MSC Opinion: University of Michigan Regents v. Titan Ins. Agency

3. August 2010 By Julie Lam

In a 4-3 decision filed on July 31, 2010, the Michigan Supreme Court overruled its 2006 decision that held that actions brought pursuant to MCL 600.5851(1) are subject to the no-fault automobile insurance act's one-year-back rule. In *Univ of Mich Regents v. Titan Ins Agency*, No. 136905, the Michigan Supreme Court held that MCL 600.5821(4), which preserves the rights of state entities to file suit, also preserves the state entities' rights to recover damages incurred more than one year before the action is filed. Specifically, MCL 600.5821(4) exempts state entities from the statutory one-year-back rule, which precludes recovery "for any portion of the loss incurred more than 1 year before the date on which the action was commenced." MCL 500.3145(1). The Michigan Supreme Court overruled *Liptow v. State Farm Mut Ins Co*, a Court of Appeals decision which held to the contrary, and *Cameron v Auto Club Ins Ass'n*, the 2006 Michigan Supreme Court case on which *Liptow* relied. The majority opinion, authored by Chief Justice Kelly, and joined by Justices Cavanagh, Hathaway, and Weaver (except for the "Stare Decisis" part), concluded that *Cameron* was wrongly decided and that a compelling justification exists for overruling it. The Michigan Supreme Court concluded that there was a compelling justification to overturn precedent based on its determination that *Cameron* has proved unworkable, that reliance on its holding has been of short duration, that it is detrimentally prejudicial to public interests and that it represents an abrupt and largely unexplained departure from precedent.

Justice Weaver declined to sign on to the "Stare Decisis" part of Chief Justice Kelly's opinion, rejecting the adoption or application of any standardized test regarding stare decisis. Justice Weaver wrote a separate concurring opinion emphasizing that she agrees with the sentiment that stare decisis is a policy and not an immutable doctrine, a sentiment that Justice Weaver states was recently expressed by Chief Justice Roberts of the U.S. Supreme Court. Justice Hathaway wrote a separate concurring opinion to express her own thoughts on the doctrine of stare decisis. Agreeing that stare decisis is a principle of policy, Justice Hathaway argued that the approach to stare decisis should depend on the particular facts and circumstances of any given case and that the critical analysis to stare decisis should rest on the rationale regarding whether to overrule precedent.

The primary dissent, authored by Justice Markman, and joined by Justices Young and Corrigan, expressed the belief that *Cameron* was correctly decided, and that *Liptow* appropriately relied on *Cameron*, because the one-year-back rule is a damages-limiting provision rather than a statute of limitations. Justice Young, with Justice Corrigan concurring, wrote an impassioned separate dissent strongly criticizing the view of the "new majority" of the Court towards preserving precedent. Justice Young focused on Chief Justice Kelly's statement, made shortly after the 2008 election changed the composition of the Court, declaring that the "new majority" would "undo" what the "Republican-dominated court" had done. Justice Young rebuked the ad hoc, subjective approach

to stare decisis advocated by Justices Weaver and Hathaway, accusing them of announcing a "unique brand of feckless jurisprudence".

Chief Justice Kelly also wrote a separate concurring opinion to address Justices Young and Corrigan's "ad hominem attacks". Regarding her oft-quoted remark, Chief Justice Kelly explained that it merely expressed her desire to "undo" the damage done to the Court's reputation and to "chart a new course of civility."