

## MSC Order List: November 23, 2011

28. November 2011 By Julie Lam

The Michigan Supreme Court directed the Clerk to schedule oral argument on whether to grant the application for leave to appeal or take other action in *In re J L Gordon, Minor, No. 143673*. At oral argument, the parties shall address: (1) whether the notice requirements of § 1912(a) of the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.*, are invoked, when the mother stated on the record that she was not a tribal member; (2) if so, whether the Department of Human Services (DHS) and the family court are under a duty to make a complete record of their compliance with the notice requirements of the ICWA; and (3) whether a parent can waive a minor child's status as an "Indian Child" under the ICWA, or waive compliance with the ICWA's requirements, and, if so, whether the mother's statements on the record constituted a waiver.

The Michigan Supreme Court directed the Clerk to schedule oral argument on whether to grant the application or take other action in *Paletta v. Oakland County Road Comm'n, No. 143663*. At oral argument, the parties shall address whether the accumulation of gravel on the paved roadway is actionable under the highway exception to the governmental tort liability act, MCL 691.1402, and, in particular, whether such an accumulation of gravel implicates the county road commission's duty to maintain the highway in "reasonable repair" within the meaning of MCL 619.1402(1).

In lieu of granting leave to appeal in *Clancy v. RCO Eng'g Inc et al., No. 143647*, the Michigan Supreme Court reversed the portion of the decision of the Workers' Compensation Appellate Commission (WCAC) finding Millennium Painting Company and Liberty Mutual Insurance Company liable for payment of benefits for the reasons stated in the WCAC dissenting opinion, and remanded the case to the Michigan Compensation Appellate Commission, as successor to the WCAC, for entry of an order requiring payment of plaintiff's benefits from RCO Engineering, Inc., and Safeco Insurance Company of America based on date of injury. The Court denied the application for leave in all other respects. In lieu of granting leave to appeal in *Kirby v. General Motors Corp, No. 143455*, the Michigan Supreme Court reversed in part the decision of the WCAC and remanded the case to the Board of Magistrates for the reasons set forth in the WCAC dissenting opinion. On remand, the magistrate shall determine, on the basis of the existing record, whether the plaintiff met her burden of proving that her wage loss following her retirement was due to her work-related disability, rather than her retirement. Justices Marilyn Kelly and Hathaway would deny leave to appeal. In lieu of granting leave to appeal in *People v. Hernandez-Perez, No. 143543*, the Michigan Supreme Court reversed in part the judgment of the Court of Appeals because the statements made on the record regarding the potential length of the defendant's sentence could not reasonably have led him to believe that the plea agreement had a sentencing component, and the circuit judge clearly stated that no promise had been made about the sentence the defendant would receive. Accordingly, the Court determined that the defendant is not entitled to withdraw his plea. In lieu of granting leave in *In re R.G. Brinker, IV, Minor, No. 143871*, the Court remanded the case to the circuit court for a ministerial task, and denied leave to appeal in all other respects.

The Court ordered that the application for leave in *People v. Matthews*, No. 143440, be held in abeyance pending the decisions in *People v. Likine*, No. 141154, *People v. Parks*, No. 141181, and *People v. Harris*, No. 141513.

The Court denied the motions for reconsideration and the motion for clarification in *McCarthy v. Sosnick et al.*, No. 142461-2. On the Court's own motion, the Court concluded that the motions filed by the plaintiff-appellant are frivolous and vexations and ordered plaintiff-appellant to pay the Clerk of the Court \$500.

Having granted leave to appeal in *Engenius, Inc v. Ford Motor Co*, No. 141977, and briefs and oral arguments of the parties having been considered, the Michigan Supreme Court vacated its previous order granting the application for leave, and denied the application.

The Court denied 13 other applications for leave to appeal. Justice Markman issued a concurring opinion in *Shaw v. Eaton Corp*, No. 143346, noting that although he is "troubled by the magistrate's findings," he "reluctantly concur[s]" with the order of denial because for purposes of Michigan Supreme Court review, factual findings by the magistrate and the WCAC are treated as conclusive, absent fraud. In *Norris v. Police Officers for the City of Lincoln Park*, No. 142962, Justice Marilyn Kelly would reverse and remand for trial, and Justice Hathaway would grant leave to appeal. In *Finkbeiner v. Twp of Clinton*, No. 143265, Justice Hathaway would grant leave to appeal. In *Goodman v. 1012, Inc.*, No. 143317-18, Justice Marilyn Kelly would grant plaintiffs' application for leave to appeal.

The Court denied one prisoner's motion to waive fees.