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STATE OF MICHIGAN

IN THE SUPREME COURT

In re ESTATE OF JEROME E. SIZICK.

JULIE K. GRIES, Personal Representative of the ESTATE OF JEROME E. SIZICK,

Petitioner-Appellant,

v

DEPARTMENT OF HEALTH & HUMAN SERVICES,

Respondent-Appellee.
_____/

Supreme Court No. 166921

Court of Appeals No. 364321

Saginaw Probate Court
LC No. 21-141789-PO

SUPPLEMENTAL BRIEF *AMICI CURIAE* OF THE ELDER LAW AND DISABILITY RIGHTS SECTION OF THE STATE BAR OF MICHIGAN (ELDRS) AND THE MICHIGAN CHAPTER OF THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS (MI-NAELA) ON WHY THIS APPEAL HAS NOT BEEN RENDERED MOOT AS A RESULT OF THE DEATH OF JEROME E. SIZICK

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Date: October 11, 2024

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I. Procedural Background

The application for leave to appeal in this matter was filed with the Court on April 10, 2024. On April 21, 2024, Jerome E. Sizick died. On May 29, 2024, a motion was filed to substitute Julie K. Gries, Personal Representative of the Estate of Jerome E. Sizick, as the named petitioner-appellant. On June 5, 2024, this Court granted the motion.

On September 13, 2024, this Court issued an order directing the parties to file supplemental briefs within 28 days addressing whether this appeal has been rendered moot as a result of the death of Jerome Sizick.

This supplemental brief shows this appeal has not been rendered moot as a result of Jerome E. Sizick's death. It also shows that if the Court finds this matter has been rendered moot, it should nevertheless grant the application for leave to appeal because it presents an issue that is publicly significant, is likely to recur and is likely to evade judicial review.

II. This appeal is not moot. If the Court decides in favor of the petitioner-appellant that will provide relief to the estate of Jerome E. Sizick.

"An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief." *City of Warren v Detroit*, 261 Mich App 165, 166 n 1; 680 NW2d 57 (2004), quoting *Michigan Nat'l Bank v St. Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997). If this Court decides in the petitioner-appellant's favor, will that grant it relief?

After the death of Jerome E. Sizick, a probate estate was opened in the Saginaw County Probate Court. It was assigned File No. 23-145794-DE. On May 29, 2024, the St. Francis Home of Saginaw filed a Statement and Proof of Claim (PC 579) in the estate. It claims that Jerome E.

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Sizick owed that nursing facility $125,231 for patient room and board charges incurred between July 2022 and January 2024. A copy of that Statement and Proof of Claim is Appendix 1 of this supplemental brief.

If this Court grants the application for leave to appeal and finds in favor of the petitioner-appellant that will have a direct effect on the amount owed by the estate of Jerome E. Sizick to the St. Francis Home of Saginaw. It will mean the respondent-appellee is responsible for paying all or part of the health care costs reported on the Statement and Proof of Claim, not the estate. That will provide tangible relief to the estate of Jerome E. Sizick.

III. This appeal should be reviewed because it presents an issue that is publicly significant, is likely to recur and is likely to evade judicial review.

If this Court finds this matter is technically moot it should nevertheless review this appeal because it presents an issue that is likely to recur, yet also is likely to evade judicial review. *In re Martin*, 237 Mich App 253, 254; 602 NW 2d 630 (1999), citing *In re Midland Publishing Co, Inc*, 420 Mich 148, 152 n. 2; 362 NW2d 580 (1984) and *In re Parole of Franciosi*, 231 Mich App 607, 615; 586 NW2d 542 (1998).

As described in the briefs filed by the petitioner-appellant and the *amici curiae* in support of the application for leave to appeal, the reliance of the Court of Appeals on *In re Estate of Schroeder*, 335 Mich App 107; 966 NW2d 209 (2020) blocks Michigan citizens from exercising their right under 42 USC 1396r-5(f)(2)(A)(iv) and (f)(3) to seek a protective order for spousal support from a local probate court to increase the amount of assets that may be retained by the spouse of an institutionalized individual (the "community spouse") to meet her or his demonstrated living needs. Because *Schroeder* bars probate courts from considering a petition

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for a protective order of spousal support until ***after*** an individual applies for Medicaid and qualifies, that means a married couple has no choice but to spend down their financial resources to the amount specified in the respondent-appellee's policy[1] -- even if it is can be shown that amount of resources does not meet the living needs of the community spouse. Once those resources are spent down, seeking a protective order of spousal support is pointless. There is no way to preserve those resources for the support of the community spouse because they are gone.

