

MSC Order List: November 2, 2011

[7. November 2011 By Julie Lam](#)

On November 2, 2011, in lieu of acting on the Governor's request to direct the Ingham Circuit Court to certify certain questions for immediate determination in *In re Executive Message (Brown v. Governor)*, No. 143563, the Michigan Supreme Court directed the plaintiffs and the defendants to file briefs addressing: whether the requirements of MCR 7.305(A) have been met; whether the urgency of the request under MCR 7.305(A) is mitigated by MCR 7.302(B)(4)(b); and whether 2011 PA 4 violates various provisions of the Michigan Constitution. The Executive Message remains under consideration.

The Michigan Supreme Court granted leave to appeal in *Estate of Darryl Houston Price v. Kosmalski*, No. 143123, to address: (1) whether a mortgagee must affirmatively consent to the appointment of a receiver to be required to the receiver's costs and fees; (2) whether the statutory right of first priority belonging to the holder of the recorded mortgage under MCL 600.3236 overrides the common-law rule that a receiver's costs and fees are entitled to first priority; and (3) whether a mortgagee must actually benefit from incurred expenses to be required to pay for the expenses.

The Court directed the Wayne County Prosecuting Attorney to answer the application for leave to appeal in *People v. Morris*, No. 143148, specifically addressing defendant's argument that the trial court erred in scoring ten points for Offense Variable 15 where defendant was not convicted of violating MCL 333.7401(2)(a)(i)-(iii). The Court directed the Saginaw County Prosecuting Attorney to answer the application for leave in *People v. Saylor*, No. 143117, and invited the prosecutor to address whether the Court of Appeals correctly decided *People v. Fonville*, — Mich App — (COA Dkt. No. 294554). Justice Marilyn Kelly would remand the case for a hearing pursuant to *People v. Ginther*, 390 Mich 436 (1973).

In lieu of granting leave to appeal in *People v. Floyd*, No. 142617-8, the Michigan Supreme Court vacated that part of its order that found a violation of *People v. Tanner*, 387 Mich 683 (1973) because the decision does not apply to sentences where the statutory maximum is "life or any term of years." The Court vacated that part of the judgment of the Court of Appeals that remanded for resentencing based on a violation of *Tanner*, and denied leave to appeal in all other respects. Justice Cavanagh would grant leave to appeal.

In lieu of granting leave to appeal in *Hubbard v. Detroit Public Schools*, No. 143354, the Court vacated the judgment of the Court of Appeals and remanded the case to the Court of Appeals as on reconsideration granted. The Court of Appeals shall consider whether jurisdiction was lacking where the petitioning teacher did not file a statement of exceptions to the decision of the Administrative Law Judge. In lieu of granting leave to appeal in *Geoghegan v. Northwest Airlines, Inc.*, No. 143034, the Court remanded the case to the Michigan Compensation Appellate Commission for reconsideration of the defendants' partial disability issue, and denied leave to appeal in all other respects. Justices Marilyn Kelly and Hathaway would simply deny leave to appeal. In lieu of granting leave to appeal in *People v. Johnston*, No. 143067-8, the Court remanded the case to the Court of Appeals as on leave granted.

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The Michigan Supreme Court denied 6 applications for leave to appeal, as well as an application for leave to appeal as cross-appellant. Justice Marilyn Kelly would grant leave to appeal in *In re Mark E Moon Estate*, No. 142743 and would remand for sentencing in *People v. Torres*, No. 143074-6.

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