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**STATE OF MICHIGAN**
**IN THE SUPREME COURT**

KERAN ERNEST, Individually and as Personal Representative of the Estate of Maurice Ernest, Deceased

Plaintiff/Appellant,

-vs-

Dr. Paul W. Brown Jr., Dr. Elmahdi M. Saeed, Dr. Farouk M. Belal, McLaren Health Care Corporation and Cypress Cardiology, PLLC,

Defendants/Appellees.

Supreme Court No. 168462
Court of Appeals Case No. 368566
Genesee County Case No: 23-119425-NH
Honorable: Celeste D. Bell

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# PAUL W. BROWN, JR., MD AND MCLAREN HEALTH CARE CORPORATION'S ANSWER TO PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

***ORAL ARGUMENT REQUESTED****

NOW COME DEFENDANTS-APPELLEES, Paul W. Brown, Jr., MD and McLaren Health Care Corporation, by and through their attorneys, CLINE, CLINE & GRIFFIN, P.C., specifically J. Brian MacDonald and Megan R. Mulder, and hereby submit Defendants-

Appellees Paul W. Brown, Jr., MD and McLaren Health Care Corporation's Answer to Plaintiff-Appellant's Application for Leave to Appeal.

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## APPENDIX/EXHIBITS


**Exhibit 1** Letters of Authority

**Exhibit 2** Plaintiff's Notice of Intent

**Exhibit 3** Plaintiff's Complaint

**Exhibit 4** Defendants' Motion for Summary Disposition

**Exhibit 5** Plaintiff's Response to Motion for Summary Disposition

**Exhibit 6** Defendants' Reply to Plaintiff's Response to Motion for Summary Disposition

**Exhibit 7** Genesee County Circuit Court Order dated October 23, 2023

**Exhibit 8** Plaintiff-Appellant's Bypass Application for Leave

**Exhibit 9** Defendants-Appellees' Response to Plaintiff-Appellant's Bypass Application for Leave

**Exhibit 10** Order Denying Plaintiff-Appellant's Bypass Application for Leave

**Exhibit 11** *Poniewierski v William Beaumont Hospital Royal Oak, et al*, unpublished per curiam opinion of the Court of Appeals, issued December 1, 2022

**Exhibit 12** Order Denying Leave in *Poniewierski v William Beaumont Hospital Royal Oak, et al* dated October 6, 2023

**Exhibit 13** Plaintiff-Appellant's Application for Leave

**Exhibit 14** Defendants-Appellees' Response to Plaintiff-Appellant's Application for Leave

**Exhibit 15** Court of Appeals Opinion dated March 20, 2025

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## COUNTER-STATEMENT OF APPELLATE JURISDICTION

Defendants-Appellees, Paul W. Brown, Jr., MD and McLaren Health Care Corporation, state this Court has jurisdiction to consider Plaintiff-Appellant's Application for Leave and the instant Answer to Plaintiff-Appellant's Application for Leave under MCR 7.305.

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals erred when it affirmed the trial court's order granting Defendants' Motion for Summary Disposition in Lieu of an Answer by applying the holding of *Waltz v Wyse* to conclude Plaintiff's Complaint was time barred?

Plaintiff-Appellant Answers: "Yes"

**Defendants-Appellees Answer: "NO"**

**Court of Appeals Answers: "NO"**

**This Court Should Answer: "NO"**

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## STATEMENT OF FACTS AND PROCEDURAL HISTORY

**Introduction**

Plaintiff failed to file her Complaint timely, which warranted dismissal with prejudice by the Genesee County Circuit Court. The Michigan Court of Appeals agreed with the Genesee County Circuit Court, affirming the dismissal of Plaintiff's Complaint. Defendants-Appellees ask this Court to deny Plaintiff-Appellant's Application for Leave.

