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STATE OF MICHIGAN

IN THE SUPREME COURT

In re: ESTATE OF
HERMANN A VON GREIFF

Michigan Supreme Court Case No: 161535
Court of Appeals No: 347254
Marquette Probate Court No: 18-34046-DE

CARLA J. VON GREIFF,

Petitioner-Appellant,

v

ANNE JONES-VON GREIFF,

Respondent-Appellee.

APPELLANT CARLA VON GREIFF'S APPENDIX

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Dated: August 16, 2021

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STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF HERMANN A. VON GREIFF.

CARLA J. VON GREIFF,

Petitioner-Appellee,

v

ANNE JONES-VON GREIFF,

Respondent-Appellant.

FOR PUBLICATION
April 23, 2020
9:10 a.m.

No. 347254
Marquette Probate Court
LC No. 18-034046-DE

Before: MARKEY, P.J., and GLEICHER and M. J. KELLY, JJ.

GLEICHER, J.

Anne Jones-Von Greiff and Hermann Von Greiff were married for 15 years. During the marriage, Hermann was unfaithful to Anne. The parties argued, sometimes fiercely. On June 1, 2017, after Hermann repeatedly and angrily told Anne to "get out of my fucking house," Anne filed for divorce.

Over the course of the next year, the parties and their lawyers litigated and negotiated the dissolution of the Von Greiff marriage. Hermann stipulated that Anne could reside in the marital home, and he never returned. Hermann died shortly before the divorce judgment was signed—on June 17, 2018, slightly more than a year after the parties separated. Hermann's adult daughter, Carla J. Von Greiff, brought this action seeking to dispossess Anne of her right to inherit as Hermann's surviving spouse.

The probate court ruled that Anne did not qualify as Hermann's surviving spouse because she was "willfully absent" from him for more than a year before his death, citing MCL 700.2801(2)(e)(*i*). That statute is inapplicable to the period of time consumed by divorce proceedings. We reverse.

AT001

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I

Anne and Hermann Von Greiff had a rocky relationship. The couple actually divorced in 2000, but remarried in 2003. Husband and wife sometimes lived separately, as Hermann moved away for extended periods of time to accept various job opportunities. Hermann was often unfaithful. And Hermann suffered from bipolar disorder, making him volatile and difficult to live with. As Hermann grew older, his physical health also declined. In May 2017, Hermann decided to undergo an elective spinal fusion surgery. Anne disagreed that he should undertake the risks of the operation. The couple fought, and Hermann asked his daughter Carla to fly up from Florida to take him for the surgery. Anne described that Hermann said "nasty things" to her during this period, demanded that she leave for the "hundredth time" during a "fierce attack," and told her repeatedly and angrily to "get out of my fucking house." Anne questioned whether Hermann was certain about his decision, and he responded by again ordering Anne out of the home.

Anne did not immediately leave the home, but waited for Carla's arrival. Following Hermann's surgery, he moved to an assisted living facility. In his absence, Anne and Hermann agreed that only Anne would move back into the marital home. Divorce proceedings followed.

A Michigan spouse may seek a divorce without stating a specific cause. "[A] divorce can be sought on the basis that there has been 'a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.' MCL 552.6(1). Nothing more is required." *In re Estate of Erwin*, 503 Mich 1, 12 n 5; 921 NW2d 308 (2018). Anne Von Greiff filed for divorce on June 1, 2017. Although she did not need to, Anne alleged a cause for the breakup of her marital union: infidelity. During the divorce proceedings, Hermann admitted under oath that he had sexual relations with other women while married to Anne.

The divorce moved slowly. The parties eventually resolved all divorce-related issues but apparently could not agree regarding spousal support. The circuit court issued an opinion and order granting Anne spousal support on May 29, 2018, almost a year after the divorce action had been filed. The table was set for the prompt entry of the divorce judgment.

Unfortunately, the circuit court's spousal support opinion contained a significant error. The opinion inaccurately asserted that "Plaintiff admitted to infidelity during the marriage;" it should have stated "Defendant admitted to infidelity during the marriage." Anne filed a motion objecting to this aspect of the order and seeking its correction. But Hermann died before her motion could be heard, the error fixed, and the judgment signed. As of June 17, 2018, the date of Hermann's death, the parties had lived apart for little more than a year. In August 2018, the circuit court issued an order correcting its previous opinion and order to reflect that Hermann had been the unfaithful party.

After Hermann's death, Carla J. Von Greiff filed a petition in the probate court under MCL 700.2801(2)(e), seeking a declaration that Anne was not Hermann's surviving spouse. Section 2801(2)(e)(*i*) provides that a "surviving spouse" under the EPIC "does not include . . . [a]n individual who . . . [w]as willfully absent from the decedent spouse" for a year or more before the decedent spouse's death. Carla alleged that Anne had been "willfully absent" from Hermann for more than a year before his death.

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The probate court conducted an evidentiary hearing on the petition. Anne and Carla testified extensively. The probate court found that Anne had intentionally absented herself from Hermann, physically and emotionally, for more than a year before Hermann died. Therefore, the probate court ruled, Anne did not qualify as Hermann's surviving spouse.

II

Anne now challenges the probate court's determination that she was "willfully absent" and therefore not qualified as a surviving spouse. Generally, we review for clear error a court's factual findings. *In re Estate of Erwin*, 503 Mich 1, 9; 921 NW2d 308 (2018). We review de novo a lower court's determination that a statute applies to the action before it. *Florence Cement Co v Vettraino*, 292 Mich App 461, 473; 807 NW2d 917 (2011).

The evidentiary hearing in this case was unnecessary and the probate court's findings irrelevant, because MCL 700.2801(2)(e) does not apply as a matter of law. Anne did not "willfully absent" herself from Hermann; she sought a divorce and, as many divorcing spouses do, elected to live separately while the matter made its way through the circuit court. Furthermore, Hermann formally *stipulated* to that living arrangement. Considering a combination of common sense, the common law, and a venerable canon of statutory construction: *expressio unius est exclusio alterius*, it is clear that the Legislature did not intend to disinherit a spouse whose divorce was in progress but not yet finalized when the other spouse dies.

III

We begin with a review of the common law. Just last term, in *In re Estate of Erwin*, our Supreme Court explored the meaning of MCL 700.2801(2)(e) in considerable detail. The subsections of this statute provide that a surviving spouse does not include:

> (e) An individual who did any of the following for 1 year or more before the death of the deceased person:
>
> (*i*) Was willfully absent from the decedent spouse.
>
> (*ii*) Deserted the decedent spouse.
>
> (*iii*) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law. [MCL 700.2801(2)(e).]

Like *Erwin*, this case involves subsection (*i*): willful absence.

In arriving at the meaning of the phrase "willfully absent," the *Erwin* Court observed that the three grounds for disinheriting a spouse listed under (e) are inherently fault-based and rest on intentional spousal misconduct. "Desertion" and "willful neglect" describe deliberate, unilateral choices designed to destroy the objects of matrimony. The Supreme Court explained: "MCL 700.2801(2)(e)(*ii*) and (*iii*) [addressing desertion and willful neglect] involve intentional acts that bring about a situation of divorce in practice, even when the legal marriage has not been formally dissolved." *Erwin*, 503 Mich at 15. Willful absence is somewhat more difficult to parse; one of

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the questions presented in *Erwin* was whether the phrase encompassed only physical separation, or "includes consideration of the emotional bonds and connections between spouses." *Id.* at 6.

The Supreme Court interpreted "willful absence" in accordance with its "context"—its placement alongside the terms "desertion" and "willful neglect." *Id.* at 15. "A comprehensive review of the statutory scheme confirms that the term 'willfully absent' should be interpreted consistently" with the meanings of desertion and willful neglect, and the rule that a divorced spouse is not a surviving spouse. *Id.* at 15-16. For the *Erwin* majority, context dictated that both physical *and* emotional separation are required under MCL 700.2801(2)(e)(*i*). "Absence in this context presents a factual inquiry based on the totality of the circumstances, and courts should evaluate whether complete physical and emotional absence existed, resulting in an end to the marriage for practical purposes." *Erwin*, 503 Mich at 27.

Thus, MCL 700.2801(e) generally stands for the proposition that when a spouse decides to *informally* dissolve a marriage by neglecting or deserting a partner or by withdrawing from that partner both physically and emotionally, that departing spouse loses the right to inherit from the spouse left behind.

These provisions encapsulate readily understood equitable principles. A spouse who contrives an *extralegal* remedy for a failed marriage by desertion, neglect, or abandonment should not be afforded the rights available to those who follow the rules. Similarly, a spouse loses his or her right to survivorship status by willful physical and emotional absence, thereby bringing about "a practical end to the marriage," *Erwin*, 503 Mich at 17, rather than a legal end. As highlighted in *Erwin*, subsections (2)(e)(*i*), (*ii*) and (*iii*) illustrate intentional acts that destroy a marriage and leave one partner legally adrift. Laws disinheriting the selfish partners "are premised on moral policy, eclipsing the usual desiderata of forced-share laws." Hirsch, *Inheritance on the Fringes of Marriage*, 2018 U Ill L Rev 235, 270 (2018).[1]

Divorce is different.

---

[1] Before the advent of no-fault divorce, Michigan law required that the party seeking a divorce prove fault on the part of the other party. See *Rosecrance v Rosecrance*, 127 Mich 322; 86 NW 800 (1901). Desertion was a ground for divorce, characterized in the caselaw as: "(1) cessation of cohabitation, (2) abandonment by his spouse without fault on complainant's part, and (3) that the abandonment or separation was against the will and desire of the party seeking the decree." *Ferguson v Ferguson*, 310 Mich 630, 633; 17 NW2d 777 (1945) (quotation marks and citations omitted). A court could find a marital partner "guilty" of desertion, and divorced against that partner's will. See *Fanner v Fanner*, 326 Mich 466, 469; 40 NW2d 225 (1949) ("We honor defendant's scruples against divorce but she has refused to comply with the conditions of married life and under all the circumstances we must consider that she is guilty of desertion since 1944—therefore, for a period much greater than two years, as plaintiff claims."). It makes sense that the Legislature would treat a spouse who deserts or abandons his or her partner as though divorced for the purposes of survivorship.

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During a divorce action, the court considers the parties' incomes, liabilities, premarital property, and abilities to work. Both partners weigh in. Ideally, the court equitably distributes the marital property in a manner that allows both parties to live independently. The divorce judgment eliminates the need for any property distribution after an ex-spouse dies, which is why a divorced spouse is not a surviving spouse. MCL 700.2801(1).

Here, however, the divorce was incomplete when Hermann died. As best we can tell, no one deliberately delayed the process; sometimes, divorces take more time than anticipated or hoped. The point is that by filing for divorce, Anne sought to bring about a *legal* end to her marriage. She did not intend to abandon or desert Hermann by consigning him to a marriage with none of the fundamental attributes of a marriage. Rather, Anne intended to exercise her legal right to seek a divorce decree, and to enforce the rights due her as a divorcing spouse.[2] Those rights potentially included spousal support, and certainly included an equitable division of marital property. Anne's invocation of legal process allowed Hermann to protect his property rights, too.

