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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

Defendant-Appellee Cypress Cardiology's Response to the Michigan Association for Justice's *Amicus Curiae* Brief

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Statement of Questions Presented[1]

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.

The Michigan Association for Justice 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.

[1] On September 26, 2025, this Court directed its clerk to schedule oral argument on the Estate's application for leave to appeal. **Cypress Cardiology Amicus Response Appendix ("Cypress Appendix") 2**, MSC Order granting MOAA.

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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* were 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.

The Michigan Association for Justice 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 the tolling provision only tolls "[t]he statute of limitations or repose" and the wrongful death savings provision is neither of those. In fact, the savings provision's text refers to a *separate* "period of limitations."

Despite the Michigan Association for Justice's ("MAJ") assertion to the contrary, this Court's holding in *Waltz* is consistent with the plain language of the tolling provision and the wrongful death savings statute. The plain text of the statutes at issue establish that the wrongful death savings statute is a *savings* statute, not a statute of limitations or a tolling statute. Further, applying *Waltz* to the Estate's claim here establishes that the Estate's claim is time-barred under the two-year medical-malpractice statute of limitations. Because the Estate did not file suit within two-years of the probate court issuing letters of authority, the *grace period* in the wrongful death savings statute did not *save* the Estate's claim. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm the Court of Appeals' ruling.

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.[2] For this Court's convenience, Cypress Cardiology includes a brief timeline of the underlying events here:

[2] 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;[3]
- July 17, 2020 – Dr. Belal treats Ernest in the hospital;[4]
- July 17, 2020 – Ernest died while still admitted to the hospital;[5]
- June 7, 2021 – the Genesee county probate court issued letters of authority, appointing Keran Ernest as the Estate's personal representative;[6]
- February 10, 2023 – Ernest's estate mailed a notice of intent to sue to Dr. Belal and Cypress Cardiology;[7]
- August 14, 2023 – the Estate filed this case against Dr. Belal, Cypress Cardiology, and their co-defendants.[8]

[3] **Cypress Appendix 6**, Complaint, p 3 ¶ 10.
[4] Cypress Appx. 7, Complaint, p 4 ¶ 14.
[5] Cypress Appx. 7, *Id.* at p 4 ¶ 15.
[6] **Cypress Appendix 33**, Letters of authority.
[7] **Cypress Appendix 35**, Notice of intent.
[8] The MAJ states that the Estate filed its complaint on September 10, 2023. MAJ Amicus, p 1. However, the trial court record shows that the Estate filed its complaint on August 14, 2023. **Cypress Appendix 63**, 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

A. This Court in *Waltz* correctly held that MCL 600.5852 is a savings provision, not a statute of limitations (response to MAJ argument I.II).

Medical-malpractice claims, generally, have a two-year statute of limitations. MCL 600.5805(8). 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 *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 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

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may file suit within two years of the probate court 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, in pertinent part, that, because the statute expressly referenced a separate "period of limitations," it was not a statute of limitations or repose. *Id.* at 651, 655. 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.

In addition to the text of the statute, this Court looked to its prior decisions 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), to hold that MCL 600.5852 is a savings statute or a grace period, *not* a separate statute of limitations. *Waltz*, 469 Mich at 650, 650 n 12; *Lindsey*, 455 Mich at 65, 69 (describing MCL 600.5852 as an exception to the statute of

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limitations); *Miller*, 466 Mich at 197, 202 ("Section 5852 is a saving statute, not a statute of limitations.").

The MAJ argues that because MCL 600.5838a(2) references the wrongful death savings statute, that the wrongful death savings statute is a statute of limitations.[9] The MAJ focuses its argument on the reference to "sections 5851 to 5856" in MCL 600.5838a(2). MCL 600.5838a(2)'s reference to the notice tolling provision, MCL 600.5856, and the six-year statute of repose demonstrates the error in the MAJ's argument.