Plaintiff's Complaint contained allegations of malpractice and wrongful death. The date of the alleged malpractice was July 16, 2020. Mr. Ernest died the following day on July 17, 2020. Given this is a claim brought under the Wrongful Death Act, the Wrongful Death Savings Provision is applicable. Pursuant to MCL 600.5852, Plaintiff had two years from the date the letters of authority were issued to file suit. Here, the letters of authority were issued on June 7, 2021, giving Plaintiff until June 7, 2023 to file suit. (Exhibit 1). However, Plaintiff did not file suit until August 14, 2023, well after the June 7, 2023 deadline. (Exhibit 3). As such, Plaintiff-Appellant's Complaint was untimely.

Plaintiff's Notice of Intent was filed on February 10, 2023, after the expiration of the two-year statute of limitations period for malpractice (June 16, 2022). As such, the filing of the Notice of Intent did not trigger tolling. Additionally, MCL 600.5856(c) does not provide for tolling of a savings provision. The Court in *Waltz v Wyse* made clear that MCL 600.5852 is a savings provision. *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004). *See also Lentini v Urbancic*, 267 Mich App 579; 705 NW2d 701 (2005). As such, Plaintiff-Appellant does not receive the benefit of tolling based upon the filing of the Notice of Intent.

Plaintiff's Complaint was properly dismissed by the Genesee County Circuit Court pursuant to the relevant Michigan Statutes and in accordance with *Waltz v Wyse*. The Court of

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Appeals appropriately upheld the Genesee County Circuit Court's ruling, which dismissed Plaintiff's Complaint with prejudice.

Plaintiff now comes before this Court to attempt to persuade it that *Waltz* should be overturned. However, Defendants-Appellees maintain that *Waltz* was appropriately decided. This instant matter does not present any unique facts or circumstances that would warrant overturning *Waltz*. Disagreement with a decision is not enough to warrant overturning the decision in its entirety. Plaintiff-Appellant's Application for Leave should be denied.

**Factual Background**

On July 16, 2020, Mr. Ernest presented to McLaren Flint with complaints of chest pain and diaphoresis. His pain began two days prior to presentation. He was seen in the emergency department and then transferred to the cardiac unit for observation in the early morning hours of July 17, 2020.

Mr. Ernest was monitored and underwent a cardiology consult while in the observation unit. Sadly, Mr. Ernest's condition deteriorated and he was pronounced dead on July 17, 2020.

**Procedural History**

Letters of authority were issued by the Genesee County Probate Court on June 7, 2021. (Exhibit 1). This was the first personal representative to be appointed. Plaintiff filed the Notice of Intent on or about February 10, 2023. (Exhibit 2). Plaintiff filed suit on or about August 14, 2023. (Exhibit 3).

Defendants-Appellees filed a Motion for Summary Disposition in Lieu of an Answer on or about September 14, 2023. (Exhibit 4). Co-Defendants-Appellees filed similar motions. Plaintiff-Appellant filed a Response on or about October 13, 2023. (Exhibit 5). Defendants-Appellees filed a Reply to Plaintiff-Appellant's Response on or about October 18, 2023. (Exhibit

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6). Oral argument occurred on October 23, 2023 before Genesee County Circuit Court Judge Celeste Bell. Judge Bell granted Defendants-Appellees' Motion for Summary Disposition in Lieu of an Answer, along with the motions for summary disposition filed by the other named defendants. An order dismissing Plaintiff-Appellant's Complaint with prejudice, in accordance with the Genesee County Circuit Court's ruling, was entered that same day. (Exhibit 7).

On or about November 8, 2023, Plaintiff-Appellant filed a Claim of Appeal with the Court of Appeals. On December 26, 2023, Plaintiff-Appellant filed a Bypass Application for Leave to Appeal before the Michigan Supreme Court. (Exhibit 8). The instant Defendants-Appellants filed a Response to Plaintiff-Appellant's Bypass Application for Leave on January 23, 2024. (Exhibit 9). The other named Defendants-APpellants also filed responses. On March 29, 2024, the Michigan Supreme Court denied Plaintiff-Appellant's Bypass Application. (Exhibit 10).