The common law recognizes the distinction between a divorcing couple and a couple living separately due to one party's desertion. For example, in *In re Ehler's Estate*, 115 Cal App 403, 405-406; 1 P2d 546 (1931), the California Supreme Court found that a widow could not be automatically disinherited for abandonment because a divorce was pending at the time of the husband's death, and whether good cause existed for the separation could not be determined:

> Appellants contend that the widow voluntarily abandoned decedent, and that she thereby waived her right to claim any allowance from his estate. As a matter of fact, the record shows that she left him and instituted an action for divorce against him, which was pending at the date of his death. It was therefore never determined whether or not respondent left voluntarily or for good cause. In view of this we are of the opinion that there was a total absence of any showing that respondent by her conduct lost her statutory rights as the widow of decedent.

Applying statutory language similar to Michigan's, the Iowa Supreme Court held a surviving wife a widow entitled to inherit where she was living apart from her husband and pursing a divorce. *In re Quinn's Estate*, 243 Iowa 1271; 55 NW2d 175 (1952).[3] See also *Born v Born*, 213 Ga 830, 831;

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[2] In his answer to Anne's complaint for divorce, Hermann averred, "Defendant does not wish to be divorced but accepts the fact that if Plaintiff is requesting the dissolution of the marriage, then joins in the request for a fair and equitable division of property, resources, and debts, based on the present and future needs of both parties . . . ." Anne's right to a divorce under the circumstances is well-established. See *Draggoo v Draggoo*, 223 Mich App 415, 424; 566 NW2d 642 (1997) ("[A] divorce will be granted upon the request of only one of the original marrying parties, i.e., even over the objection of one of the marrying parties."). And a divorce must be granted if a court finds that the marriage is so broken that its "objects . . . have been destroyed," and there is no reasonable likelihood of repair. MCL 552.6(3).

[3] At the time, Iowa allowed only fault-based divorce. The Court elaborated, "It is our conclusion that the statute expresses no legislative intent that the merits of matters pertaining peculiarly to the

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102 SE2d 170 (1958) ("A separation by mutual consent of the parties does not constitute desertion, and a libel for divorce by the husband on grounds other than desertion is equivalent to a separation by consent.").

Common sense also dictates that a spouse cannot be disinherited on the ground of "willful absence" if a divorce is pending at the time the other spouse's death. Many spouses separate during divorce proceedings.[4] Often, one leaves the other, physically and emotionally. If MCL 700.2801(2)(e)(*i*) is enforceable based on the time a divorce is pending, delays and gamesmanship are inevitable, particularly when the spouses are elderly or one is ill.[5]

Had there been no error in the circuit court's spousal support ruling, the parties would have been divorced within a year and Carla's claim under MCL 700.2801(2)(e)(*i*) would have died aborning. The delay in getting to final judgment was no one's fault. It is nonsensical to believe that the Legislature intended that pure serendipity could dictate whether Anne was disinherited.

IV

An amendment to MCL 700.2801 that took effect in 2017 provides further support. In its entirety, MCL 700.2801 now provides as follows:

> (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of married couple is not a divorce for purposes of this section.

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divorce court should be inquired into upon applications for widow's allowances." *In re Quinn's Estate*, 243 Iowa 1271, 1273; 55 NW2d 175 (1952). In a no-fault setting, the same rule should apply.

[4] Here, the parties *stipulated* that Anne "shall have the right to occupy the former marital residence . . . subject to" Hermann's right to remove his personal effects.

[5] We respectfully disagree with the dissent's contention that we have disregarded either the language of the statute or the Supreme Court's construction of the language in *In re Estate of Erwin*, 503 Mich 1; 921 NW2d 308 (2018). In *Erwin*, the Supreme Court labored to interpret "willfully absent" in a manner that corresponded contextually with the rest of the statute, and we have done the same. Further, we note that in *Erwin*, the majority held that the inquiry under MCL 700.2801(2)(e)(*i*) "presents a factual question for the trial court to answer: whether a spouse's complete absence *brought about* a practical end to the marriage." *Erwin*, 503 Mich at 27 (emphasis added). Anne's absence during the period that the divorce remained pending did not "bring about" the end of the Von Greiff marriage. The Supreme Court's interpretation of the statute, like ours, "giv[es] effect to the act as a whole." *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003).

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(2) For purposes of parts 1 to 4 of this article and of [MCL 700.3203], a surviving spouse does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as a married couple.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.

(c) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

(d) An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.

(e) An individual who did any of the following for 1 year or more before the death of the deceased person:

(*i*) Was willfully absent from the decedent spouse.

(*ii*) Deserted the decedent spouse.

(*iii*) Willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

(3) *For purposes of [MCL 700.3206], a surviving spouse does not include either of the following:*

(a) An individual described in subsection (2)(a) to (d).

(b) *An individual who is a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death.* [Emphasis added.]

MCL 700.3206 is titled "Funeral arrangements and handling, disposition, or disinterment of decedent's body; right and power to make decisions; priority" and is inapplicable here.

In adding MCL 700.2801(3), the Legislature carved out a new exception to the status of surviving spouse. A spouse who is a "party" to a divorce proceeding at the time of the other spouse's death may not have a say in the deceased's funeral arrangements. That's it—funeral arrangements. The Legislature did not identify "an individual who is a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death" as otherwise excluded from the status of a surviving spouse.

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The United States Supreme Court has explained that "[w]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." *Christensen v Harris Co*, 529 US 576, 583; 120 S Ct 1655; 146 L Ed 2d 621 (2000) (quotation marks and citation omitted). This canon of construction, known as *expressio unius est exclusio alterius*, means that "the expression of one thing suggests the exclusion of all others." *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 712; 664 NW2d 193 (2003). The enactment of MCL 700.2801(3)(b) implies that divorcing spouses were not intended by the Legislature to fall within the categories of spouses excluded from inheriting under MCL 700.2801(2)(e). The Legislature specifically considered parties to an ongoing divorce in the context of spousal survivorship and limited only their ability to make funeral arrangements. It makes sense that no other limitation was intended. See *Pittsfield Charter Twp*, 468 Mich at 711 ("[T]he Legislature, by explicitly turning its attention to limits on the county siting power and deciding on only one limitation, must have considered the issue of limits and intended no other limitation.").

Anne Jones-Von Greiff had a legal right to divorce Hermann Von Greiff. Had the divorce proceeded a tad more swiftly, she would have been entitled to spousal support and, presumably, a fair share of the marital property. Hermann's untimely death abated the divorce, but Anne's participation in a legal divorce process, regardless of its length, did not disqualify her from survivorship status. As a matter of law, Anne survived Hermann as his wife and is entitled to the benefits of that legal status.

We reverse.

/s/ Elizabeth L. Gleicher
/s/ Jane E. Markey

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FOR PUBLICATION
April 23, 2020

No. 347254
Marquette Probate Court
LC No. 18-034046-DE

Before: MARKEY, P.J., and GLEICHER and M. J. KELLY, JJ.

M. J. KELLY, J. *(dissenting)*.

MCL 700.2801(2)(e)(*i*)—as written by the Legislature—causes an unjust result when applied to the facts of this case. But the statute is clearly written and recent, binding precedent from our Supreme Court requires that we follow it. Accordingly, I respectfully dissent.

MCL 700.2801(2)(e)(*i*) provides:

> (2) For purposes of parts 1 to 4 of this article and of section 3203, a surviving spouse does not include any of the following:
>
> * * *
>
> (e) An individual who did any of the following for 1 year or more before the death of the deceased person:
>
> *(i) Was willfully absent from the decedent spouse.*

Relying upon "common sense," the "common law," the maxim *expressio unius est exclusio alterius*, as well as caselaw and statutes from sister states rather than the unambiguous language of the statute, the majority proclaims that, because "it is nonsensical to believe that the Legislature intended that pure serendipity would dictate whether Anne was disinherited," MCL

AT009

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700.2801(2)(e)(*i*) is "inapplicable to the period of time consumed by divorce proceedings." I disagree.

Our Supreme Court has already provided binding guidance on the interpretation of MCL 700.2801(2)(e)(*i*), and unlike the majority's interpretation, the Supreme Court relied upon the plain language of the statute. In *In re Estate of Erwin*, 503 Mich 1, 9; 921 NW2d 308 (2018), the Court stated that

> an individual is not a surviving spouse for the purposes of MCL 700.2801(2)(e)(*i*) if he or she intended to be absent from his or her spouse for the year or more leading up to the spouse's death. Absence in this context presents a factual inquiry based on the totality of the circumstances, and courts should evaluate whether complete physical and emotional absence existed, resulting in an end to the marriage for practical purposes. The burden is on the party challenging an individual's status as a surviving spouse to show that he or she was "willfully absent," physically and emotionally, from the decedent spouse. [*Erwin Estate*, 503 Mich at 27-28.]

Here, it is factually undisputed that Anne was both physically and emotionally absent from Hermann, her decedent spouse, for over a year prior to his death. Anne testified that when Hermann died "we were already divorced" and were just "waiting for the final judgment." She further testified that from May 18, 2017 until Hermann's death on June 17, 2018, they lived as a divorced couple. She even obtained an ex parte order prohibiting Hermann from living in the martial home.[1] In addition, Anne unequivocally stated that she did not provide Hermann with any direct emotional support after May 18, 2017. The following excerpt of Anne's testimony—quoted by the probate court in its findings of fact—is telling:

> *Q*. . . . Okay. And Ms. Jones-VonGreiff, you had no direct personal contact with Hermann VonGreiff after May 18, 2017, is that correct?
>
> *A*. Correct.
>
> *Q*. Okay. And that includes no physical contact, no telephone contact, or other direct contact with Hermann?
>
> *A*. No.
>
> *Q*. Is that correct?

[1] Eventually the parties stipulated to amend the ex parte order. Under the amended order, Hermann was still excluded from living in the martial home, but was permitted to return to it to collect personal items, so long as he gave Anne notice. The fact that there was an ex parte order that was turned into a stipulated order, does nothing to negate Anne's admissions that she was physically and emotionally absent from Hermann for over a year prior to his death.

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A. Correct.

Q. Thank you. Additionally, after May 18, 2017, the only emotional support you alleged to have offered Hermann was via text messages to Hermann's daughter, Carla, is that correct?

A. Correct.

Q. Okay. And you ceased sending those messages to Carla on May 31, 2017, correct?

A. Correct.

Q. Okay. And so based on your testimony, you had no physical contact with Hermann VonGreiff after May 18, 2017 and offered no emotional support to him after May 31, 2017, correct?

A. Correct.

The probate court was entitled to credit Anne's testimony and find that Anne intended to be completely physically and emotionally absent from Hermann starting on May 18, 2017 when she left the marital home and continuing without interruption through and even beyond his death on June 17, 2018. It was during this period of time that she filed for divorce and obtained exclusive occupancy of the home and Hermann underwent a serious surgical procedure that resulted in his aftercare taking place in a succession of different facilities.

Because the divorce was not finalized before Hermann's death, there will be no judicial division of the martial estate. And because Hermann died more than a year after Anne was physically and emotionally absent from him, she is disinherited under MCL 700.2801(2)(e)(*i*). This is the unfortunate, yet proper result of applying the statute as it is written. It creates an injustice to Anne, as it would to any other divorcing spouse in a similar situation.

Rather than follow the majority's approach of disregarding the language of the statute and the *Erwin* Court's interpretation of it, I would instead affirm the probate court. That the judiciary is tasked with interpreting, and not rewriting, the laws enacted by Legislature is a tenet firmly established in our jurisprudence. See *McGhee v Helsel*, 262 Mich App 221, 226; 686 NW2d 6 (2004) (noting that this Court "may not rewrite the plain language of the statute and substitute [its] own policy decisions for those already made by the Legislature."); see also *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008) (stating that courts "are not to rewrite the express language of statutes"). The remedy to any injustice caused by this statute must come from the Legislature and not from a panel of this court.

