

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ESTATE OF LINDA HORN, by JOELYNN T.  
STOKES, Personal Representative,

Plaintiff-Appellant,

v

MICHAEL J. SWOFFORD, D.O., and  
SOUTHFIELD RADIOLOGY ASSOCIATES,  
PLLC,

Defendants-Appellees.

FOR PUBLICATION  
October 22, 2020

No. 349522  
Oakland Circuit Court  
LC No. 2018-164148-NH

Advance Sheets Version

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Before: BOONSTRA, P.J., and MARKEY and HOOD, JJ.

BOONSTRA, P.J. (*concurring*).

I concur in the majority opinion. I write separately simply to encourage our Supreme Court, in this or another appropriate case, to clarify the law in this area. I note that while this case turns largely on the Supreme Court’s decision in *Woodard v Custer*, 476 Mich 545; 719 NW2d 842 (2006), by which we are bound, that decision featured no fewer than four opinions, including three concurring opinions—one of which was authored by the same justice who wrote the four-justice majority opinion, and one of which maintained that it actually was the majority opinion (by virtue of the second concurrence), see *id.* at 591-592 (TAYLOR, C.J., concurring). Moreover, this Court’s unpublished decision in *Higgins v Traill*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 343664), featured a separate concurring opinion by Judge GLEICHER in which she maintained that *Woodard*’s analysis was faulty in certain respects and should be reconsidered. Although the Supreme Court subsequently denied leave to appeal in *Higgins*, it did so on an evenly split 3-3 vote, with one justice not participating. And there remains disagreement—which the Supreme Court could put to rest, one way or another—about whether its order in *Estate of Jilek v Stockson*, 490 Mich 961 (2011), implicitly overruled *Reeves v Carson City Hosp (On Remand)*, 274 Mich App 622; 736 NW2d 284 (2007).

For these reasons, I concur in the majority opinion but encourage our Supreme Court to provide much-needed clarity in this complex area of law.

/s/ Mark T. Boonstra