

STATE OF MICHIGAN
COURT OF APPEALS

LIZ PATMON,

Plaintiff-Appellee,

and

MENDELSON ORTHOPEDICS, P.C.,

Intervening Plaintiff-Appellee,

v

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY,

Defendant-Appellant.

UNPUBLISHED

December 23, 2014

No. 318307

Wayne Circuit Court

LC No. 12-012378-NF

Before: O'CONNELL, P.J., and BORRELLO and GLEICHER, JJ.

O'CONNELL, P.J. (*dissenting*).

I respectfully dissent. If I were writing on a clean slate, in principle I would agree with my colleague's well-written opinion. But, while the opinion reaches an equitable result in a heart-tugging factual situation, it is legally unsound. I would reverse the trial court's erroneous decision that a step-child is related to a step-parent even after a spouse's death terminated the marriage, and remand.

Intermediate appellate courts have no authority to change the law. Principles of stare decisis require us to reach the same result in a case that presents substantially similar issues as presented in a case that another panel of this Court decided. MCR 7.215(C)(2); *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 341; 686 NW2d 9 (2004). No matter how dire the circumstances, or how deserving the cause, we are not allowed to side-step the law.

Persons are related by affinity when they are members of a family that is unified by a marriage. *People v Armstrong*, 212 Mich App 121, 128; 536 NW2d 789 (1995). A relationship by affinity includes a step-relationship created by the remarriage of a parent. *Id.* at 122, 128. However, the law in Michigan is clear: a marriage terminates on death of a spouse. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Byington v Byington*, 224 Mich App 103,

109; 568 NW2d 141 (1997). The surviving spouse is no longer related to the other spouse's children. See *In re Combs Estate*, 257 Mich App 622, 625; 669 NW2d 313 (2003).

Sometimes, this rule leads to an apparently unfair result. For instance, in *Combs*, the step-children were not entitled to any proceeds from a wrongful death action involving their step-mother because their father passed away several years earlier. *Id.* at 623, 625. But this is the law in Michigan, and we are not free to avoid it.

In this case, Patmon is not entitled to recover under the language of the policy because she is not related to Jordan by blood, affinity, or marriage. While a former step-child may remain close and still maintain an emotional relationship with the former step-parent, at law, they are no longer related. The “why” is uncomplicated—marriage terminates on divorce or the death of a spouse. The legal relationship formed as a result of that marriage does not survive the spouse's death.

While I note that the contract may be ambiguous for other reasons,¹ the parties did not raise or argue this position below, and I would not decide this case on the basis of an unpreserved issue. See *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

I would reverse and remand.

/s/ Peter D. O'Connell

¹ A contract's provisions are ambiguous when its provisions are capable of conflicting interpretations. *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). In this case, the contract's provision that a relative must be “related to you by blood, marriage or adoption” conflicts with the next statement that a relative “includ[es] a ward or foster child[.]” While these conflicting provisions create an ambiguity, I am not convinced that it applies to the current factual situation, which involves a step-child rather than a ward or foster child.