This is an issue of public significance because the Court of Appeals has established a standard that is binding on local probate courts. It effectively bars Michigan citizens from exercising their rights under 42 USC 1396r-5(f)(2)(A)(iv) and (f)(3) to seek a protective order of spousal support to avoid the impoverishment of a community spouse. This makes no sense when one considers that avoidance of spousal impoverishment was one of Congress's goals in enacting this federal statute.

In addition, this issue is likely to recur and evade judicial review. *Schroeder* tells the public that even if federal law grants a married couple the right seek a court order as an alternative remedy for preserving enough of their assets to provide for the support of the community spouses, don't bother filing a petition for a protective order in probate court to secure that remedy. Because *Schroeder* conditions the issuance of a protective order on a married couple first having applied and qualified for Medicaid, no one will seek a protective order because it cannot provide any benefit for the community spouse. Once a couple's financial resources are spent down to qualify for Medicaid, they are forever lost and cannot be preserved

[1] See MDHHS Bridges Eligibility Manual (BEM) 402, pages 9-10. Available online at: https://dhhs.michigan.gov.olmweb.ex/html/.

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for the support of the community spouse. All the married couples who could derive a real benefit from their rights under 42 USC 1396r-5(f)(2)(A)(iv) and (f)(3) will never exercise them and this issue will forever evade judicial review.

IV. RELIEF

For all these reasons, Amici Curiae ELDRS and MI-NAELA respectfully request that the Court grant the application for leave to appeal.

Respectfully submitted,

Amici Curiae
Elder Law and Disability Rights Section
of the State Bar of Michigan and the
Michigan Chapter of the
National Academy of Elder Law Attorneys

By: /s/ *David L. Shaltz*
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Dated: October 11, 2024

Pursuant to MCR 7.212(B)(3), this brief contains 1,086 countable words.

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SUPPLEMENTAL BRIEF *AMICI CURIAE* OF THE ELDER LAW AND DISABILITY RIGHTS SECTION OF THE STATE BAR OF MICHIGAN (ELDRS) AND THE MICHIGAN CHAPTER OF THE NATIONAL ACADEMY OF ELDER LAW ATTORNEYS (MI-NAELA) ON WHY THIS APPEAL HAS NOT BEEN RENDERED MOOT AS A RESULT OF THE DEATH OF JEROME E. SIZICK

APPENDIX 1

Statement and Proof of Claim (PC 579)
in Saginaw Count Probate Court File No. 23-145794-DE
(Four Pages)

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Approved, SCAO | JIS CODE: SPC

STATE OF MICHIGAN SAGINAW PROBATE COUNTY OF SAGINAW	STATEMENT AND PROOF OF CLAIM	FILE NO. 23-145794-DE

Estate of JEROME E. SIZICK, DECEASED
First, middle, and last name

I, ST. FRANCIS HOME OF SAGINAW of 915 N. RIVER ROAD, SAGINAW, MICHIGAN 48609
Creditor's name Address
submit the following claim against the estate for the sum set forth.*

DESCRIPTION OF CLAIM	AMOUNT
PATIENT ROOM AND BOARD CHARGES [JULY, 2022 THRU JANUARY, 2024] (OUTSTANDING BALANCE DUE)	$125,231.00
There is now due on the claim, above all legal setoffs, the sum of:	$125,231.00

[ ] Notice to interested persons: This is a claim by a personal representative for an obligation that arose before the death of the decedent. Upon petition and notice to interested persons, a hearing will be held to determine whether to allow the claim. You may object to the claim before or at the hearing.

I declare under the penalties of perjury that this statement and proof of claim has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Attorney signature

BRAUN KENDRICK FINKBEINER P.L.C.
CRAIG W. HORN P34281
Name (type or print) Bar no.

4301 FASHION SQUARE BLVD.
Address

SAGINAW, MI 48603 (989) 498-2100
City, state, zip Telephone no.

MAY 29, 2024
Date

Claimant signature ST. FRANCIS HOME OF SAGINAW
By: Craig W. Horn, as Attorney for Claimant

915 N. RIVER ROAD
Address

SAGINAW, MI 48609 (989) 781-3150
City, state, zip Telephone no.

*1. Describe nature of claim or attach a statement. Attach copy of receipt or other evidence of payment if submitted by assignee.

2. Claims must be presented either personally or by mail to the fiduciary on or before the last day for presentment of claims. This claim may also be filed with the probate court (see reverse side for proof of service).

{S1834126.DOCX.1}

(SEE SECOND PAGE)

USE NOTE: If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

Statement and Proof of Claim (12/17)

File No. 24-145794-DE

PROOF OF SERVICE

I served upon JULIE K. GRIES, C/O NORMAN HARRISON, 805 S. MICHIGAN AVENUE, SAGINAW, MICHIGAN 48602 and SAGINAW COUNTY PROBATE COURT
Name

fiduciary, a copy of this statement and proof of claim on MAY 29, 2024
Date

by FIRST CLASS MAIL
State method and address of service

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

MAY 29, 2024
Date

Courtenay L. Bourdow
Signature COURTENAY L. BOURDOW

ACKNOWLEDGMENT OF SERVICE

Service of the attached statement and proof of claim is acknowledged.

