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Appellate Practice Report

APPELLATE PRACTICE
Do Peremptory Supreme Court Orders Constitute Binding Precedent?

Recently on the State Bar of Michigan Appellate Practice Section's listserv, a question came up concerning the extent to which peremptory orders issued by the Supreme Court constitute binding precedent. The answer depends on whether such orders contain a rationale that can be understood.

Const 1963, art 6, § 6 provides that "[d]ecisions of the supreme court . . . shall be in writing and shall contain a concise statement of the facts and reasons for each decision." The seminal Supreme Court decision construing this provision is *People v Crall*.[1] In *Crall*, the Supreme Court held that the Court of Appeals erred in rejecting a Supreme Court order as "not binding precedent."[2] The order, issued in *People v Bailey*,[3] found that "[t]he defendant waived the issue of entrapment by not raising it prior to sentencing." Finding "no basis" for the Court of Appeals' conclusion that the order in *Bailey* was not binding precedent, the Supreme Court in *Crall* observed that "[t]he order in *Bailey* was a final Supreme Court disposition of an application, and the order contains a concise statement of the applicable facts and the reason for the decision."[4] Thus, the *Crall* Court held that the Court of Appeals should have followed *Bailey* and rejected a similarly unpreserved entrapment issue.[5]

Numerous Court of Appeals decisions since *Crall* have variously stated that a peremptory Supreme Court order constitutes binding precedent if the Court of Appeals "can determine the applicable facts and the reason for the decision,"[6] if the order "can be understood,"[7] or if the order contains "an understandable rationale."[8]

This also includes situations where the Supreme Court's "rationale" is actually contained in *another* decision incorporated into the order by reference. In *Mullins v St Joseph Mercy Hosp*,[9] the Court of Appeals observed that it "consistently has adhered to the principle that the Michigan Supreme Court's summary disposition orders constitute binding precedent when they finally dispose of an application and are capable of being understood, even by reference to other published decisions."[10]

Sometimes a Supreme Court order may even reference a Court of Appeals dissenting opinion. For example, in *Evans & Luptak, PLC v Lizza*,[11] the Court of Appeals relied on an analysis of an ethical rule contained in a Court of Appeals dissent because the Supreme Court's order reversing the Court of Appeals majority's decision expressly stated that it "agree[d] with the Court of Appeals dissent's discussion of [the] principles pertaining to [the ethical rule]."[12]

In sum, whether a peremptory Supreme Court order may properly be relied on as binding precedent essentially turns on whether the Court's rationale for its decision can be understood and applied beyond the circumstances of the particular case.

ISSUES PENDING IN THE SUPREME COURT
Does MCL 500.3174 Extend the "One-Year-Back" Rule for Claims

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Filed Through the Michigan Assigned Claims Facility?

***Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219; 779 NW2d 304 (2009), lv gtd ___ Mich ___ (Docket No. 140301, October 27, 2010)**

In a case involving the recovery limitation provision contained in the Michigan no-fault insurance act (the "one-year-back" rule), the Michigan Supreme Court recently granted leave to decide whether MCL 500.3174, the assigned claims plan notice and commencement section of the no-fault act, extends the recovery limitation as it applies to claims filed through the Michigan Assigned Claims Facility ("MACF").[13] .

Bronson Methodist Hospital provided medical treatment to an uninsured driver from December 30, 2006 through January 5, 2007. On December 14, 2007, Bronson Methodist Hospital submitted an application to the MACF seeking recovery of the expenses. The MACF assigned the claim to Allstate Insurance Company on January 7, 2008. When Allstate refused to pay the claim, Bronson Methodist Hospital filed suit on February 6, 2008.

The trial court, however, granted summary disposition to Allstate, concluding that Bronson Methodist Hospital's claim was precluded by the no-fault act's one-year-back-rule, which provides that a claimant "may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."[14] The trial court reasoned that under a strict application of the one-year-back rule, none of the expenses incurred by Bronson Methodist Hospital could be recovered because all of the medical services were performed more than one year before the action was commenced.

On appeal, Bronson Methodist Hospital argued that MCL 500.3174, which governs notice to the MACF and commencement of actions against insurers to whom claims have been assigned, extended the recovery limitation with respect to assigned claims. MCL 500.3174 provides:

> A person claiming through an assigned claims plan shall notify the facility of his claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned, or of the facility if the claim is assigned to it. *An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.* [Emphasis added.]

Relying on MCL 500.3174, Bronson Methodist Hospital argued that because it filed suit (February 6, 2008) within 30 days of when the claim was assigned to Allstate (January 7, 2008), it was not precluded from recovering the medical expenses it incurred.