In its effort to wiggle free from the constraints of the statutory language, the majority begins with a review of the common law. This is unwarranted. The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., is a comprehensive statutory creation. As a result, it supersedes the common law. See *Hoertsman Contracting Co, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006) ("In general, where comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific

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limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter.") (quotation marks and citation omitted). Thus, the majority's reliance on the common law—let alone the common law of foreign jurisdictions—is therefore unnecessary and inappropriate. It does not matter that the common law recognizes a distinction between a divorcing couple and a couple living separately due to one party's desertion of the marriage. Under the comprehensive statutory framework set forth in EPIC, that distinction is irrelevant when determining whether a surviving spouse will be disinherited under MCL 700.2801.

I find equally unavailing the majority's reliance on the 2017 amendment to MCL 700.2801 that added subdivision (3). MCL 700.2801(3) provides:

> (3) For purposes of section 3206[, which addresses funeral arrangements], a surviving spouse does not include either of the following:
>
> (a) An individual described in subsection (2)(a) to (d).
>
> *(b) An individual who is a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death.*

The majority believes that by adding MCL 700.2801(3)(b), the Legislature implied that under *all* other circumstances, an individual who is party to a divorce proceeding with the decedent when the decedent dies *is* a surviving spouse. This deduction is reached, the majority assures us, under the principle of *expressio unius est exclusio alterius*.[2] But this canon of construction cannot be employed if doing so would defeat the statute's clear legislative intent. *AFSCME Council 25 v Detroit*, 267 Mich App 255, 260; 704 NW2d 712 (2005).

Here, the legislative intent is clear: an individual is not considered a surviving spouse under MCL 700.2801(2)(e)(*i*) if he or she was willfully absent from the decedent spouse for a year or more preceding the decedent's death. And as explained in MCL 700.2801(3)(b)—without regard to whether a spouse has or has not been willfully absent for the requisite period of time—if the spouse is in the process of a divorce, he or she is never considered a surviving spouse for the purposes of making funeral arrangements. It is not the case, however, that all divorcing spouses are willfully absent for a year prior to the death of their spouse. Some spouses might start divorce proceedings but remain physically present; others might be physically absent, but emotionally supportive. Moreover, an individual who is willfully absent from the decedent spouse for *less* than a year, would still be considered a surviving spouse under MCL 700.2801(2)(e)(*i*), but would not be considered a surviving spouse for purposes of funeral arrangements under MCL 700.2801(3)(b). Because the two sections cover different circumstances, it is improper to apply the legislative exclusion that the legislature expressly set

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[2] The maxim "*expressio unius est exclusio alterius*"—the expression of one thing is the exclusion of others—is understood to mean that the express mention of one thing in a statute implies the exclusion of other similar things. *Johnson v Recca*, 492 Mich 169, 176 n 4; 821 NW2d 520 (2012).

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forth for surviving spouses when addressing funeral arrangements and graft it onto the MCL 700.2801(2)(e)(*i*) to frustrate the plainly stated legislative intent. Whether a divorcing spouse is "willfully absent" or is *not* "willfully absent," MCL 700.2801(3)(b) states only that they will never be considered a surviving spouse.

Rather than interpreting the statute, the majority rewrites it to suit the majority's policy preferences. I would apply the actual language of the statute, not the majority's rewrite of it. Under the actual language of the statute, an individual is not a surviving spouse if: (1) for a year or more before the decedent's death (2) he or she was willfully absent from the decedent spouse. In contrast, under the majority's reasoning, the statute is rewritten to disinherit a surviving spouse if: (1) for a year or more before the decedent's death (2) he or she is willfully absent from the decedent spouse, and (3) he or she is not in the process of obtaining a divorce or annulment from the divorcing spouse.

Furthermore, while it is true MCL 700.2801 was amended to add a third section dealing with funeral arrangements, this does not lend support to the argument that the legislature meant something other than what the seven words they chose to put into section MCL 700.2801(2)(e)(*i*) plainly say. If anything, it lends support to the opposite conclusion: that the Legislature considered the statute, noted that it needed amendment by way of section (3), and chose *not* to amend § (2)(e)(*i*). If the Legislature is reflective of society at large, then nearly half of its members have been through the unhappy process of a divorce, and, even if they have not, it is hardly a secret that a divorce case often can linger for more than a year in court. Yet, even in amending the statute, the Legislature chose to leave section (2)(d)(*i*) as it was. The simple truth is we do not know what their intent was when they amended the statute, and this fact requires us to be agnostic on the question.

If the Legislature so desires, it can expressly state that a divorcing spouse is not disinherited by statute if his or her spouse dies before a final judgment of divorce is entered. I encourage our legislators to do so. But they have not done so, and it is not the place of the judiciary to rewrite the plain language of this or any other statute enacted by the Legislature. Therefore, because the statute itself is clear and it makes no provision or exception for spouses going through a divorce, we must apply the statute as it is written, and leave the task of amending the statute to the Legislature.

/s/ Michael J. Kelly

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STATE OF MICHIGAN

PROBATE COURT

FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF: File No. 18-34046-DE

ESTATE OF HERMANN VONGREIFF

_____/ Hon. Cheryl L. Hill

ORDER FINDING ANNE JONES-VONGREIFF NOT THE SURVIVING SPOUSE OF HERMANN VONGREIFF PURSUANT TO MCL 700.2801

FINDINGS OF FACT

The Respondent, Anne Jones-VonGreiff and the decedent, Hermann VonGreiff were married twice. The first marriage occurred on June 12, 2000. The marriage ended in divorce within several months. Anne and Herman, however, remarried on January 10, 2003. The parties remained legally married until the death of Hermann on June 17, 2018. Petitioner, Carla VonGreiff, daughter of Hermann VonGreiff has petitioned this Court under MCL 700.2801 (2)(e) for a finding that Anne Jones-VonGreiff is not the surviving spouse of Hermann VonGreiff.

Testimony was provided to the Court regarding the marital life of Hermann VonGreiff and Anne Jones-VonGreiff for the year or more before Hermann's death.

The facts established that Anne and Hermann, after their second marriage on January 10, 2003, lived as a marital couple. The marriage was not without difficulties. There were periods of infidelity on the part of Hermann VonGreiff as well as issues of physical and mental health problems suffered by both parties.

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The testimony centered on the time period from May of 2017 until Hermann's death in June of 2018.

Hermann VonGreiff suffered from spinal issues. He sought to deal with the issues through medical intervention and scheduled a surgery for May 19, 2017. Anne VonGreiff was not in favor of Hermann undergoing surgery as she felt that he was too weak for the procedure. The couple had an argument on the evening of May 16, 2017. This argument precipitated Anne VonGreiff leaving the marital home. It was Anne's belief that Hermann wanted her out of the house and that he wanted to divorce her. Anne testified that Hermann said very hurtful things to her. She admitted that the couple had argued in the past but this time he was very angry, swore at her, and told her to leave the house.

Although Anne believed Hermann wanted her to leave the home, she did not leave on the evening of May 16th. She and the Petitioner, Carla, had a telephone conversation wherein Carla decided that she would come to Marquette to be with her father during his time of surgery.

Carla arrived in Marquette on May 18, 2017. Anne VonGreiff met Carla at the airport and showed Carla where the hospital was as Carla would be driving her father to his surgery on the following morning.

Upon delivering Carla to the marital home, Anne collected her bags and the dog and left the home.

Anne admitted that before leaving the home, Hermann asked her to stay. Anne left despite Hermann's request that she stay.

After leaving the home, Anne and Carla exchanged a few text messages. On the evening of May 16 2017, Anne texted Carla and inquired as to Hermann's status. Anne indicated that she was, "Sorry for everything," and asked that Carla keep her updated on Hermann's surgery.

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On the day of Hermann's surgery, Anne texted Carla inquiring as to Hermann's status. Upon receipt of Carla's text updating Anne, Anne advised Carla she was glad Hermann was okay. She also advised Carla that she would drop off the keys and checks at the marital home.

Anne did not visit Hermann while he was in the hospital. Anne also never spoke to Hermann again after she left the marital home on May 18, 2017.

There were some additional text messages to and from Carla. Carla texted Anne on at least two occasions asking her to come to the hospital to speak with Hermann. Anne did not think it was a good idea to go to the hospital and therefore, she did not. She also made a point during her testimony to point out it was Carla requesting that she come to the hospital; not her husband.

Anne's testimony throughout the hearing in this matter was clear that after May 18, 2017 she had no contact with Hermann VonGreiff. Specifically, she was asked:

Q Okay. And Mrs. Jones-VonGreiff, you had no direct personal contact with Hermann VonGreiff after May 18, 2017, is that correct?

A Correct.

Q Okay. And that includes no physical contact, no telephone contact, or no other direct contact with Hermann?

A No.

Q Is that correct?

A Correct.

Q Thank you. Additionally, after May 18, 2017, the only emotional support you alleged to have offered Hermann was via text message to Hermann's daughter, Carla. Is that correct?

A Correct.

Q Okay. And you ceased sending those messages to Carla on May 31, 2017?

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A Correct.

Q Okay. And so based on your testimony, you had no physical contact with Hermann VonGreiff after May 18, 2017 and offered no emotional support to him after May 31, 2017, correct?

A Correct.

Anne was of the firm belief that Hermann was going to file the divorce after his surgery. It was her belief that Hermann wanted her out of his life and out of the house. She was very upset with the fight the couple had on May 16, 2017. As such, she sought legal advice. Anne testified that she had reached a point in her marriage with Hermann where she did not know if she could go on any longer. She felt her husband had thrown her out of the house and she wanted legal direction. Following legal advice, Anne went to the bank to check on a joint account she and Hermann had. She found that most of the money had been withdrawn. She was not certain but believed that Carla, under a POA from Hermann, had removed the money.

Anne contacted a divorce attorney on May 22 or 23, 2017. She signed a Complaint for Divorce on May 31, 2017 and the Complaint was filed with the Court on June 1, 2017. Hermann was served with the Complaint on June 2, 2018 while still in the hospital.

Along with filing the divorce, Anne Jones sought an Ex Parte Order that granted her exclusive use of the marital home. The Order was entered and she was provided with exclusive use of the marital home, the Order further required that Hermann pay the mortgage, the home equity loan, utilities, and all other debts associated with the marital home.

During testimony, Anne VonGreiff stated that her intention in having an Ex Parte Order issued was to keep Hermann's children out of the home. She, however, admitted that by getting the Ex Parte Order, Hermann could not return to the home and she also admitted that she no longer wanted Hermann living with her. At the time of entry of the Ex Parte Order, Anne

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VonGreiff did not think that Hermann should come back to the home, as she felt he should go someplace where someone could take care of him.

The Court notes that Ms. VonGreiff's testimony was somewhat contradictory as later in her testimony, she indicated that she did not know that the Ex Parte Order meant that Hermann could not come back home.

The Ex Parte Order was modified to a certain extent later in the divorce proceeding. The modification allowed Hermann access or his agent access to the marital home to obtain his property. The order was not modified to an extent that it allowed Hermann to reside in the home; that exclusive right was left to Ms. Anne Jones-VonGreiff.