On April 15, 2024, Plaintiff-Appellant filed a Brief on Appeal. (Exhibit 13). On May 6, 2024, Defendants-Appellees jointly filed a Motion to Affirm. On May 30, 2024, the Motion to Affirm was denied. On July 15, 2024, the instant Defendants-Appellees filed a Response to Plaintiff-Appellant's Brief on Appeal. (Exhibit 14). Oral argument took place on March 11, 2025. On March 20, 2025, the Court of Appeals issued an opinion affirming the Genesee County Circuit Court's Order granting summary disposition. (Exhibit 15).

Plaintiff-Appellant has now filed an Application for Leave before this Court asking it to overturn *Waltz v Wyse* under the guise it was wrongly decided. Defendants-Appellants maintain that *Waltz* was correctly decided. As such, Plaintiff-Appellant's Application for Leave should be denied.

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## STANDARD OF REVIEW

The standard of review for an order denying or granting summary disposition is de novo. *El-Khalil v. Oakwood Healthcare, Inc.*, 504 Mich. 152, 159, 934 N.W.2d 665 (2019); *Gorman v. Am. Honda Motor Co.*, 302 Mich. App. 113, 115, 839 N.W.2d 223 (2013). A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason. *Mulholland v. DEC Int'l Corp.*, 432 Mich. 395, 411, 443 N.W.2d 340 (1989) n. 10. The standard of review for questions regarding statutory interpretation is also de novo. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010).

## ARGUMENT

### I. PURSUANT TO MCL 600.5852 AND *WALTZ V WYSE*, PLAINTIFF-APPELLANT'S CLAIM IS UNTIMELY.

Plaintiff's Complaint is time barred pursuant to MCL 600.5805(8) and MCL 600.5852. *Waltz v Wyse* further supports the dismissal of Plaintiff's Complaint. The Court of Appeals appropriately affirmed the Genesee County Circuit Court's Order granting Defendants-Appellees' Motion for Summary Disposition and dismissing Plaintiff's Complaint. Plaintiff-Appellant's Application for Leave should be denied.

#### A. Plaintiff-Appellant's Complaint is time barred because the statute of limitations ran prior to its filing and tolling is not applicable.

MCL 600.5805(8) provides that the statute of limitations for medical malpractice claims is two years from the date of the accrual of the claim. The Estate's claim accrued against McLaren Flint and Dr. Brown on July 16, 2020 when Mr. Ernest presented to the McLaren Flint Emergency Department. As such, the two year statute of limitations is July 16, 2022. There is

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no dispute the Estate filed its lawsuit on August 14, 2023, which was well after the initial two-year statute of limitations period. Therefore, the Estate's claim is time barred under MCL 600.5805(8).

Since Plaintiff-Appellant's claim was brought under the Wrongful Death Act, the savings provision comes into play. The Wrongful Death Savings Provision, as detailed in MCL 600.5852, states:

> (1) If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.
>
> (2) If the action that survives by law is an action alleging medical malpractice, the 2-year period under subsection (1) runs from the date letters of authority are issued to the first personal representative of an estate. Except as provided in subsection (3), the issuance of subsequent letters of authority does not enlarge the time within which the action may be commenced.
>
> (3) If a personal representative dies or is adjudged by a court to be legally incapacitated within 2 years after his or her letters are issued, the successor personal representative may commence an action alleging medical malpractice that survives by law within 1 year after the personal representative died or was adjudged by a court to be legally incapacitated.
>
> (4) Notwithstanding subsections (1) to (3), an action shall not be commenced under this section later than 3 years after the period of limitations has run.