The Court of Appeals, however, agreed with the trial court that "MCL 500.3174 does not extend the recovery limitation found in MCL 500.3145(1)." The Court observed that MCL 600.3145(1) contains both a one-year statute of limitations period (generally requiring an action to be commenced "within 1 year after the most recent allowable expense . . . has been incurred") and a recovery limitation (providing that a claimaint "may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced"). The Court reasoned that although MCL 500.3174 extends the statute of limitations period for assigned claims to "30 days after receipt of notice of the assignment" such that Bronson Methodist Hospital's action was *timely commenced*, the "recovery of benefits remains subject to the one-year-back rule." The Court explained:

> In sum, MCL 500.3174 does not extend the recovery limitation found in MCL 500.3145(1), because the language used by the Legislature in MCL 500.3174 unambiguously describes only an extension of the statute of limitations period.
>
> The application of the recovery limitation therefore precludes Bronson Methodist Hospital's claim. The one-year-back rule draws a strict line, which must be followed even with unfair results. Because Bronson Methodist Hospital commenced this action on February 6, 2008, it was precluded from recovering any benefits for treatment occurring before

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> February 6, 2007. Bronson Methodist Hospital last treated Brown on January 5, 2007. Thus, Bronson Methodist Hospital is no longer entitled to recover any of the medical expenses it provided to Brown.

In response to the Court of Appeals' decision, Bronson Methodist Hospital filed an application for leave to appeal with the Supreme Court on January 4, 2010. After initially holding the case in abeyance pending its decision in *Univ of Mich Regents v Titan Ins Co*, 487 Mich ___ (2010), which addressed the extent to which certain state entities are exempt from the one-year-back rule, the Supreme Court granted leave to appeal in an order entered on October 27, 2010.

The *Bronson* case is significant not only because it involves an issue of first impression concerning the interplay between MCL 500.3145(1) and MCL 500.3174, but because it will require the new Supreme Court majority to decide whether, as the Court of Appeals held, the statutory language is plain and unambiguous, or whether there is room for an interpretation that would avoid what the Court of Appeals suggested is an "unfair result[]."

COURT OF APPEALS
Mootness Doctrine – Did the Michigan Court of Appeals Expand the Ability of a Party to Satisfy a Judgment and Yet Still Pursue an Appeal?

***Michigan's Adventure, Inc v Dalton Twp*, ___ Mich App ___; ___ NW2d ___ (2010) (Docket No. 292148) (October 21, 2010)**

Michigan has long recognized the "general rule" that "a satisfaction of judgment is the end of proceedings and bars any further effort to alter or amend the final judgment."[15] This principal operates to render any appeal from a voluntarily satisfied judgment moot. In *Horowitz v Rott*,[16] when "confronted with the question whether [it] may review a judgment which has been satisfied and no longer exists," the Court concluded:

> [w]hen the judgment was rendered, two courses were open to defendant. He could satisfy the judgment or review it in this court; he could not do both. He chose by his voluntary act to satisfy it. When the judgment was satisfied, the case was at an end. [*Id*. at 372.]

Subsequent Michigan decisions have identified at least two exceptions to this general rule. First, while the mootness rule applies "as long as the appeal or review might result in putting at issue the right to the relief already received . . . there is no waiver of appeal where the appeal addresses an issue collateral to the benefits already accepted."[17] .

Second, Michigan courts have differentiated between voluntary and involuntary satisfactions of a judgment. Where a party satisfies a judgment "by his voluntary act," any subsequent appeal of the judgment is moot.[18] By contrast, where a judgment is "involuntarily satisfied," a party does "not waive [its] right to appeal," and any such "appeal is not moot."[19]

Most commonly, "involuntary" satisfaction of a judgment is accomplished by means of garnishment.[20]

Involuntary satisfaction has also been found to exist where a third party satisfies a judgment and the party against whom judgment has been rendered did not consent to the third party's satisfaction of the judgment.[21] Therefore, outside of involuntarily satisfaction of a judgment due to garnishment, or satisfaction by a third party to which was not consented to, it has generally been the case that any other satisfaction of a judgment renders moot an appeal by the party against whom the judgment was rendered.

However, in *Michigan's Adventure, Inc v Dalton Twp*,[22] the Court of Appeals appears to have broken from this general rule. There, Dalton Township appealed an order of the Michigan Tax Tribunal vacating the Township's special assessment against Michigan's Adventure, Inc. Michigan's Adventure argued that Dalton Township's appeal was moot "on the ground that [the Township] satisfied the judgment ordered by the [Michigan Tax Tribunal]."[23] The Court of Appeals rejected this argument in a footnote, holding:

> [B]ecause neither the tribunal nor the Court of Appeals granted a stay, [Dalton Township] was obligated to comply with the tribunal's judgment. MCR 7.209(A)(1). The fact of compliance does not render moot an appeal of the substantive issue.[24]

In support of its conclusion, the Court of Appeals relied solely on MCR 7.209(A)(1), which provides in relevant part that "[e]xcept for an automatic stay pursuant to MCR 2.614(D), an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders."