Sometime after filing for divorce, Hermann moved to Mill Creek, an assisted living facility. Anne was not told by Hermann, nor did she inquire of him as to where he was going upon being released from the hospital. Anne apparently found out by receiving a phone call from a nurse at Mill Creek. At some point after residing in Mill Creek, Hermann moved to Florida. Hermann died while residing in Florida. Anne found out from a realtor some nine days after his death that he had passed.

At no time after filing the divorce, did Anne Jones-VonGreiff ever express a desire to live with Hermann. Ms. VonGreiff further agreed that after the filing of the divorce, she never had an intention to return to the marriage. She agreed that for all intents and purposes, that she and Hermann lived as a divorced couple from May 18, 2017 until his death on June 17, 2018.

Hermann VonGreiff did not attempt to contact Anne either. He did not advise her of his move to Mill Creek or to Florida. He blocked his Facebook page and at some point, it is believed by Anne that he changed his phone number.

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Hermann VonGreiff died before the judgment of divorce was entered. The divorce trial, however, took place on April 18, 2018. The Judgment of Divorce was submitted on Notice of Presentment and objections were set to be heard; however, Hermann died before the hearing. Because the divorce judgment had not been signed, the matter was dismissed on August 8, 2018.

CONCLUSIONS OF LAW

The issue before the Court is whether given the totality of the circumstances, Anne Jones-VonGreiff intended to be physically and emotionally absent from Hermann VonGreiff, resulting in a practical end to their marriage.

The burden is on the Petitioner, Carla VonGreiff, to show that Anne VonGreiff does not meet the qualifications of a surviving spouse. The Petitioner must show that MCL 700.2801 has been met.

MCL 700.2801 provides, in part:

> (2) for purposes of part one to four of this article and section 3203, a surviving spouse does not include any of the following:
>
> . . .
>
> (e) an individual who did any of the following for one year or more before the death of the deceased person:
>
> (i) was willfully absent from the decedent spouse.
> (ii) deserted the decedent spouse.

The Court is guided by the decision of *in re Irwin Estate* _____ Mich _____; _____NW 2nd _____ (2018)(Dockett #153980-153981). The Irwin case stands for the proposition that an individual is not a surviving spouse for the purposes of MCL 700.2801 (2)(e)(i). If he or she intended to be both physically and emotionally absent for the year or more leading up to the decedent's spouses passing. Absence in this context presents a factual inquiry based on the

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totality of the circumstances and a court should evaluate whether complete physical and emotional absence existed resulting in an end to the marriage for practical purposes.

Anne Jones-VonGreiff relies upon the fact that she did not leave the marital home for the full year preceding Hermann's death. She admits she left the marital home for approximately twenty nights during the time in which Hermann was in the hospital and his daughter, Carla, was staying in the home while Hermann was in the hospital. Upon Carla returning to her home in Florida, Anne moved back into the marital home. While it is true that Anne did not leave the marital home, she did seek and was successful in obtaining an order in the action for divorce that gave her exclusive use of the marital home. This order was modified to allow Hermann and/or his agent access to the home to obtain personal belongings. The order, however, remained throughout the divorce proceedings. Anne may have remained in the home; however, she also successfully excluded Hermann from returning. Anne's unilateral action in requesting an Ex Parte Order effectively prohibited Hermann from returning to the home.

This Court did not find Anne Jones-VonGreiff's testimony that she did not understand that the Ex Parte Order would preclude Hermann VonGreiff from returning to the home credible. Anne and Hermann's physical separation was not a result of occupation or civic duty as detailed in *Erwin* (supra). The facts are clear the parties were physically separated.

Having established that there was a physical absence, the Court must also evaluate if there was an emotional absence from the deceased spouse. The Court finds that there was an emotional absence as well as a physical absence.

There were actions on the part of Anne Jones-VonGreiff indicating a conscious decision to permanently no longer be involved in her marriage with Hermann VonGreiff. The facts clearly show:

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1. Anne Jones-VonGreiff did not have physical contact or attempt to make physical contact with Hermann VonGreiff from May 18, 2017 until his death in June, 2018.

2. Anne Jones-VonGreiff filed for divorce while her husband was in the hospital.

3. Anne Jones-VonGreiff obtained an Ex Parte Order for exclusive use of the marital home, which prohibited Hermann VonGreiff from returning to the marital home.

4. Anne Jones-VonGreiff had no physical contact, no telephone or written contact with Hermann VonGreiff after May 18, 2017 until his death.

5. Anne Jones-VonGreiff admitted that after May 18, 2017, the only emotional support she offered to Hermann was via text messages to Hermann's daughter Carla.

6. Anne Jones-VonGreiff ceased sending any messages to Carla inquiring about Hermann as of May 31, 2017.

7. Anne Jones-VonGreiff agreed that for all intents and purposes, she and Hermann lived as a divorced couple from May 18, 2017 until his death.

8. Anne Jones-VonGreiff went forward with her divorce action against Hermann and continued to ask for a divorce.

Anne Jones-VonGreiff testified that leaving Hermann and filing for divorce was a very emotional time for her and she went on to say that her attorneys took over her life and that she was told that the judge gave her exclusive rights to the home. She unsuccessfully attempted to make this Court believe she was uninvolved in the legal decisions affecting her life. The Court believes Ms. Anne Jones-VonGreiff to be a well-educated, sophisticated, woman. While this may have been a very emotional point in her life, if she did not want to exclude Hermann from the home, even after entry of the Ex Parte Order, she could have requested that her attorneys have the order vacated. She did not do so. She clearly sought and was granted exclusive use of the marital home. This Court is not looking to Anne Jones-VonGreiff to make a continuous effort to maintain the marital relationship. Rather, this Court is focused on the "absenting" practiced by Anne Jones-VonGreiff. She filed for divorce, sought exclusive use of the home, told the Court in her testimony that after filing for divorce, she never had the intent to return to the marriage. She

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agreed that the couple lived as a divorced couple after May 18, 2017. The fact that she never contacted Hermann, support her statements that it was her intention to leave the marriage.

Anne Jones-VonGreiff forced Hermann VonGreiff from the marital home. She expressed that she had reached a point in her marriage when she could not go on any longer.

The Erwin case stands for the proposition that a party seeking to establish that a spouse is not a surviving spouse pursuant to MCL 700.2801(2)(e)(i) does not need to show that the spouse intended to dissolve the marriage, only that the surviving spouse intended to be absent from the decedent spouse. The actions of Anne Jones-VonGreiff go further than what is necessary to be proved. In this case, Anne Jones-VonGreiff intended to dissolve the marriage. In fact, if Hermann VonGreiff had not died when he did, this marriage would have been dissolved by divorce. The parties had already gone forward with a trial in this matter, proofs had been submitted, a proposed judgment had been submitted, and the parties were set to go to court to pose objections to the final language of the divorce.

SUMMARY

In answering the question whether given the totality of the circumstances, Anne intended to physically and emotionally absent herself from Hermann resulting in a practical end to the marriage. The Court finds in the affirmative.

Anne and Hermann did not co-habitate during the last year of his life. Not only did they not co-habitate, Anne did not have contact with Hermann from the day she left the home in May of 2017. It is true that Hermann also did not have contact with Anne. Anne, believing that her marriage was at an end, filed a claim for divorce and sought and received exclusive use of the marital home. Anne's testimony was clear that she no longer wanted to live with Hermann and that she provided no emotional support to Hermann after filing for divorce. There was no

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indication from Anne that at any time from May 2017 until Hermann's death felt that she and Hermann were still husband and wife. There was no testimony or evidence showing an emotional connection between Hermann and Anne. There was no evidence of the couple's continuing relationship for the one year preceding the death of Hermann VonGreiff.

This Court finds that Anne Jones-VonGreiff is not a surviving spouse for the purposes of MCL 700.2801 as there was a physical and emotional absence by Anne Jones-VonGreiff that resulted in the end of the VonGreiff's marriage for all practical purposes. Anne took action that was akin to a complete repudiation of the marriage.

This Court finds that the burden of Carla VonGreiff on challenging Anne Jones-VonGreiff's status as a surviving spouse has been met. Carla VonGreiff has demonstrated that Anne Jones-VonGreiff was willfully absent, physically and emotionally from decedent, Hermann VonGreiff.

PETITION IS GRANTED. IT IS SO ORDERED.

Date: 12/3/21

Honorable Cheryl L. Hill, Probate Judge P43370

STATE OF MICHIGAN

IN THE COURT OF APPEALS

CARLA J. VON GRIEFF,

Petitioner-Appellee,

vs. COA Case No. 347254

ANNE JONES-VON GRIEFF,

Respondent-Appellant.

_____/

ORAL ARGUMENT

BEFORE: HON. JANE E. MARKEY, HON. ELIZABETH GLEICER,
HON. MICHAEL J. KELLY

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year. If those two elements have not been met within that one-year span, then you are not considered the surviving spouse, extraneous factors not considered. And the court has considered, this court, the appellate court, has considered cases where they found that couples, despite living apart, despite perhaps even cohabitating with other romantic partners, are still maintaining contact, are still maintaining some semblance of a relationship. And they've said in those instances, this simply does not apply. In this case, though --

THE COURT: So --

MR. COLMAN: Yes, Your Honor?

THE COURT: -- you are saying simply that this happens to be an extremely unfortunate case where, although a divorce had been started, they were separated, living apart, and as would not be totally unusual, they chose not to have any contact with each other for a year. And that as a result of his death during the divorce, she now is rendered persona non grata and is not an heir in any respect to a marriage and to the assets of the estate when they were married for 20 years.

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daughter, also residing in Florida, took time to come up to Marquette. And eventually, they decided the best thing would be for him to move to Florida because, despite Anne Jones-Von Grieff knowing exactly where Mr. Von -- Dr. Von Greiff was, which was mere minutes from her home, she didn't visit him the entire time he was in assisted living.

THE COURT: I find this argument as just astonishing. These people were divorcing. He -- her testimony is that he was abusive and had been for decades, verbally and cruel and volatile and suffered from bipolar, and she simply couldn't take it anymore. I don't find it -- how can that be unusual? And why would she be expected to come back and take care of him, but yet somehow forfeit the fact that the rights to any property or whatever, because after a 20-year marriage, because that was the other side of the coin?

So again, I go back to the question that you haven't answered me, is this simply a very horrible anomaly that doesn't occur very often, where this man died during a divorce proceeding, where otherwise there would have been

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a support or not support in necessarily support, but there would have been some sort of property settlement? I'm assuming that all of that went down the toilet when he died before the divorce was completed. Is that what we're dealing with here?

MR. COLMAN: In this instance, yes.

THE COURT: Thank you. That's all that -- then that's -- and I understand all of the rest of it, and I see both sides of the coin. But this -- just this woman fell into that little crack, okay.

MR. COLMAN: I would simply refocus the Court's attention on the fact that the legislature and the Michigan Supreme Court have dictated the standards, not me, not the Von Grieff's --

THE COURT: I'm not wavering from that myself. I'm simply asking you if that's what's occurred.

MR. COLMAN: And that is what's occurred.

THE COURT: Okay. And if that were to occur, we could at least have some empathy that perhaps there is some sort of injustice, albeit

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if it's due to a statute that isn't very well constructed or didn't contemplate this bizarre -- we all know statutes can't cover every single thing. The law is never going to be a hundred percent and help everybody or hurt everybody all the time. So, rather than make the argument, let's just -- let's just be honest and forthright about what it is we're dealing with, and how the law either helps or hinders both sides. That's our job.