Pursuant to the above, Plaintiff-Appellant has two years from the date the letters of authority were issued to file suit. Letters of authority appointing a personal representative are issued on the date on which they are signed by the probate judge. *Estate of Jesse v Lakeland Specialty Hosp at Berrien Ctr*, 328 Mich App 142, 936 NW2d 705 (2019). In the instant matter, letters of authority were issued to the first personal representative on June 7, 2021. (Exhibit 1). Pursuant to the above statute, the Estate had until June 7, 2023 to file suit. Suit was not filed

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until August 14, 2023, well beyond the June 7, 2023 deadline under the Wrongful Death Savings Provision. (Exhibit 3). As such, the Estate's claim is time barred.

Additionally, Plaintiff-Appellant is not entitled to tolling based upon the filing of the Notice of Intent. Plaintiff-Appellant's Notice of Intent was filed on February 10, 2023, well after the initial two-year statute of limitations of July 16, 2022. Therefore, tolling is not appropriate. MCL 600.5856(c).

Furthermore, MCL 600.5852 is a savings provision and not subject to tolling. *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004). Since there is no tolling, the Wrongful Death Savings Provision mandated Plaintiff-Appellant's lawsuit be filed by June 7, 2023. There is no doubt or dispute that the Estate filed suit on August 14, 2023, well after the June 7, 2023 deadline. As such, Plaintiff-Appellant's Complaint is time barred and was appropriately dismissed by the Genesee County Circuit Court. The Application for Leave should be denied.

**B. *Waltz v Wyse* should not be overturned.**

The Court in *Waltz v Wyse* held that the Wrongful Death Savings Provision is not subject to tolling. *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004). In reaching that conclusion, the Court stated as follows:

> Section 5852 is a *saving* provision designed "to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions." *Lindsey, supra* at 66, 564 N.W.2d 861. It is not a "statute of limitations" or a "statute of repose." Thus, the notice tolling provision, § 5856(d)—which explicitly applies only to "the statute of limitations or repose"—does not operate to toll the additional period permitted under § 5852 for filing wrongful death actions.

*Id.* at 655.

In coming to that conclusion, the Court went through great lengths to explore the statutory construction of MCL 600.5856. Specifically, the Court stated as follows:

> Section 5856(d), by its express terms, tolls only the applicable "statute of limitations or repose." As we recently stated in **818 *Miller, supra* at 202, 644 N.W.2d 730, the wrongful death provision, § 5852, "is a *saving statute,* not a statute of limitations." (Emphasis supplied.)[12] See also *Lindsey v. Harper Hosp,* in which we explained that § 5852, as "the statute of limitations *saving provision* " and an "*exception* to the statute of limitations," operated "to suspend the running of the statute until a personal representative is appointed to represent the interests of the estate."].

*Id.* at 650.

The Court went on to say:

> Section 5852 clearly provides that it is an exception to the limitation period, allowing the commencement of a wrongful death action as many as three years after the applicable statute of limitations has expired.

*Id.* at 651.

Importantly, other courts have followed *Waltz v Wyse*. See *Lentini v Urbancic*, 267 Mich App 579; 705 NW2d 701 (2005). See also *Farley v Advanced Cardiovascular Health Specialist, P.C.*, 266 Mich App 566; 703 NW2d 115 (2005).

Notably, after *Waltz* was decided, MCL 600.5856 was amended by the legislature. This is important because the legislature is presumed to be aware of judicial statutory interpretations. *Longstreth v Gensel*, 423 Mich 675, 691; 377 NW2d 804 (1985). As such, when the legislature amended MCL 600.5856, it did so with the presumed knowledge of the *Waltz* holding. If the legislature felt it necessary to correct the Court's interpretation of *Waltz* for any reason, it could have done so then or at any point over the past 20 years since *Waltz* was decided. It has not. The fact that the legislature has not addressed the *Waltz* holding by amending the statute suggests *Waltz* was and is fully in line with what the legislature intended.