Date

Signature

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STATEMENT

St. Francis Home of Saginaw
915 N. River Rd
Saginaw, MI 48609-6831
(989) 781-3150

Resident: SIZICK, JEROME (2957)
Location: -
Statement Date: 6/1/2024

ALL TRANSACTIONS PROCESSED AFTER May 31, 2024
WILL APPEAR ON YOUR NEXT STATEMENT

Jackie Deshone
2121 Zeros Rd
Saginaw, MI 48601

Amount Due $125,231.00

PLEASE DETACH AND RETURN WITH YOUR PAYMENT Amount Enclosed $ _____

St. Francis Home of Saginaw
915 N. River Rd
Saginaw, MI 48609-6831
(989) 781-3150

Resident: SIZICK, JEROME (2957)
Location: -
Statement Date: 6/1/2024

Effective Date	Description	Units	Unit Amount	Amount
	BALANCE FORWARD			$125,231.00
	BALANCE DUE			$125,231.00

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FACILITY: ST FRANCIS HOME
RESIDENT: JEROME SIZICK-PRIVATE PAY CHARGES & PAYMENTS

DATE	Type of Charge	Private Pay Charges	Payment	Still Due
MAY 2021	PRIVATE PAY	$4,505.00	$4,505.00	$0.00
JUNE 2021	PRIVATE PAY	$7,950.00	$7,950.00	$0.00
JULY 2021	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
AUG 2021	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
SEPT 2021	PRIVATE PAY	$7,950.00	$7,950.00	$0.00
OCT 2021	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
NOV 2021	PRIVATE PAY	$7,950.00	$7,950.00	$0.00
DEC 2021	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
JAN 2022	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
FEB 2022	PRIVATE PAY	$7,420.00	$7,420.00	$0.00
MARCH 2022	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
APRIL 2022	PRIVATE PAY	$7,950.00	$7,950.00	$0.00
MAY 2022	PRIVATE PAY	$8,215.00	$8,215.00	$0.00
JUNE 2022	PRIVATE PAY	$7,950.00	$7,950.00	$0.00
JULY 2022	PRIVATE PAY	$8,215.00	$3,914.00	$4,301.00
AUG 2022	PRIVATE PAY	$8,215.00	$654.00	$7,561.00
SEPT 2022	PRIVATE PAY	$7,950.00	$654.00	$7,296.00
OCT 2022	PRIVATE PAY	$8,215.00	$654.00	$7,561.00
NOV 2022	PRIVATE PAY	$7,950.00	$654.00	$7,296.00
DEC 2022	PRIVATE PAY	$5,565.00	$654.00	$4,911.00
JAN 2023	PRIVATE PAY	$8,100.00	$820.00	$7,280.00
FEB 2023	PRIVATE PAY	$7,420.00	$820.00	$6,600.00
MARCH 2023	PRIVATE PAY	$8,215.00	$820.00	$7,395.00
APRIL 2023	PRIVATE PAY	$7,950.00	$820.00	$7,130.00
MAY 2023	PRIVATE PAY	$8,215.00	$820.00	$7,395.00
JUNE 2023	PRIVATE PAY	$7,950.00	$820.00	$7,130.00
JULY 2023	PRIVATE PAY	$8,215.00	$820.00	$7,395.00
AUG 2023	PRIVATE PAY	$7,950.00	$820.00	$7,130.00
SEPT 2023	PRIVATE PAY	$7,950.00	$820.00	$7,130.00
OCT 2023	PRIVATE PAY	$8,215.00	$820.00	$7,395.00
NOV 2023	PRIVATE PAY	$7,950.00	$820.00	$7,130.00
DEC 2023	PRIVATE PAY	$8,835.00	$2,212.00	$6,623.00
JAN 2024	PATIENT PAY SET BY MEDICAID ($1392)	$1,392.00	$820.00	$572.00
FEB 2024	PATIENT PAY SET BY MEDICAID ($1392)	$1,392.00	$1,392.00	$0.00
MARCH 2024	PATIENT PAY SET BY MEDICAID ($1392) / HOSPICE COVERAGE BY BCBS - EFF 3/12/2024	$1,392.00	$1,392.00	$0.00
APRIL 2024	HOSPICE COVERAGE BY BCBS - EXPIRED 4/21/2024	$0.00	$0.00	$0.00

OUTSTANDING BALANCE DUE	$125,231.00