MR. COLMAN: I understand. And in terms of the factual characterizations prescribed to -- ascribed to these parties, I would say that the trial court was in the best position to make that determination. And what the trial court found is, to quote from the order, there was no indication from Anne Jones-Von Grieff that at any time from May 2017 until Hermann's death, she felt she and Herman were still husband and wife. There was no testimony or evidence showing an emotional connection between Hermann and Anne Jones-Von Grieff. There was no evidence of the couple's continuing relationship for one year preceding the death of the decedent. The court did not look for her to maintain a relationship

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with a man who she no longer wanted to be in a relationship with.

The court did look, though, and say, this is someone who herself removed, took affirmative steps to no longer be engaged in a relationship. And that is the standard, the Peterson court said that parties can jointly move away from each other, that it need not be unilateral, and one party's fighting to still maintain the relationship. They can choose to both move away from each other. So, perhaps Hermann did move away from Anne Jones-Von Grieff or do things that resulted in an end to the marriage. But she, also very clearly from her own statements as judged by the trial court correctly, took affirmative acts to move away from this marriage.

I won't belabor the points and read all of her statements because they're in my brief, they're in the record. But this was not a close call. She said many, many times, she did not consider herself to be married. She did not consider this relationship to be ongoing, and she considered herself divorced from the day she walked out on Hermann. And incidentally, she

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walked out on May 18, because there was a question about the date of her divorce counsel, she walked out on May 18, which was a Thursday. On Friday, Hermann went in for surgery.

Anne Jones-Von Grieff testified that on either, she couldn't recall exactly, May 22 or May 23, that following Monday or Tuesday, right after the weekend, she contacted her divorce attorney, and that's who told her, go empty out half of those bank accounts. This wasn't a shock for her to walk in. She wasn't an innocent party checking her balance. She said, I was told by my divorce counsel to go empty half of those bank accounts. That's how she found out about the balance of the bank accounts. So, with that, unless the panel has any other questions, I will --

THE COURT: Is there any legal import or relevance to what appears also to be the fact that other than the, what he supposedly said, don't leave, on the day she walked out, that he ever made any direct contact, not by Carla or the daughter or anybody else, thereby making it a mutually absent situation?

MR. COLMAN: No, Your Honor. Under the

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continuing duty to provide emotional support, to live in the same house. Remember that what we're talking about here is a situation where, according to my client's testimony, I don't really think there's been much dispute about it. She was told that he didn't want her there. And in her mind, she was told he was going to divorce her. And his actions taken by him or by his designate are perfectly consistent with that firm belief that she had --

THE COURT: You mean draining the bank accounts before she could even get an attorney, a couple of days later?

MR. MCDONALD: And bring him the keys and the checkbook, which she did on his request. Now, communication is two ways. Are we going to require continued efforts on her part?

THE COURT: There's continued efforts, and there's absolutely no efforts, which is what we have here --

MR. MCDONALD: Okay.

THE COURT: -- which is in fact a renunciation.

MR. MCDONALD: The renunciation is --

THE COURT: Yeah, on her part.

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MR. MCDONALD: -- on her part --
THE COURT: Right.
MR. MCDONALD: And is it on his part?
THE COURT: So, you're making it sound like there's this whole business of, you know, continuously doing that. That's not what we have here, is it?
MR. MCDONALD: Well, what do we have here?
THE COURT: We have somebody that says --
MR. MCDONALD: What's the -- what's the communication that went --
THE COURT: -- that she wanted nothing to do with him.
MR. MCDONALD: Okay. And what's the communication that went from him to her? Bring the house keys and my account books.
THE COURT: What position did he take during the divorce?
MR. MCDONALD: What did he --
THE COURT: And I mean, did he, was he in any way opposed to the divorce? Did he attempt to --
MR. MCDONALD: If you --

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THE COURT: I'm sure he was opposed to the money, but.

MR. MCDONALD: Am I allowed to talk about it, because that's verboten in the trial court?

THE COURT: Well --

MR. MCDONALD: Yes, he -- his counsel --

THE COURT: So, no part of the divorce record is part of the probate record? There's nothing about the divorce in the probate record, which I haven't seen?

MR. MCDONALD: We attempted to bring that in, it was objected, and it was very small parts of the divorce proceeding.

THE COURT: Is his answer in the -- is his answer to the complaint for divorce in the record?

MR. MCDONALD: I think it is.

THE COURT: Okay, all right. So, what does he say in his answer?

MR. MCDONALD: Well --

THE COURT: Never mind, I can look it up.

MR. MCDONALD: Well, what it says

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CERTIFICATE OF TRANSCRIPTION

STATE OF MICHIGAN)
) SS
COUNTY OF KENT)

I, JANICE P. YATES, hereby certify the transcription of the foregoing proceedings. These proceedings were recorded on an audiotape; said audiotape was not recorded by me nor under my supervision or control. I certify that this is a full, true, complete, and correct transcription of the audiotape to the best of my ability.



JANICE P. YATES, CER-9181
Notary Public,
Kent County, Michigan
My Commission expires: December 2, 2023

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FAMILY DIVISION

FOR THE COUNTY OF MARQUETTE

In the Matter of:

THE ESTATE OF HERMAN VONGREIFF File No.18-34046-DE

---/

PETITION TO DENY ANNE JONES-VONGREIFF THE PRIVILEGES OF A SURVIVING SPOUSE PURSUANT TO MCL 700.2801(2) INTER ALIA

BEFORE THE HONORABLE CHERYL L. HILL, PROBATE JUDGE

Marquette, Michigan - Wednesday, November 7, 2018

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marriage?

MR. MCDONALD: I'm going to object, Your Honor.

THE COURT: Okay. Wait a sec, because I think Mr. McDonald has an-- And your objection?

MR. MCDONALD: This calls for complete speculation on Mr.--Dr. VonGreiff's mental state at a particular time in the past. I don't think this witness can answer that question without engaging in just complete speculation.

MR. COLMAN: I'm only asking for her opinion, Your Honor.

THE COURT: And I think she can give her opinion.

BY MR. COLMAN:

Q Does this, in your opinion, seem like someone who wants out of a marriage?

A Herman could flip on a dime. He's bi-polar.

Q Had he just been diagnosed as bi-polar on May 16th?

A No.

Q Was he diagnosed bi-polar formally by a doctor?

A I don't know that.

Q Is it-was he taking medications for bi-polar disorder?

A Yes, he was.

Q What medications was he talking?

A Gabapentin, is mood stabilizer, which he recommended and-- and prescribed to his patients all the time and Celexa,

THE COURT: Okay.

MS. JONES-VONGREIFF: Is this from the deposition? I don't know what--

THE COURT: No. You--you're not going to have that. He'll--he's referencing trial testimony.

MR. COLMAN: I don't know why these pages got mixed up in here. No. Because I have the--I'm looking at the deposition; the actual deposition transcript. That's why. Not the hearing transcript. So--yes, 36 line 9.

MR. MCDONALD: That's correct.

MR. COLMAN: Here you are.

MS. JONES-VONGREIFF: I don't have it in here.

MR. COLMAN: No, it's--it's a separate transcript.

BY MR. COLMAN:

Q So, if you would just read lines eight through ten, please.

A Oh, well I understand. I didn't have a--I didn't have a home. I mean, I know where you're going with this.

Q Okay. Well, if you'll allow me to just ask my questions. You indicated that in your testimony you didn't have a home at that time, correct?

A Correct.

Q Okay. In fact, you own a home with your brother located in Garden, Michigan, correct?

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A It's like a summer home.
Q Okay. It's a home in Garden, Michigan?
A Correct.
Q And you--you own that?
A With my brother.
Q With your brother. That was inherited from your mother?
A Correct.
Q Okay. And you--you had assisted your daughter with buying a new home just prior to Herman going in for surgery, correct?
A Correct. But she wasn't in it yet.
Q Okay. Plus of course, we know that you obtained an Ex Parte Order granting you exclusive use of the marital home within a couple of weeks of his going into the hospital.
A And I told you I wasn't aware of that; the attorney did it.
Q Okay. But to say you didn't have a home is not accurate. You could have gone to Garden, Michigan.
A I don't have clothes there. I don't have food--food there. I--I, you know, considering it a home, I couldn't consider that my primary residence as a home.
Q But a place to go certainly?
A Correct.
Q During your cross examination, your attorney made issue out of Herman testifying that he would be--well, actually-

STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

I certify that that this transcript, consisting of 134 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on November 7, 2018.

DATE 11/26/2018

Wendy S. Luokkala, CER 8751
Probate Court
234 West Baraga Avenue
Marquette, Michigan 49855
906-225-8301

AT041

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STATE OF MICHIGAN

IN THE PROBATE COURT

FOR THE COUNTY OF MARQUETTE

In the Matter of:

ESTATE OF HERMANN A. VONGREIFF File No. 18-34046-DE

_____/

HEARING ON PETITION TO DENY ANNE JONES-VONGREIFF

THE PRIVILEGES OF A SURVIVING SPOUSE

PURSUANT TO MCL 700.2801(2) INTER ALIA

(AFTERNOON SESSION)

BEFORE THE HONORABLE CHERYL L. HILL, PROBATE JUDGE

Marquette, Michigan - Wednesday, November 7, 2018

APPEARANCES:

For the Petitioner Carla VonGreiff:	JONATHAN M. COLMAN P72176 Barron, Rosenberg, Mayoras & Mayoras 1301 West Long Lake Road, Suite 340 Troy, Michigan 48098 248-641-7070
For the Respondent Anne Jones-VonGreiff:	WILLIAM I. MCDONALD P17376 MOLLY PHILLIPS OMBRELLO P74411 McDonald & Wolf, PLLC 115 South Lakeshore Boulevard, Suite A Marquette, Michigan 49855 906-226-6537
RECORDED BY:	Laurie A. Skytta, CER 7836 Certified Electronic Recorder and Patricia A. Nolan, Temp. CER 9385 (906) 225-8300

she got out of the car, and she greeted me at that little entrance in that small airport, and I saw her, and we exchanged niceties. And then I said to her, oh, Anne, you don't have to worry about entertaining me while I'm here. When I'm not at the hospital, you know, I'll just need a reprieve. And that---she said to me, oh, about that. I'm leaving. (crying) I'm sorry. When she said that to me, I was shocked, and I actually---I---I kinda immediately knew I was in trouble. So then we went in the car, and, you know, I asked her if my dad knew that she was gonna be leaving. And she said no. So, you know, while in the car, we were talking, but at the same time, I called my mother on the phone in the car because I knew that I was in trouble as she's just gonna leave, and I was walking into a situation that I wasn't prepared for. I had assumed that I was actually gonna be there, staying in the house, with her, and that, you know, it might have been a little awkward, but I just assumed that I was gonna be with her throughout this time.

Q Was anything else said? In---in that car ride?

A Yah. In the car, she---she---she proceeded to tell me, you know, things about their relationship, and she was justifying her actions to me basically. And she was saying, you know, she was stressed out, her daughter was going through a divorce, and she didn't want my father to

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have this surgery. She knew it looked bad, but she's not a gold digger. She also said that it was gonna ruin her summer because he was gonna require care. So, you know, I was hearing this---all these things, and there was a part of me that I'm like well, if---if it---I didn't feel comfortable. Of course I didn't want her to leave my dad, and I knew this was a bad situation. But I didn't know what I'm supposed to say to a woman that's made that decision. Am I supposed to tell her well don't leave him. So it was a bit of an awkward conversation. She was essentially justifying to me that why she was doing what she was doing.

Q Okay. So you---you then arrive at your father's house with Anne, correct?