Under the MAJ's logic, because MCL 600.5838a(2) references the tolling provision and the six-year statute of repose, these statutes are statutes of limitations. They're not. The MAJ disregards the fundamental differences between statutes of limitations, savings statutes, statutes of repose, and tolling statutes. Each of these statutory provisions necessarily addresses a timeframe for filing a suit. See MCL 600.5838a(2) ("Except as otherwise provided in this subsection, an action involving a claim based on medical malpractice *may be commenced* at any time . . .") (emphasis added). But, each of these statutes 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);

- A savings provision is an *exception* to the statute of limitations. See, e.g., *Waltz*, 469 Mich at 655 (describing the wrongful death savings provision as a grace period);

- 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. See, e.g., *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

[9] MAJ Brief, p 12-15.

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product), even if this period ends before the plaintiff has suffered a resulting injury"); and

- "A tolling statute is a 'law that interrupts the running of a statute of limitations in certain situations . . .'" *Carter v DTN Management Co*, 515 Mich 61, 79; 28 NW3d 291 (2024), quoting *Black's Law Dictionary* (11th ed).

Statutes of limitations, savings statutes, statutes of repose, and tolling statues are different provisions in the law. This Court must give them their recognized, unique meanings. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008); MCL 8.3a. A mere reference to the wrongful death savings statute in MCL 600.5838a(2) does not transform the savings statute into a statute of limitations.

The Estate's statute-of-limitations argument further fails because it is well-established that the applicable statute of limitations in a wrongful-death action is the statute of limitations of the underlying claim. See, e.g., *Miller*, 466 Mich at 202; *Waltz*, 469 Mich at 657. 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 v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000), 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); *Black's Law Dictionary* (12th ed) (defining a statute of limitations). Nothing in the savings statute indicates that the Legislature intended to change the accrual date, which is expressly addressed in MCL 600.5838a. In fact, the savings statute expressly contemplates that the claim has accrued and the limitation period has expired.

This Court in *Waltz* correctly held that the wrongful death savings provision is a savings provision, *not* a statute of limitations. In turn, this Court in *Waltz* correctly held that, under its plain language, the notice

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tolling provision of MCL 600.5856 does not apply to MCL 600.5852. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm the Court of Appeals' ruling.

B. The Estate's claim is time-barred under the two-year statute of limitations and the grace period for filing suit under the wrongful death savings statute does not save the Estate's claim. (response to MAJ argument I.I).

When an Estate brings a wrongful death action, the Estate must file suit within the statute of limitations for the underlying claim. *Waltz*, 469 Mich at 657. However, an Estate in a wrongful death action may also avail itself of the *grace period* established in the wrongful death savings statute. See *id.* at 650 n 12. In *Waltz*, this Court explained the relationship between the statute of limitations and the savings statute when it explained that the plaintiff's claim was "barred by the two-year statute of limitations for medical malpractice actions. [And the] saving provision simply [did] not *save* the plaintiff's claim because she did not file her complaint until after the *grace period* provided for in the saving provision had expired." *Id.* (emphasis in original).

A plaintiff filing a wrongful-death action does not need to file suit under the wrongful-death savings period. Cf. *Id.* at 664 n 3, 669 (Cavanagh, J., dissenting). An estate may timely file suit within the underlying statute of limitations—either the two-year period or the 6-month discovery period -- without ever making use of the savings statute.

Here, the Estate's claim, like the plaintiff's claim in *Waltz*, is time-barred under the two-year statute of limitations. And like the plaintiff in *Waltz*, because the Estate did not file suit within two years of the probate court appointing a personal representative, the grace period provided in the wrongful death savings statute did not save the Estate's claim.

The Estate makes no argument that it was not aware of its claim. So, the Estate's claim accrued on July 17, 2020.[10] MCL 600.5838a(1). And the two-year medical-malpractice statute of limitations expired on July 17,

[10] See Cypress Appx. 7, Complaint, p 4, ¶ 14.

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2022. MCL 600.5805(8). Despite the probate court issuing letters of authority on June 7, 2021,[11] the Estate waited until February 10, 2023, to mail its notices of intent.[12] When it mailed its notices of intent, the Estate's claim was *already barred* under the two-year statute of limitations.[13] And because the Estate filed suit on August 14, 2023,[14] over two-years after the probate court issued letters of authority, the savings statute did not save its claim.

