

MSC Order List: September 15, 2010

16. September 2010 By Madelaine Lane

On September 15, 2010, the Michigan Supreme Court denied 12 applications for leave to appeal, denied one bypass application for leave to appeal, and held its decision on the application for leave to appeal in the case of *American Home Mortgage Servicing v. Panko*, No. 141958, in abeyance pending the Court's decision in *Tusu v. Hurt*, No. 139769.

The Court remanded the case *People v. Johnson*, No. 140255, to the Wayne County Circuit Court to consider whether the sentencing guidelines apply to conditions imposed by a court under MCL 762.13 (Holmes Youthful Trainee Act). The Court also remanded the case of *People v. Craig*, No. 141033, to the Wayne County Circuit court for an amendment of the Judgment of Sentence to reflect a single conviction for gross indecency under MCL 750.338b. In reaching this conclusion, the Court held that MCL 750.10a was a definitional statute and does not carry the possibility of a separate conviction or sentence. Finally, the Court remanded the case of *Loar v. Department of Human Services*, No. 140810, to the Court of Appeals with directions to articulate the reason(s) the Court of Appeals denied plaintiffs' complaint for mandamus.

The Court took substantive action in one criminal and three civil cases which are discussed after the jump.

People v. Hill, No. 141122: The Court ordered oral argument on the application for leave to appeal. In a per curiam unpublished decision released on May 11, 2010, the Court of Appeals unanimously reversed and remanded the defendant's convictions for home invasion, assault and battery, unlawful imprisonment, extortion, and three counts of armed robbery. In reaching this decision, the court held that the trial court's decision to allow a police detective to testify regarding the hearsay statement of Jacqueline Sistrunk violated the confrontation clause of the Sixth Amendment. The Supreme Court directed the parties to address: 1) whether the dog tracking test was improperly admitted; and, 2) whether, in light of the resolution of that issue, the admission of Sistrunk's statement was harmless beyond a reasonable doubt.

Drake v. City of Benton Harbor, No. 140685: The Court ordered oral argument on the application for leave to appeal the Court of Appeal's January 21, 2010 decision. At oral argument, the parties were directed to address whether the City may lease a portion of Jean Klock Park to Harbor Shores Community Redevelopment Corporation to develop three holes of a proposed 18-hole Jack Nicklaus golf course without violating either: 1) the restriction in the 1914 deed; or, 2) the January 27, 2004 consent judgment between these same two parties relating to the City's sale of a portion of the park to Grand Boulevard Renaissance, LLC. The Michigan Municipal League and the Michigan Recreation and Park Association were invited to file briefs amicus curiae.

Evans v. Gross Pointe Public School System, No. 140670: The Court granted leave to appeal the January 19, 2010 Court of Appeals decision which vacated an earlier October 22, 2009 ruling by the same court. Following an evidentiary hearing, the trial court granted the defendant's motion for summary disposition under MCR 2.116(c)(3). Specifically, the court held that plaintiff failed to serve the defendant with the complaint and summons in this case. Although plaintiff's process server contended he served defendant with both the complaint and summons, the trial court judge deemed defendant, specifically the executive assistant of the superintendent who was served with the papers, to be more credible when she testified that she only received the complaint.

In its October 22, 2009 opinion, the Court of Appeals initially reversed and remanded the case holding that the defendant made a general appearance by filing an answer and therefore the case could not be dismissed based on a failed service of process. However, the Court of Appeals later vacated its ruling based on *Al-Shimmari v. Detroit Medical Center*, 477 Mich 280; 731 NW2d 29 (2007).

In its January 21, 2010 opinion, the court held that the trial court did not err in conducting an evidentiary hearing to determine that plaintiff failed to serve the summons and, further, that the trial court correctly determined that the defendant was not equitably estopped from raising inadequate service as a defense. In reaching this conclusion, the court noted that in *Al-Shimmari*, the Supreme Court held that it is proper for a trial court to conduct a bench trial to determine issues of fact relating to motions under MCR 2.116(c)(1)-(6). Moreover, the court held that because the plaintiff created the procedural problem, specifically the improper service of process, it was not entitled to the benefit of the equitable estoppel doctrine under MCR 2.105(j)(3).

Duffy v. Department of Natural Resources, No. 140937: The Court granted leave to appeal to address whether the Little Manistee Trail is a "highway" for purposes of MCL 691.1401(e) and, if it is, whether MCL 691.1402(1) exempts the state and the Department of Natural Resources from liability for maintaining a trailway that is not adjacent to any vehicular traffic. In *Duffy*, plaintiff suffered injuries following an ATV accident on the Little Manistee Trail. He subsequently filed a lawsuit against the State of Michigan and the DNR. The issue in this case is whether MCL 691.1402(1) requires the State and the DNR to repair and maintain the Little Manistee Highway. The Court of Appeals concluded that it did not. Specifically, the court decided that, under the statute, all sidewalks, crosswalks, and trails were excluded from defendants' duty to maintain. Accordingly, it determined that defendants could not be held liable for plaintiff's injuries.