A Yes.

Q Did she come in with you? To the house?

A She did. We parked in the garage, went in, and my dad was sitting on the couch, you know, that's where he spent, you know, a lot of his time in that home. And, you know, he---he was happy to see me. He looked up, and he got up. And she went and got her---her bag from her room. They---they had separate rooms in the house, two separate wings. And he has his bedroom, and she had her bedroom. She went to get her bag. She got the dog---got his dog that he loved, and basically told him she was leaving him. And my

A I let them know---asked to speak to the bank, and I let them know that my dad asked me to call. To explain the situation. That his wife had left him, and he was concerned about his bank accounts because he was in a hospital. He didn't know what she was gonna do. And so that is when the banker said he could go meet with my dad.

Q Okay. And do you recall exactly when you made that phone call?

A It would have been that day. On Monday.

Q Okay. Again, morning? Afternoon?

A I don't know.

Q Was your father still in the hospital at that time?

A Yes, my father was in the hospital for three weeks.

Q Okay. And where was he in the hospital when---he'd already had surgery on---what was the date of that?

THE WITNESS: What was the date of what?

MR. MCDONALD: Of the surgery.

THE WITNESS: May 19th.

BY MR. MCDONALD:

Q All right. And I think you told us that because of some complications, he was transferred to the---to another part of the hospital, I think you described it as ICU, but is that your testimony?

A I believe on Saturday, yes.

Q All right. And how long was he in that special unit of

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the hospital?

A From---I don't recall. He was---he was in the hospital for three weeks. I don't recall specifically, you know, when he was considered ICU or not.

Q Well, let me ask this. When you made the phone call on Monday, was he still in ICU?

A I don't think so. He was in the hospital, but I don't think he was in ICU.

Q Other than making the phone call you described, Ms. VonGreiff, did you provide any documentation of any kind to River Valley Bank regarding any---regarding this account?

A I didn't have any documentation. None.

Q And the next item here says---I think it's the same item actually---on the next line, transfer to open new account. And I'm going to ask you if you have any knowledge about that new account that was established that day?

MR. COLMAN: Objection, your Honor. That's a---that's a very broad and vague question. Do you have any knowledge about that account? Does he mean today does she have any knowledge? At the---on May 22nd, did she have any knowledge? Through the course of the divorce proceedings? Can we get some sort of a limitation on that, please?

THE COURT: Sure. Maybe just kinda give her a timeframe as to when she may have had knowledge.

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STATE OF MICHIGAN)
)
COUNTY OF MARQUETTE)

I certify that that this transcript, consisting of 111 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case in the afternoon session on November 7, 2018.

November 26, 2018

Laurie A. Skytta, CER 7836
Marquette County Probate Court
234 West Baraga Avenue
Marquette, Michigan 49855
906-225-8300

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STATE OF MICHIGAN

CIRCUIT COURT FAMILY DIVISION

FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF:

The Estate of Herman VonGreiff, File No. 18-34046-DE

_____/ Hon. Cheryl L. Hill

ORDER ON HEARSAY RULINGS

During an evidentiary hearing to determine whether or not Anne VonGreiff is the surviving spouse of Herman Von Greiff under MCL 700.2801(2) Ann Von Grief sought to introduce a hearing transcript from the divorce proceedings between the decedent, Herman VonGreiff and Anne VonGreiff. A hearsay objection was posed by the Petitioner.

Anne VonGreiff proffered that the statements came within the exception to hearsay under MRE 804(b)(1) former testimony.

Rule 804(b)(1) applies to in court testimony including trial testimony.

MRE 804(b)(1) reads as follows:

> "Former testimony. Testimony given as a witness at another hearing of the same or different proceeding, if the party against whom the testimony is against is now offered, or in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct contact, cross, or redirect examination.

Carla VonGreiff argues that the court does not get to evaluate the two basic requirements of MRE 804(b)(1) as Carla VonGreiff is not a "predecessor" in a civil action.

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The Court did not make a ruling on the matter and directed parties to file briefs on the hearsay objection.

Carla VonGreiff's objection went to the proposed submission by Anne VonGreiff of the entire transcript to the court. Upon Briefing the matter, Anne VonGreiff has limited the submission of the transcript to certain passages of the transcript.

Anne VonGreiff argues for the admission of 5 specific statements:

> **1. Decedent's counsel:** All right. Now I want to talk about the spousal support factors. The first factor is the parties' relations and conduct, sometimes known as fault. Your wife made the allegation that, in the context of the marriage, you were unfaithful, in other words, had sexual relations with other women. Is that true?
>
> **Decedent:** Yes.
>
> **2. Decedent's counsel:** Okay. The next factor is the parties' health. We've heard testimony from Anne about some of your medical issues. Would you please describe what medical issues you encountered last year, and then tell us what your current medical situation is.
>
> **Decedent:** I underwent a spinal stenosis relief from Marquette General Hospital, and since then I have been incapacitated. I have not been able to walk without assistance. In addition to that, I have a diagnosis of congestive heart failure, for which I have had two hospital (inaudible). I also have arterial hypertension, and I have suffered with microscopic colitis, for which I am on steroids on a permanent basis.
>
> **Decedent's counsel:** And—
>
> **Decedent:** I also have a history of coronary artery disease, which I had a coronary bypass—quadruple coronary bypass in 1988.
>
> **3. Decedent's counsel:** Do you believe that you'll ever be able to return to your prior standard of living, in other words, living in an independent home, free from the assisted living facility that you're at right now?
>
> **Decedent:** No, not at all.

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4. Anne's counsel: Do you feel those programs are or have been beneficial for you?

Decedent: Well, this is a slow thing because this has been – this is spinal stenosis. An atrophy of the motor fibers from my spine have been going on for eight years. (Inaudible) have you notice any noticeable change for the better, my answer would have to be no, not so far.

Anne's counsel: Is there some reason you continue to engage in therapy that apparently is not helpful for you?

Decedent: Because I have to continue and not give up in the possibility of improving...

5. Anne's counsel: Why did you say to Anne, according to her testimony, on the day or two before your surgery in Marquette, that you could not stand her fucking face, and she should get out of your fucking house?

Decedent: That is her characterization of an altercation that we both had.

Anne's counsel: I don't understand your answer.

Decedent: That is a characterization of the (Inaudible) that she puts into that argument that she and I had.

Carla VonGreiff argues that she is not a predecessor in interest.

The Court could locate no published opinions which apply predecessor provision MCR 804(b)(1). As such, common law privity principals could apply. *Couyoumjian v Anspach*, 360 Mich 371, 387-88, 103 NW 2nd 587, 595-96(1960) (dictum).

Common law privity principals could apply in situations such as, a previous owner or a co-owner of property is a predecessor in interest of the present owner; a donor is a predecessor of the done; and a decedent could be a predecessor of the personal representative.

Here, Carla VonGreiff has not been appointed the personal representative. The Court will not find Carla VonGreiff a predecessor in interest. MCR 804(b)(1) is not applicable.

The Court will address each statement in turn.

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Statement 1

1. Decedent's counsel: All right. Now I want to talk about the spousal support factors. The first factor is the parties' relations and conduct, sometimes known as fault. Your wife made the allegation that, in the context of the marriage, you were unfalthful, in other words, had sexual relations with other women. Is that true?

Decedent: Yes.

Anne VonGreiff argues the statement is not hearsay as it is an admission of a party opponent and is excluded from the definition as hearsay under MRE 801(d)(2). The statement sought to be admitted is the statement of Herman VonGreiff, the decedent.

Anne VonGreiff offers, *In Re Estate of Hutton*, 191 Mich app 292 (1991) for the proposition that Herman VonGreiff's statements were admissible as a party-opponent. The Court does not believe *Hutton* stands for the proposition that the decedent is a party opponent.

The Court does not believe that Herman VonGreiff, the decedent is a party to this action.

Having determined Herman VonGreiff is not a party, the statement falls under the definition of hearsay and thus an exception or exclusion must be found in order for statement to be admitted.

The Court looks to MRE 804(b)(3) Statement Against Interest. Herman VonGreiff is unavailable to testify due to his death. The statement sought to be introduced at the time of its making is so far contrary to his pecuniary or proprietary interest that a reasonable person in the declarant's positon would not have made the statement unless believing it to be true.

The Court finds that the admission to extra marital sexual relations when being questioned about spousal support factors during his divorce hearing was directly contrary to his interest. Herman VonGreiff would not have made the statement unless he believed it to be true. The statement comes in as a statement against interest (MRE 804(b)(3).

The Court also finds MRE 804(b) (7) applicable. The statement sought to be admitted was made during a divorce proceeding where the decedent was sworn under oath to tell the truth. The court finds that there

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are guarantees of trustworthiness in the making of the statement. The statement is offered as to a material fact – the decedent's conduct in the marriage which is highly relevant to the question of whether Ann VonGreiff absented herself from the marriage. Herman VonGrelff is deceased as such his statement is more probative on the point and no other evidence can reasonably be procured. Finally, the interest of justice will be served in allowing the statement to be considered.

Statement 1 above will be admitted.

Statement 2

> **2. Decedent's counsel:** Okay. The next factor is the parties' health. We've heard testimony from Anne about some of your medical issues. Would you please describe what medical issues you encountered last year, and then tell us what your current medical situation is?
>
> **Decedent:** I underwent a spinal stenosis relief from Marquette General Hospital, and since then I have been incapacitated. I have not been able to walk without assistance. In addition to that, I have a diagnosis of congestive heart failure, for which I have had two hospital (inaudible). I also have arterial hypertension, and I have suffered with microscopic colitis, for which I am on sterois on a permanent basis.
>
> **Decedent's counsel:** And –
>
> **Decedent:** I also have a history of coronary artery disease, which I had a coronary bypass –quadruple coronary bypass in 1988.

The statements above go to the medical history of the Decedent. Anne Von Grief agrees the statements are hearsay but argues that the "Other Exceptions" of MRE 804(b) (7) should apply. The Court agrees.

The statements sought to be admitted were given by the Decedent, under oath, at his divorce trial. He was answering questions that went to the factors used in determining spousal support.

The statements have guarantees of trustworthiness and are offered as evidence of a material fact – that Herman Von Grief had medical conditions that effected his marital life. Herman Von Grief is deceased as

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such his statements regarding his own medical condition are more probative on the point and no other evidence can reasonably be procured. There is no one who can access his medical records to determine the extent of his medical conditions. Finally, the interest of justice will be served in that a full picture of the parties' marriage is necessary for the Court to rule in the matter.

Statement 2 above will be admitted.

Statement 3

3. Decedent's counsel: Do you believe that you'll ever be able to return to your prior standard of living, in other words, living in an independent home, free from the assisted living facility that you're at right now?

Decedent: No, not at all.

The statement above by Herman VonGreiff is an answer to a question of whether he believes he will ever live independently again.

MRE 804(b)(7) will allow for the admission of the decedent's response.

The statements sought to be admitted were given by the decedent, under oath, at his divorce trial. He was answering questions that went to the factors used in determining spousal support.

The statements have guarantees of trustworthiness and are offered as evidence of a material fact—that Herman VonGreiff did not believe he could return to independent living. Herman VonGreiff is deceased as such his statements regarding his own belief where he could or could not live are more probative on the point and no other evidence can reasonably be procured. Finally, the interest of justice will be served in that a full picture of the parties' marriage is necessary for the Court to rule in the matter.

Statement 3 above will be admitted.

