the reliance interest. When that happens, a subsequent court, rather than holding to the distorted reading because of the doctrine of stare decisis, should overrule the earlier court's misconstruction. The reason for this is that the court in distorting the statute was engaged in a form of judicial usurpation that runs counter to the bedrock principle of American constitutionalism, i.e., that the lawmaking power is reposed in the people as reflected in the work of the Legislature, and, absent a constitutional violation, the courts have no legitimacy in overruling or nullifying the people's representatives. [Id. at 467.]

As explained in Argument I, the statutory text here draws a clear distinction between statutes of limitation and saving provisions. Nothing in MCL 600.5856(c) authorizes MCL 600.5852 to be subject to tolling. For more than two decades, Waltz has supplied a clear and administrable rule governing how statutes of limitations, saving provisions and tolling statutes interact in wrongful-death medical malpractice cases. During that time, litigants on both sides have structured their conduct in reliance on that rule, conduct that implicates protected reliance interest because it occurs before a suit is filed.

Plaintiffs' counsel have relied on Waltz to evaluate viable claims, calculate filing deadlines and determine the appointment of personal representatives. Those decisions are made before a claim is pursued and fall squarely within the reliance

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interests Robinson protects. Defendants, including hospitals and other health care providers, have likewise relied on Waltz when assessing exposure, setting reserves and managing litigation.

This is the exact type of reliance Robinson describes: "knowledge… that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event." 462 Mich at 467. Changing the rule now would not simply alter litigation strategy going forward, it would disrupt conduct already undertaken in conformity with settled law. Kirby v Larson, 400 Mich 585, 618; 256 NW2d 400 (1977) ("Alterations are not usually made in a doctrine which is serving well, and with which the bench, bar and public are satisfied.")

Here, Waltz governs the timeliness of the action itself. Missing the filing deadline extinguishes the claim entirely, impacting both sides of litigation. The issue in this case is not a rule of civil procedure that occurs during discovery, trial or appeal where parties can adapt to a new procedure or technique. The rule in Waltz is existential, not procedural.

That plaintiffs already receive a substantial filing window underscores, rather than diminishes, those reliance interests. Under the existing framework, in certain cases a wrongful-death plaintiff may file suit up to five years after the alleged malpractice. Whether an additional 182 days might generally appear modest is beside the point. The question is not the length of the extension, but whether the Legislature authorized it. The saving statute does not speak in terms of tolling and does not

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reference statutes of limitation or repose. Reading tolling into that provision would add language the Legislature did not include.

For more than two decades, Waltz has provided a definitive answer to that statutory question and litigants on both sides have relied on that answer when orienting their conduct. The longer a rule remains in place, the more disruptive the rule's abandonment will be: "[T]he longer a rule has continued, the more thoroughly has it inevitably become interwoven with the business and property interests of the community at large; and, therefore, the more disastrous must be a change, especially a sudden change." N Am Brokers, LLC v Howell Pub Sch, 502 Mich 882; 913 NW2d 638, 642 (2018), quoting Wells, A Treatise on the Doctrines of Res Judicata and Stare Decisis (1878), pp 544–545 (McCORMACK, J., concurring).

C. No Intervening Changes in Law or Fact Justify Overruling Waltz

The final Robinson factor asks whether changes in law or fact have undermined the precedent's justification. None have. The Legislature has had more than two decades to amend the Revised Judicature Act if it believed Waltz misconstrued legislative intent. It has not done so. If correction is warranted, that correction lies with the Legislature, not through abandonment of settled statutory interpretation.

This case therefore differs from those involving common-law doctrines subject to evolving policy considerations. See, for example, Price v High Pointe Oil Co, Inc, 493 Mich 238, 242; 828 NW2d 660 (2013) ("The common law, however, is not static.

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By its nature, it adapts to changing circumstances.") The same cannot be said of the legislative enactments at issue here. The operative language has not changed.

As this Court has cautioned, precedent should be overruled only when it is "not merely that the case was wrongly decided, but also that less injury will result from overruling than from following it." Pohutski v City of Allen Park, 465 Mich 675, 693; 641 NW2d 219 (2002), quoting McEvoy v Sault Ste Marie, 136 Mich 172, 178; 98 NW 1006 (1904). Overruling Waltz would not correct an isolated error – it would unsettle the interaction of statutes that govern the timeliness in wrongful-death actions.

Conclusion—Argument II

Stare decisis exists to prevent precisely the kind of uncertainty that overruling Waltz would create. Under Robinson, a precedent should be abandoned only where the Court is convinced both that it is wrongly decided and that overruling it would cause less injury than adherence. That demanding standard is not met here.

Overruling Waltz would not correct a past interpretive choice; it would disturb settled reliance interest and disrupt a predictable framework governing timeliness. In this area of law, the parties must orient their conduct in advance of litigation making predictability essential to protect their interests. The principles of stare decisis articulated in Robinson compel that Waltz be upheld. Accordingly, Mrs. Ernest's Application for Leave to Appeal should be denied.

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CONCLUSION AND RELIEF REQUESTED

For the above-stated reasons, McLaren Health Care Corporation and Dr. Brown request that this Court deny Mrs. Ernest's Application for Leave to Appeal and uphold its decision in Waltz.

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT COMPLIANCE

1. This Supplemental Brief complies with the word count limitation of MCR 7.312 and MCR 7.212 because:

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