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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

GLORIA KATO KARUNGI,

Plaintiff,

vs.

RONALDLEE EJALU,

Defendant.

"OAKLAND" "COUNTY" 16-841198-DS
Cc -DS
JUDGE LISA LANGTON
KARUNGI,GLORI v EJALU,RONALDL

2018 JUN -4 AM 8:46
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Defendant's Reply to Plaintiff's Supplemental Brief and Response to Defendant's Request for Sanctions pursuant to MCR 2.114(D)

INTRODUCTION

Plaintiff Karunji's response to Defendant's Request for Sanction clearly illustrates how far adrift Plaintiff is from following the MCOA Remand Order and this court's directives at the issue in this case. She and her counsel still seek to have the court take judicial notice as to their mantra that *"in vitro frozen embryos equal life"* and spend the majority of their response providing myriad argument is support. Plainitt's ill founded filings ignores the fact that both this court and the Remand Order has narrowed the issues in this case to exploration as to this court's *"subject matter jurisdiction*

regarding the contract dispute between the parties." To this end, Plaintiff even proffers that "any contracts are inapplicable and irrelevant to the parental disagreement" thus supporting Defendant's pending motion for summary disposition set for June 20th,2018 (see Plaintiff's Resposne to Motion pg.5). Further, Plaintiff continues to malign Mr. Ejalu with her response.

Plaintiff's motion for GAL, its premise, its analysis and its requested relief is vexatious sanctionable, and warrants a finding of Contempt by this court. As clearly apparent from Plaintiff's Response, Plaintiff and her counsel have doubled down on the presentation of the frozen embryos "custody", "personhood", "children" arguments, blatantly ignoring the remand order and MCOA findings. Plaintiff and her counsel continue to drive a religious and political agenda unrelated to the contract dispute of the parties solely at issue on remand from the Court of Appeals. To this end, Plaintiff's response wastes judicial and Defense litigation time by making, *inter alia*, the following irrelevant references in pursuit of their cause:

-'already procreated human lives;

-viable human embryos;

-unborn frozen embryo children;

-killing living embryo..to continue life;

-human lives of sibling embryos;

Based on the reasons and legal authority more fully stated below, ***Defendant is in full agreement with the final sentence of the Conclusion of Plaintiff's Response*** on page 8 which states:

"The conduct of Plaintiff literally screams out for the imposition of sanctions." Emphasis supplied.

The Court should only address Plaintiff's frivolous work-product submitted in this case since remand in connection to Defendant's Request for Sanctions.

SANCTIONS ANALYSIS OF PLAINTIFF'S RESPONSE

As the remaining issue left in this case is solely a contract dispute between the parties for which the trial court is tasked with exploring if it has jurisdiction. Lacking any pleadings on the sole reaminiing issue and for which the family division of the circuit court has no subject matter jurisdiction, Defendant has filed summary disposition. See Defendant's Motion for Summary Disposition and the Court of Appeals remand order in this case. Rejecting the Plaintiff's arguments regarding custody and personage of frozen embryos, the Court of Appeals has limited the issue to a contract dispute. According to the remand order the trial court, the family division of the circuit court, must determine whether it has subject matter jurisdiction.

Sanctions and attorney fees and costs are appropriate against Plaintiff, since the filing of Plaintiff's Motion for the Appointment of GAL and Plaintiff's Response falls within the definition of "frivolous" in 2.114(D), (E), (F); 2.625(A)(2). Given the insurmountable legal deficiencies in Plaintiff's motion and her Response, this Court should award Plaintiff the costs and attorneys' fees she incurred in connection with reviewing and responding to Plaintiff's Motion for appointment of GAL and her Response to Defendant's Request for Sanctions pursuant to MCR 2.114(E) and (F), MCR 2.625(A) and MCL 600.2591. Pursuant to MCR 2.114(E), sanctions are

warranted if a party or its counsel signs a pleading in violation of MCR 2.114, which includes a certification that the pleading is well-grounded in fact and is warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law. MCR 2.114(D); FMB-First National Bank v Bailey, 232 Mich App 711, 720 (1998).