Statement 4

4. Anne's counsel: Do you feel those programs are or have been beneficial for you?

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Decedent: Well, this is a slow thing because this has been—this is spinal stenosis. An atrophy of the motor fibers from my spine have been going on for eight years. (Inaudible) have you noticed any noticeable change for the better, my answer would have to be no, not so far.

Anne's counsel: Is there some reason you continue to engage in therapy that apparently is not helpful to you?

Decedent: Because I have to continue and not give up in the possibility of improving...

Like the medical statements above, Ann VonGreiff offers the therapy statements to show Decedent suffered from spinal stenosis and to show that he had not noticed much of a change and he had a basis for continuing therapy.

The statements will be admitted under MRE 804(b) (7). The statements sought to be admitted were given by the Decedent, under oath, at his divorce trial. He was answering questions that went to the factors used in determining spousal support.

The statements have guarantees of trustworthiness and are offered as evidence of a material fact – that Herman VonGreiff had medical conditions for which he was participating in therapy that effected his marital life. Herman VonGreiff is deceased as such his statements regarding his own medical conditions and treatments are more probative on the point and no other evidence can reasonably be procured. There is no one who can access his medical records or therapy records to determine the extent of his medical conditions. Finally, the interest of justice will be served as the Court needs a full picture of the parties' marriage to rule on this matter.

Statement 4 above will be admitted.

Statement 5

5. Anne's counsel: Why did you say to Anne, according to her testimony, on the day or two before your surgery in Marquette, that you could not stand her fucking face, and she should get out of your fucking house?

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Decedent: That is her characterization of an altercation that we both had.

Anne's counsel: I don't understand your answer.

Decedent: That is a characterization of the (inaudible) that she puts into that argument that she and I had.

Carla VonGreiff objects heartily to the admission of Anne VonGreiff's counsel's questions in the above section of testimony. Carla VonGreiff argues that "this is hearsay upon hearsay" and that the statement is being offered for "no other reason that pure shock value".

Anne VonGreiff argues that the counsel's question is provided to give context to Herman VonGreiff's answer.

The Court will allow counsel's question as context for Herman VonGreiff's answer. Herman VonGreiff's statement is hearsay. MRE 804(b)(7) is the only exception that may apply in this situation.

The statements sought to be admitted were given by the decedent under oath at his divorce trial. He was answering questions that went to factor in determining spousal support.

The statement has guarantees of trustworthiness and is being offered by Anne VonGreiff, not to prove Herman VonGreiff could not stand Anne VonGreiff and that she should get out of his home; rather, Anne VonGreiff argues the fact that the decedent did not deny making the alleged statements is extremely probative. She suggests that if he had not made the statements, he would have denied the statements.

Anne VonGreiff's position may be true, but it may be equally true in the response, Mr. Herman VonGreiff was denying the statement was made.

At any rate, the Court believes justice will be served and will allow for the statement under MRE 807 (b)(7).

Statement 5 above will be admitted.

11-1-18

Date

Honorable Cheryl L. Hill P43370

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Case Search

Case Docket Number Search Results - 347254

Appellate Docket Sheet
COA Case Number: 347254
MSC Case Number: 161535
IN RE VON GREIFF ESTATE

1	VON GREIFF HERMANN A ESTATE OF	ZZ		
2	VON GREIFF CARLA J Oral Argument: Y Timely: Y	AE	RET	(72176) **COLMAN JONATHAN M**
3	JONES-VON GREIFF ANNE Oral Argument: Y Timely: Y	AT	RET	(17376) **MCDONALD WILLIAM I**

COA Status: Case Concluded; File Open **MSC Status:** Pending on Application
Case Flags: Upper Peninsula

01/14/2019 1 Claim of Appeal - Civil
Proof of Service Date: 01/09/2019
Jurisdictional Checklist: Y
Register of Actions: Y
Attorney: 17376 - MCDONALD WILLIAM I

12/26/2018 2 Order Appealed From
From: MARQUETTE PROBATE COURT
Case Number: 18-034046-DE
Trial Court Judge: 43370 HILL CHERYL
Nature of Case:
Civil Miscellaneous

01/14/2019 3 Transcript Filed By Party
Date: 01/09/2019
Filed By Attorney: 17376 - MCDONALD WILLIAM I
Hearings:
08/31/2018
11/07/2018 am & pm sessions
Comments: attached to event #1;partial transcript

01/22/2019 5 Steno Certificate - Tr Request Received
Date: 01/14/2019
Timely: Y
Reporter: 8751 - LUOKKALA WENDY S
Hearings:
07/23/2018
Comments: 8/31/18 & 11/7/18 prev filed

03/01/2019 6 Invol Dismissal Warning - No Dkt Stmt
Attorney: 17376 - MCDONALD WILLIAM I
Due Date: 03/22/2019

03/04/2019 7 Notice Of Filing Transcript
Date: 02/26/2019

AT056

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Timely: Y
Reporter: 8751 - LUOKKALA WENDY S
Hearings:
07/23/2018

03/15/2019 8 Docketing Statement MCR 7.204H
For Party: 3 JONES-VON GREIFF ANNE AT
Proof of Service Date: 03/12/2019
Filed By Attorney: 17376 - MCDONALD WILLIAM I

04/18/2019 9 Brief: Appellant
Proof of Service Date: 04/18/2019
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 17376 - MCDONALD WILLIAM I
For Party: 3 JONES-VON GREIFF ANNE AT
Comments: amended bf filed in evt #15

04/22/2019 11 Motion: Extend Time - Appellee
Proof of Service Date: 04/22/2019
Filed By Attorney: 72176 - COLMAN JONATHAN M
For Party: 2 VON GREIFF CARLA J AE
Fee Code: EPAY
Requested Extension: 07/05/2019
Answer Due: 04/29/2019
Comments: 7/4/19 is a holiday

04/25/2019 10 Defective Filing Letter
Event: 9
Defect:
Table of Contents - Cured

04/30/2019 13 Submitted on Administrative Motion Docket
Event: 11 Extend Time - Appellee
District: L

04/30/2019 15 Brief: Amended - Appellant
Proof of Service Date: 04/30/2019
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 17376 - MCDONALD WILLIAM I
For Party: 3 JONES-VON GREIFF ANNE AT
Comments: appendix from original bf linked to this bf evt

05/01/2019 14 Defect Cured
Event: 9
P/S Date: 04/30/2019
Defect:
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05/01/2019 16 Order: Extend Time - Appellee Brief - Grant
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Event: 11 Extend Time - Appellee
Panel: MFG
Attorney: 72176 - COLMAN JONATHAN M
Extension Date: 07/05/2019

07/01/2019 17 Brief: Appellee
Proof of Service Date: 07/01/2019
Oral Argument Requested: Y
Timely Filed: Y

AT057

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Filed By Attorney: 72176 - COLMAN JONATHAN M
For Party: 2 VON GREIFF CARLA J AE

07/01/2019 18 Noticed
Record: REQST
Mail Date: 07/02/2019

07/18/2019 19 Record Filed
File Location:
Comments: 2 lcf;3 tr;dep;folder(exhs)--marquette probate

01/14/2020 25 Submitted on Case Call
District: G
Item #: 7
Panel: JEM,ELG,MJK

01/14/2020 26 Oral Argument Audio
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04/23/2020 30 Opinion - Authored - Published
View document in PDF format
Pages: 8
Panel: JEM,ELG,MJK
Author: ELG
Result: L/Ct Judgment/Order Reversed

04/23/2020 31 Opinion - Dissent
View document in PDF format
Pages: 5
Author: MJK

06/26/2020 32 SCt: Application for Leave to SCt
Supreme Court No: 161535
Answer Due: 07/24/2020
Fee: E-Pay
For Party: 2
Attorney: 72176 - COLMAN JONATHAN M

06/26/2020 33 SCt Case Caption
Proof Of Service Date: 06/26/2020

06/26/2020 34 Other
Date: 06/26/2020
For Party: 2 VON GREIFF CARLA J AE
Attorney: 72176 - COLMAN JONATHAN M
Comments: Notice of filing for leave to appeal in the Supreme Court

07/10/2020 35 SCt: Answer - SCt Application/Complaint
Filing Date: 07/10/2020
For Party: 3 JONES-VON GREIFF ANNE AT
Filed By Attorney: 17376 - MCDONALD WILLIAM I

07/15/2020 36 Supreme Court - Record Sent To
File Location:
Comments: sc#161535 2 lcf;4 tr;folder(exhs)

07/16/2020 37 SCt: Trial Court Record Received
4 tr; 1 exh; 2 files

07/24/2020 38 SCt: Reply - SCt Application/Complaint
Filing Date: 07/24/2020
For Party: 2 VON GREIFF CARLA J AE
Filed By Attorney: 72176 - COLMAN JONATHAN M

AT058

03/31/2021	41 SCt Order: MOAA -Oral Argument on Lv Appl
	View document in PDF format
	Comments: Invited AC=Probate & Estate Planning Section of SBM.
04/30/2021	42 Michigan Appeals Reports Publication
	332 Mich App 251
05/24/2021	43 Copy Request Fulfilled Case Listing Complete

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CASE# 18340460-DE XREF # - JUDGE HILL FILED DATE 6/29/2018
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ADDRESS
CITY MARQUETTE STATE MI ZIP PHONE
STATUS O CLOSED REOPEN ATTNY 72176 COLMAN PUBLIC P
MICRO DISPO DATE 1/16/2019 DISPO CODE GTD ORIG PR 1/16/2019 01
CSE TYP CHG FROM TYPE CHG VENUE RACE ANCILLARY

NUM	DESC	QUALIFICATION	DUE DATE	PARTY ACTIVITY	COURT ACTIVITY	SURETY
1	IPI	AOT 1/16/2019	1/16/2019	NCD 4/05/2021		

VON GREIFF,CARLA, ATTORNEY: COLMAN
606 ARBOR LAKE LANE
TAMPA BAY FL 33602 INVENTORY: $ 390000.00

NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
2	IPA	6/29/2018					72176			43370

APPLICATION FOR INFORMAL PROBATE AND/OR APPOINTMEN

3	TES	6/29/2018					72176			43370

TESTIMONY OF INTEREST PARTY

4	RRA	6/29/2018					72176			43370

RENUNCIATION OF RIGHT TO APPT/NOMINATION OF PERS R
X3 - AXEL VON GREIFF; HELGA VON GREIFF-COBIAN; ERWIN VON GREIFF

5	DEC	6/29/2018					72176			43370

DEATH CERTIFICATE

6	PET	7/02/2018					72176			43370

PETITION TO DENY ANNE JONES-
VON GREIFF THE PRIVILEGES OF A SURVIVING SPOUSE PURSUANT TO MCL 700.2801(2)
INTER ALIA

7	NOH	7/02/2018		7/23/2018	1500		72176			43370

NOTICE OF HEARING

1	PSV	7/09/2018					72176			43370

PROOF OF SERVICE

8	APA	7/13/2018					72176			43370

APPEARANCE OF ATTORNEY
WIM MCDONALD FOR ANNE JONES-VONGREIFF; POS

10	OBJ	7/20/2018					72176	GTD	12/26/2018	43370

OBJECTION OR CONTESTED MATTER
TO PETITION TO DENY ANNE JONES VON GREIFF THE PRIVILEGES OF SURVIVING SPOUSE

11	OTH	7/20/2018					72176			43370

COUNTER PETITION FOR PROBATE

9	PSV	7/23/2018					72176			43370

PROOF OF SERVICE

12	HRG	7/23/2018		8/31/2018	130		72176			43370

HEARING HELD/PARTIES PRESENT/
MORE TIME NEEDED/SET FOR 1/2 DAY HEARING/NO ORDERS ISSUED/WSL
REP/REC- W LUOKKALA, #8751 CER