The MAJ asserts the Estate's claim would not have been barred by the statute of limitations until June 7, 2023 — which is two-years after the probate court issued letters of authority.[15] In other words, the MAJ asserts that notice tolling applies because, when the Estate sent its notice in February 2023, its claim "would be barred by the statute of limitations" during the notice period. The MAJ's argument ignores that the statute of limitations already barred the Estate's claim as of July 17, 2022. As a savings statute, the two-year grace period under MCL 600.5852 operates "although the period of limitations has run." The grace period is not itself a statute of limitations. And it doesn't prevent the underlying statute of limitations from running in the manner the MAJ suggests.

The MAJ's argument seemingly conflates a savings statute with a tolling statute. There is no tolling language in the wrongful death savings statute. The Legislature knows how to write a tolling statute. The notice tolling statute has clear tolling language. MCL 600.5856 (stating "the statutes of limitations or repose *are tolled* . . .") (emphasis added); MCL 600.5856(c) (stating ". . . but in this case, the statute *is tolled* not longer than the number of days equal to the number of days remaining in the

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[11] Cypress Appx. 33, Letters of Authority.

[12] Cypress Appx. 35-45, Notice of Intent. Under MCL 700.3701, the Estate did not have to wait until the probate court issued letters of authority to send out its notices of intent.

[13] If the Estate mailed its notices of intent before the statute of limitations expired on July 17, 2022, the notice tolling provision of MCL 600.5856 would have applied to the Estate's claim. *Waltz*, 469 Mich at 652 n 14; Cf. MAJ Brief, p 5.

[14] Cypress Appx. 63, Register of Actions, p 17.

[15] MAJ Brief, p 4.

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applicable notice period after the date notice is given") (emphasis added). There is no similar language in MCL 600.5852, the wrongful death savings statute.

The MAJ's legislative intent argument also fails.[16] Following this Court's 2004 decision in *Waltz*, the Legislature has not amended MCL 600.5852 in any way that addresses *Waltz*. But, in 2013 the Legislature amended MCL 600.5852 to, in pertinent part, clarify 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. Despite amending the statute in the context of a medical-malpractice claim, the Legislature didn't take this amendment as an opportunity to state that MCL 600.5852 was a statute of limitations, insert tolling language into MCL 600.5852, or state 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.").

The Estate's claim is barred under the two-year statute of limitations. And it is not saved by the grace period established in the wrongful death savings statute. The MAJ's argument that the notice tolling provision applies to the wrongful death savings statute presupposes that the wrongful death savings statute tolls the statute of limitations. It doesn't. This Court should deny the Estate's application for leave to appeal or, in the alternative, affirm the Court of Appeals' ruling.

C. Stare decisis favors upholding *Waltz*.

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 v Crittenton Hosp*, 490 Mich 61, 75, 90; 803 NW2d 271 (2011); *Farley v Advanced Cardiovascular Health Specialists PC*, 266 Mich App 566, 575; 703 NW2d 115 (2005). And because *Waltz* is settled precedent, the plaintiffs' bar is aware of the relevant interplay among the

[16] MAJ Brief, p 11.

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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.

Further, there are no changes to the law or facts relevant to this Court's holding in *Waltz*. This Court correctly decided *Waltz*. This Court's holding in *Waltz* adheres to this Court's prior precedent. And, post-*Waltz*, the Legislature amended MCL 600.5852 without doing anything that would undermine or abrogate *Waltz*'s analysis and holding.

Finally, as discussed in Cypress Cardiology's Supreme Court briefing,[17] 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 or, in the alternative, affirm the Court of Appeals' ruling.

Conclusion and Relief Requested

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

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BY: */s/ Simonne N. Kapadia*

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[17] Cypress Cardiology Answer to the Estate's Application for Leave to Appeal, p 20-22; Cypress Cardiology Supplemental Brief, p 25-32.

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Dated: April 8, 2026

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Certificate of Compliance

I certify that Defendant-Appellee Cypress Cardiology, PLLC's Response to the Michigan Association for Justice's *Amicus Curiae* Brief complies with the type-volume limitation set forth in MCR 7.312(A)(2)(c). 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 2,978.

COLLINS EINHORN FARRELL PC

BY: */s/ Simonne N. Kapadia*

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