The Court in *Waltz, supra,* correctly identified that MCL 600.5852 is a savings provision, not a statute of limitations or statute of repose, and thus is not subject to tolling. There are



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simply no facts to support that the application of *Waltz* to the instant matter defies legislative intent and leads to an inappropriate result. The legislative intent of ensuring a lawsuit does not die with the death of the original claimant was no doubt met here. The Estate had three years to file suit in the instant matter. Specifically, the alleged malpractice occurred on or about July 16, 2020 and Mr. Ernest died the following day on July 17, 2020. The personal representative was appointed on June 7, 2021 leaving the Estate until June 7, 2023 to file suit, which it failed to do.

Plaintiff-Appellant cites two cases in support of their argument, *Hardy v Maxheimer*, 429 Mich 422; 416 NW2d 299 (1987) and *Omelenchuck v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000), both of which are distinguishable. In *Hardy*, *supra*, the question before the court was whether MCL 600.5852 applied to cases in which death was instantaneous. That case did not address the issue of whether the Wrongful Death Savings Provision could be tolled.

In *Omelenchuck*, *supra*, the issue before the court was whether the notice of intent tolling provision was 182 days or 154 days when a defendant did not provide a written response to the notice of intent. The Court did not decide whether the Wrongful Death Savings Provision could be tolled. Since neither of these cases address the issue at hand, neither are relevant to the question before this Court, i.e. whether tolling applies to the Wrongful Death Savings Provision.

Plaintiff-Appellant also argues that by accepting the *Waltz* holding, somehow Defendants-Appellees are left with the ability to control when a Complaint can be filed. This is absolutely not the case. Defendants-Appellees are left with no control over when a Complaint can be filed under the Wrongful Death Savings Provision. Specifically, Defendants-Appellees have no control over when Plaintiff requests letters of authority from the probate court or when those are issued. Similarly, Defendants-Appellees have no control over when Plaintiff files a notice of intent.



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Waltz was clear, a savings provision is not entitled to tolling. The intent of the legislature was in no way diminished by the holding. Given that the legislative intent was maintained and there are no unique facts or circumstances to suggest *Waltz* should be overturned, Plaintiff-Appellant's Application for Leave should be denied.

Additionally, in light of this Court's decision to deny leave in a recent case dealing with a similar question, *Poniewierski v William Beaumont Hosp Royal Oak*, 995 NW2d 353 (Mich), reconsideration den 998 NW2d 202 (Mich, 2023), Defendants-Appellees request this Court take a similar position. (Exhibit 11 and Exhibit 12).

## CONCLUSION AND RELIEF REQUESTED

The letters of authority in this matter were issued on June 7, 2021, appointing the first personal representative, Keran Ernest. Under the Wrongful Death Savings Provision, Plaintiff-Appellant was required to file suit by June 7, 2023, or within two years after the letters of authority were issued. Plaintiff-Appellant failed to do so. Instead, suit was not filed until August 14, 2023, well after the June 7, 2023 deadline. Since Plaintiff did not bring the lawsuit within the two-year period of the appointment of the first personal representative, the lawsuit is untimely.

Furthermore, *Waltz* was appropriately decided. There are no facts or unique circumstances in the instant matter warrants overturning *Waltz*. Additionally, *Waltz* is in line with the legislative intent of the Wrongful Death Savings Provision. Disagreement with a decision is not enough. As such, Plaintiff-Appellant's Application for Leave should be denied



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**WHEREFORE**, Defendants-Appellees, McLaren Flint and Dr. Brown, request that Plaintiff-Appellant's Application for Leave be denied.

Respectfully Submitted,

**CLINE, CLINE & GRIFFIN, P.C.**

Date: June 4, 2025

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CERTIFICATE OF COMPLIANCE

I certify that Defendants-Appellees' Response to Plaintiff-Appellant's Bypass Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). This Brief uses a 12-point proportional font (Times New Roman), and the word count, based upon the word count of the word-processing system, for this brief is 3550.

Date: June 4, 2025

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