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NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
13	PSV	7/30/2018					72176			43370
PROOF OF SERVICE										
14	PSV	8/03/2018					72176			43370
PROOF OF SERVICE										
NOTICE OF DEPOSITION AND FIRST INTERROGATORIES										
15	PSV	8/06/2018					72176			43370
PROOF OF SERVICE										
16	PSV	8/24/2018					72176			43370
PROOF OF SERVICE										
PSV FOR RESPONSES TO CARLA VON GREIFFS FIRST INTERROGATORIES										
17	OTH	8/31/2018					72176			43370
TRANSCRIPT OF FINAL DIVORCE										
HEARING - FILED BY WIM MCDONALD										
21	HRG	8/31/2018					72176			43370
HEARING HELD- PARTIES										
PRESENT, ADJOURNED TO NEXT DATE. TN										
REP/REC- P NOLAN, #9385										
18	ORD	9/05/2018					72176			43370
ORDER										
REGARDING HEARSASY OBJECTION AND POLYCOM APPEARANCE										
19	NOH	9/05/2018		11/07/2018	830		72176			43370
NOTICE OF HEARING										
20	PSV	9/05/2018					72176			43370
PROOF OF SERVICE										
22	OTH	9/18/2018					72176			43370
CARLA VON GREIFFS BRIEF TO EXCLUDE HEARSAY TESTIMONY OF DECEDANT HERMANN VON GRIEFF FROM PRIOR UNRELATED PROCEEDING; POS										
24	OTH	9/24/2018					72176			43370
ANNE JONES VON GREIFFS BRIEF IN SUPPORT OF ADMISSION OF PRIOR TESTIMONY OF DECEDENT HERMANN VON GREIFF										
30	PSV	9/24/2018					72176			43370
PROOF OF SERVICE										
23	TSP	9/25/2018					72176			43370
TRANSCRIPT PREPARED										
TRANSCRIPT OF AUGUST 31, 2018 DONE BY WSL										

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CSE TYP CHG FROM TYPE CHG VENUE RACE ANCILLARY

NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
25	OTH	10/02/2018					72176			43370

CARLA VON GREIFFS REPLY TO
RESPONSE TO BRIEF TO EXCLUDE HEARSAY TESTIMONY OF DECEDENT HERMANN VON GREIFF FROM A PRIOR UNRELATED PROCEEDINGS; POS

29	RPL	10/09/2018					72176			43370

ANNE JONES-VONGREIFF'S
SURREPLY IN SUPPORT OF ADMISSION OF PRIOR TESTIMONY OF DECEDENT HERMANN VON GREIFF

31	PSV	10/09/2018					72176			43370

PROOF OF SERVICE

26	ORD	11/01/2018					72176			43370

ORDER
ORDER ON HEARSAY RULINGS

27	PSV	11/02/2018					72176			43370

PROOF OF SERVICE

28	BT	11/07/2018					72176			43370

BENCH TRIAL RE SPOUSE/PR
P NOLAN STARTED/L SKYTTA ALSO RECORDED; PARTIES TO DO CLOSINGS
REP/REC- P NOLAN, #9385

33	TSP	11/28/2018					72176			43370

TRANSCRIPT PREPARED
PETITION TO DENY ANNE JONES-VONGREIFF THE PRIVILEGES OF SURVIVING SPOUSE OF 11/07/2018

32	ATF	12/04/2018					72176			43370

PETR CARLA VONGREIFFS PROPOSED
FINDINGS OF FACT/CONCLUSIONS OF LAW; POS

34	OTH	12/14/2018					72176			43370

RESP PROPOSED FINDINGS OF
FACT AND CONSLUSIONS OF LAW; POS

35	OTH	12/18/2018					72176			43370

PETR CARLA VONGREIFF REPLY TO
RESP PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; POS

36	ORD	12/26/2018					72176			43370

ORDER FINDING ANNE JONES-
VONGREIFF NOT THE SURVIVING SPOUSE OF HERMANN VONGREIFF PURSUANT TO MCL 700.2801

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NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
40	COA	1/14/2019					72176			43370
CLAIM OF APPEAL										
43	COA	1/14/2019					72176			43370
CLAIM OF APPEAL										
37	AOT	1/16/2019					72176			43370
IPI ACCEPTANCE OF TRUST/APPOIN										
38	RIO	1/16/2019					72176			43370
REGISTERS ORDER/STATEMENT										
39	LET	1/16/2019					72176			43370
LETTERS OF AUTHORITY										
51	DSP	1/16/2019								
DISPO CODE GTD WAS ENTERED										
44	RRC	1/17/2019					72176			43370
REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANS										
X2										
41	NOD	1/22/2019								43370
NOTICE TO GDN/CONS/PERS REP OF DUTIES										
42	NOD	1/28/2019								43370
NOTICE TO GDN/CONS/PERS REP OF DUTIES										
45	RRC	1/28/2019					72176			43370
REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANS										
XC FR MCDONALD TO COA; POS										
46	TSP	2/26/2019					72176			43370
TRANSCRIPT FILED --HEARING										
DATE OF 7/23/2018 - TRANSCRIBED BY WSL 8751										
47	NFT	2/26/2019					72176			43370
NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MA										
48	AFP	3/01/2019					72176			43370
AFFIDAVIT OF PUBLICATION										
49	INV	4/05/2019					72176			43370
IPI INVENTORY FILED										
50	IFC	4/05/2019					72176			43370
IPI INVENTORY FEE CALCULATED										
52	PSV	4/22/2019					72176			43370
PROOF OF SERVICE										
53	IFP	4/29/2019								43370
INVENTORY FEE PAID										
54	NOD	5/02/2019								43370
NOTICE TO GDN/CONS/PERS REP OF DUTIES										

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NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
55	NCD	2/10/2020					72176			43370
IPI NOTICE OF CONTINUED ADMINI										
56	PSV	2/21/2020					72176			43370
PROOF OF SERVICE										
57	OTH	4/27/2020					72176			43370
MISCELLANEOUS										
COA DECISION										
58	PRF	4/30/2020					72176			43370
PETITION FOR REMOVAL FID & APPT OF SUCCESSOR W/ PSV										
59	NHR	5/12/2020		6/23/2020	900		72176			43370
NOTICE OF HEARING, REMOTE										
60	PSV	5/12/2020					72176			43370
PROOF OF SERVICE										
61	MOT	5/18/2020					72176			43370
PR'S MOTION FOR STAY OF PROCEEDINGS										
62	OTH	5/18/2020					72176			43370
PR'S BRIEF IN SUPPORT OF MOTION FOR STAY OF PROCEEDINGS										
63	PSV	5/18/2020					72176			43370
PROOF OF SERVICE										
64	OTH	6/04/2020					72176			43370
MISCELLANEOUS										
ANNE VON-GREIFF'S RESPONSE AND BRIEF IN OPPOSITION TO PR'S MOTION FOR STAY OF PROCEEDINGS										
65	BRF	6/04/2020					72176			43370
BRIEF FILED										
BRIEF IN SUPPORT OF PETITION OF ANNE VON-GREIFF TO REMOVE PR AND APPOINTMENT OF SUCCESSOR										
66	PSV	6/04/2020					72176			43370
PROOF OF SERVICE										
69	OBJ	6/11/2020					72176			43370
OBJECTION OR CONTESTED MATTER										
PR'S RESPONSE AND OBJECTIONS TO THE PETITION TO REMOVE PR AND APPOINTMENT OF SUCCESSOR										

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NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
67	RCE	6/12/2020		7/01/2020	1000		72176			43370
REMOVE CALENDAR ENTRY FOR PETITION FOR STAY W/ ZOOM INVITE										
68	PSV	6/12/2020					72176			43370
PROOF OF SERVICE										
70	HRG	6/23/2020					72176			43370
HEARING HELD VIA ZOOM; COLEMAN AND MCDONALD APPEARED-BOTH GAVE VERBAL ARGUMENT-WIM TO PREPARE ORDER TO PRODUCE ACCTG W/IN 30 DAYS-MOTION TO STAY AND PET TO REMOVE PR ADJ TO NXT DATE REP/REC- W LUOKKALA, #8751 CER										
71	MOT	6/23/2020		7/28/2020	900		72176			43370
MOTION FOR STAY										
72	PET	6/23/2020	1	7/28/2020	900		72176			43370
PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SUCCESSOR										
73	NHR	6/23/2020					72176			43370
NOTICE OF HEARING, REMOTE										
74	OTH	6/23/2020					72176			43370
ZOOM NOTICE/INSTRUCTIONS										
75	PSV	6/23/2020					72176			43370
PROOF OF SERVICE										
76	NOP	6/29/2020					72176			43370
NOTICE OF PRESENTMENT FROM WILLIAM MCDONALD										
77	PSV	6/29/2020					72176			43370
PROOF OF SERVICE										
78	NOG	6/29/2020					72176			43370
NOTICE NOTICE OF APPLICATION FOR LEAVE TO APPEAL										
79	PSV	6/29/2020					72176			43370
PROOF OF SERVICE										
80	ORD	7/02/2020					72176			43370
ORDER ORDER INTREPRETING TRUST FROM NOTICE OF PRESENTMENT										

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NUM	CODE	F/DATE	SEQ	H/DATE	TIME	MICROFILM#	ATTNY	DISP	DATE	JUDGE
81	PSV	7/05/2020					72176			43370
PROOF OF SERVICE										
82	ORD	7/06/2020					72176			43370
ORDER										
STIPULATION AND ORDER RE: FIRST ANNUAL ACCOUNTING										
83	PSV	7/06/2020					72176			43370
PROOF OF SERVICE										
OF STIP AND ORDER. SENT TO MCDONALD TO SERVE ON PARTIES AS REQUESTED										
84	PSV	7/10/2020					72176			43370
PROOF OF SERVICE										
85	ORD	7/15/2020					72176			43370
ORDER										
ORDER FROM NOTICE OF PRESENTMENT REGARDING ANNUAL ACCOUNTING										
86	PSV	7/15/2020					72176			43370
PROOF OF SERVICE										
87	ACC	7/27/2020					72176			43370
IPI ANNUAL ACCOUNT FILED										
88	PSV	7/27/2020					72176			43370
PROOF OF SERVICE										
89	HRG	7/28/2020					72176			43370
MCDONALD AND COLMAN APPEARED										
VIA ZOOM- PARTIES STIPULATED TO A STAY OF PROCEEDINGS UNTIL NOTIFIED BY THE										
SUPREME COURT RE: APPLICATION FOR LEAVE										
REP/REC- W LUOKKALA, #8751 CER										
90	ORD	7/28/2020					72176			43370
STIPULATED ORDER FOR STAY										
91	PSV	7/29/2020					72176			43370
PROOF OF SERVICE										
92	NCD	2/25/2021					72176			43370
IPI NOTICE OF CONTINUED ADMINI										
93	NCD	4/05/2021					72176			43370
IPI NOTICE OF CONTINUED ADMINI										
94	ORD	4/12/2021					72176			43370
ORDER										
FROM COURT OF APPEALS RE LEAVE OF APPEAL										
95	PSV	5/17/2021					72176			43370
PROOF OF SERVICE										

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