This holding appears to run counter to the "voluntary/involuntary satisfac-

Where a judgment is "involuntarily satisfied," a party does "not waive [its] right to appeal," and any such "appeal is not moot."

tion" dichotomy set forth by previous cases, such as *Kusmierz*. Those cases imply that compliance with or satisfaction of a judgment, even one which has not been stayed pending appeal, is considered "voluntary" and renders any subsequent appeal moot. The contary holding in *Michigan's Adventure*, which does not address those longstanding cases, appears to stand for the proposition that where a party seeks a stay of a judgment which is not granted by the trial court or Court of Appeals, its subsequent satisfaction of, or compliance with, the judgment does not preclude the party from pursuing an appeal.

Endnotes

1. 444 Mich 463; 510 NW2d 182 (1993).
2. *Id*. at 464, n 8.
3. 439 Mich 897; 478 NW2d 480 (1991).
4. *Crall*, 444 Mich at 464, n 8.
5. *Id*.
6. *Weschler v Wayne Co Road Comm'n*, 215 Mich App 579, 591 n 9; 546 NW2d 690 (1996), remanded on other grounds 455 Mich 863 (1997). See also *Dykes v William Beaumont Hospital*, 246 Mich 471, 483; 633 NW2d 440 (2001) ("An order that is a final Supreme Court disposition of an application and that contains a concise statement of the applicable facts and reasons for the decision is binding precedent.").
7. *People v Edgett*, 220 Mich App 686, 693 n 7; 560 NW2d 360 (1996). See also *People v Phillips (After Second Remand)*, 227 Mich App 28, 38 n 11; 575 NW2d 784 (1997) ("Supreme Court peremptory orders are binding precedent when they can be understood."); *Brooks v Engine Power Components, Inc*, 241 Mich App 56, 61; 613 NW2d 733 (2000) (same), overruled on other grounds *Kurtz v Faygo Beverages, Inc*, 466 Mich 186; 644 NW2d 710 (2002).
8. *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006) (rejecting reliance on a Supreme Court order because it could not be "understood as expressing an opinion on how the issue should be decided").
9. 271 Mich App 503; 722 NW2d 666 (2006), rev'd on other grounds 480 Mich 948 (2007).
10. *Id*. at 508.
11. 251 Mich App 187; 650 NW2d 364 (2002).
12. See *Abrams v Susan Feldstein, PC*, 456 Mich 857 (1997). See also *Love v City of Detroit*, 270 Mich App 563, 566; 716 NW2d 604 (2006) (relying on a peremptory Supreme Court order that in turn had adopted the Court of Appeals dissent).
13. *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219; 779 NW2d 304 (2009), lv gtd ___ Mich ___ (Docket No. 140301, October 27, 2010)
14. MCL 500.3145(1).
15. *Becker v Halladay*, 218 Mich App 576, 578; 554 NW2d 67 (1996) (citing *Ideal Furnace Co v Int'l Molders' Union of North America*, 204 Mich 311; 169 NW 946 (1918)).
16. 235 Mich 369, 370; 209 NW 131 (1926).
17. *Becker*, 218 Mich App at 578 (citing *Wohlfert v Kresge*, 120 Mich App 178; 327 NW2d 427 (1982)).
18. *Horowitz*, 235 Mich at 372.
19. *Kusmierz v Schmitt*, 268 Mich App 731, 740 n 3; 708 NW2d 151 (2005), rev'd on other grounds 477 Mich 934 (2006).
20. *Id*. See also *Robbins v Sault Ste Marie Tribe of Chippewa Indians*, unpublished per curiam opinion of the Court of Appeals, Docket No. 290321 (May 20, 2010) (Slip Op at 2) ("An involuntary satisfaction by means of garnishment does not render an appeal moot, or waive a party's right to appeal.").
21. See *Hillsdale Community Health Ctr v Pioneer State Mut Ins Co*, unpublished per curiam opinion of the Court of Appeals, Docket Nos. 285681, 287126) (September 8, 2009) (Slip Op at 4) ("Here, [the appealing party] did not satisfy the judgment; rather, it was Pioneer who voluntarily satisfied the judgment. [The appealing party] chose to appeal the judgment. Thus, as to [the appealing party], the judgment was involuntarily satisfied.").
22. ___ Mich App ___; ___ NW2d ___ (2010) (Docket No. 292148) (October 21, 2010).
23. Slip Op at 1 n 2.
24. [*Id*. at 1-2, n 2.].