

## MSC Order List: March 23, 2011

24. March 2011 By Layla Kuhl

The Michigan Supreme Court granted leave to appeal in 5 cases, denied 12 applications for leave to appeal, held *People v Owens* in abeyance pending the Court's decision in *People v Williams*, and took action in 5 cases in lieu of granting leave to appeal. The Court also affirmed the Genessee Circuit Court, Family Division, in *In re CW, BW, and DW, Minors*, after, on remand, the circuit court had conducted an evidentiary hearing and issued a written opinion and order. Summaries of the cases where the Court granted leave to appeal or took substantive action follow.

In separate orders ([142568](#), [142566 & \(67\)](#)), the Court granted leave to appeal in *In re Mays, Minors*. Both appeals concern the termination of parental rights based on the mother's failure to comply with her individual treatment plan which included individual counseling, parenting classes and drug screening and the father's failure to comply with his treatment plan, which included parenting classes and individual counseling, and his lack of desire to care for the children. Among the issues that the Court directed the parties to brief were: whether the trial court erred in ordering the father to comply with the treatment plan in the absence of an adjudication of unfitness, whether the so-called "one parent" doctrine first adopted in *In re CR*, 250 Mich App 185 (2001) should be upheld, and whether the trial court committed plain error in failing to hold a permanency planning hearing before directing the petitioner to file a supplemental petition seeking termination. The Court invited the Children's Law Section and the Family Law Section of the State Bar of Michigan to file briefs *amicus curiae*.

In *People v Franklin*, following a bench trial, defendant was convicted of first-degree home invasion, larceny of a building, and larceny of a firearm. Defendant appealed his conviction arguing that the trial court should not have set aside his plea to second degree home invasion. In an unpublished [opinion](#), the Court of Appeals concluded that the trial court was not bound to accept the sentence portion of the plea agreement, but could not unilaterally set aside the plea itself. The Court of Appeals vacated the conviction and the prosecution filed an application for leave to appeal with the Supreme Court. The Court granted the prosecution's application and directed the parties to address: (1) whether the trial court was required to give the defendant the opportunity to affirm his guilty plea to second-degree home invasion when the court indicated that it was unable to impose the sentence stated by the court at the plea hearing; (2) whether the question of the defendant's right to affirm his guilty plea should be evaluated under MCR 6.310(B)(2)(a) or MCR 6.310(B)(2)(b); (3) whether this Court's decision in *People v Grove*, 455 Mich 439 (1997), has been superseded by the language of MCR 6.310(B); and (4) whether, even if the defendant had the right to affirm his guilty plea, he waived that right by failing to object when the trial court vacated his plea and scheduled a trial. The Court invited Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file briefs *amicus curiae*.

In *Johnson v Pastoriza*, plaintiff filed an action alleging medical malpractice and negligence under the wrongful death act (MCL 600.2922a) based on the preterm delivery of her baby that did not survive. Defendants moved for summary disposition arguing that the wrongful death act requires an affirmative act and that it specifically excludes actions based on acts by medical professionals.

In a published [opinion](#), the Court of Appeals affirmed the trial court’s denial of defendant’s motion for summary disposition concluding that the current version of MCL 600.2922a applies. In granting defendants application for leave to appeal, the Michigan Supreme Court directed the parties to address (1) whether the 2005 amendment of MCL 600.2922, 2005 PA 270, applies retroactively, and (2) if so, whether the reference to “death as described in section 2922a” in the 2005 amendment to MCL 600.2922 incorporates the exceptions to recovery contained at MCL 600.2922a(2).

The Court granted leave to appeal in [Department of Environmental Quality v Township of Worth](#), limited to the issue whether the Natural Resources and Environmental Protection Act, MCL 324.101, *et seq.*, empowers the Department of Environmental Quality to seek, and the circuit court to grant, an order effectively requiring a township to install a sanitary sewer system when a widespread failure of private septic systems results in contamination of lake waters. In a published [opinion](#), the Court of Appeals determined that it did not. The Michigan Supreme Court invited the Environmental Law Section of the State Bar of Michigan to file a brief *amicus curiae*.

In [People v Williams](#), defendant pled guilty to two counts of armed robbery. The defendant later moved to withdraw his plea, arguing that one of his pleas was deficient because there was no demonstration or showing that defendant actually took any property from the store. The trial court denied the motion. In a published [opinion](#), the Court of Appeals granted his delayed application for leave to appeal and subsequently affirmed the trial court, determining that the statutory language now encompasses attempts to commit larceny and that, as a result, a completed larceny is no longer required for a conviction of armed robbery. Judge Gleicher [dissented](#), stating that in his view “the Legislature did not intend that its 2004 amendment of the armed robbery statute would fundamentally alter the elements of that offense by eliminating the requirement of a completed larceny.” In granting leave to appeal, the Michigan Supreme Court directed the parties to address whether a larceny needs to be completed before a defendant may be convicted of armed robbery. The Court invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file briefs *amicus curiae*.

In [Billings v Michigan Ability Partners](#), the Court reversed the part of the Court of Appeals decision that reinstated the plaintiff’s claim of discrimination under the Persons with Disabilities Civil Rights Act. The Court stated that plaintiff failed to demonstrate that a genuine issue of material fact existed concerning whether the reason for her termination was a pretext and whether the defendant’s decision was in any manner motivated by discriminatory animus.

In [People v Carr](#), the Court vacated the defendant’s sentence and remanded the case for resentencing, stating that “the trial court committed plain legal error in scoring Offense Variable (OV) 1 because the defendant did not use the methadone against her child as a weapon, as is required to score the variable. MCL 777.31”

The Court again considered the applications in [People v Corrin](#) and [People v Miller](#), which were held in abeyance pending the decision in [People v Smith](#), which was decided this past December. In [People v Corrin](#), the Court reversed in part the Court of

Appeals stating that “Offense Variable 19 was properly scored by the trial court because that offense variable provides for the consideration of conduct after the completion of the sentencing offense.” In *People v Miller*, the Court reversed that part of the Court of Appeals judgment that vacated the defendant’s sentence and remanded for resentencing, and reinstated the judgment of sentence, stating that “Offense Variable 19 was correctly scored at 10 points.”