As previously noted, ***there are no issues of intestate succession, an estate, probate proceedings, a wrongful death action, or otherwise regarding the possibility of entitlement to a property interests, real or personal, legal or equitable that would allow the Court to appoint a GAL*** pursuant to MCL 700.1103(f), MCL 700.1106 (c), MCL 600.2045, 600.2922, 600.2922a or otherwise in this case. In response to Defendant's Response which seeks dismissal of Plaintiff's motion and sanction, Plaintiff incompletely recites MCLA 600.2045: "Under the statute, the Guardian Ad Litem is authorized to engage counsel and "do whatever is necessary to defend and protect the interest of the unborn person." Plaintiff's Response, page 2 of 9. The Statute, MCL 600.2045, Guardian ad litem for unborn persons, *states in total*

> (1) ***If in an action or proceeding***, other than in probate court, ***it appears that a person not in being may become entitled to a property interest***, real or personal, legal or equitable, involved in or affected by the action or proceeding, and the interest of the unborn person is not or cannot otherwise properly be represented and protected, the court, upon its own motion, or upon the motion of any party, may appoint a suitable person to appear and act as guardian ad litem of the unborn person. The guardian ad litem is authorized to engage counsel and do whatever is necessary to defend and protect the interest of the unbom person. A judgment or order made after the appointment shall be conclusive upon the unborn person for whom a guardian was appointed.

> (2) The guardian ad litem may be removed by the court which appointed him, without notice, when it appears to the court to be for the best interests of the ward. The guardian ad litem may be allowed reasonable compensation by the court appointing him, to be paid and taxed as a cost of the proceedings as directed by the court.

The statute is unambiguous. The "interest" referenced by MCL 600.2045 is simply a "property interest." A "person not in being" is just that, not a person. Plaintiff's motion for GAL and Plaintiff's current response continues to fail to set out any good faith basis why the frozen embryos or a GAL are relevant in determining the subject matter jurisdiction of the contract dispute of the parties.

Following Plaintiff's and counsel's brazen mischaracterization of the GAL statute, Plaintiff's response continues with her irrelevant, personhood argument regarding the frozen embryos which is well beyond the scope of the Court of Appeals remand order. Plaintiff pays no mind and offers no analysis in support of her request to overturn the clear public policy of the State of Michigan and ***the Legislature which determined that embryos and fetuses are not "live infants", "children" nor "persons" until at least partially or completely expelled from a woman's body***. See Michigan Infant Protection Act, MCL 750.90g; Michigan Legal Birth Definition Act, MCL 333.1082; Regardless of the constitutionality of these Acts, see Northland Family Planning Clinic v Cox, 396 F Supp 2d 978 (2005)(Legal Birth Definition Act unconstitutional); WomanCare of Southfield, PC v Granholm, 143 F Supp 2d 849, 855 (ED Mich 2001)(Infant Protection Act as a regulation of abortion is unconstitutional, however, the court did not specifically address the question of whether a fetus is a person) there has been no action by the Legislature to repeal these Acts, nor has the Michigan Legislature conferred the status of 'person' upon a human embryo through the enactment of any

other civil or criminal statutes. These Acts and the existing statutory framework reflects the exercise of the state's interest in potential life and is the complete statement of the public policy of the State of Michigan. People v Fomby, 300 Mich App 46, 50; 831 NW2d 887 (2013)([l]ower federal court decisions (regarding Michigan law) are not binding on this Court, but may be considered on the basis of their persuasive analysis."

Since Roe v. Wade as reaffirmed by Casey, (citations omitted) it is well-settled in the State of Michigan that an "unborn child" is not a person as understood and protected by the Constitution. In People v. Bricker, 389 Mich. 524, 208 NW2d 172)(1973), the Michigan Supreme Court held "We are duty bound under the Michigan Constitution to preserve the laws of this state and to that end to construe them if we can so that they conform to Federal and state constitutional requirements. ***The United States Supreme Court would be the first to acknowledge that our construction of our statutes in a manner which does not offend the Federal constitutional right recognized in Roe and Doe[1] is determinative*** until changed by the Michigan Legislature or the initiative of the people of this state. ***Nor are we obliged to adhere to earlier constructions by this Court of our statutes or by other courts of their similar statutes***." All state and federal appellate decisions in the State of Michigan to date have rejected the notion that embryos are 'children' or 'persons" under the law. Citations omitted. See Defendant's Response in Opposition to Plaintiff's Motion for Appointment of a Guardian Ad Litem and Defendant's Request for Sanctions pursuant to MCR 2.114(D), pp. 3-4 and Footnote 2. . See also Michigan Legal Birth Definition Act, initiated by citizen petition, in which the Legislature clearly defined the commencement of personhood and rights in

[1] Doe v Bolton, 410 US 179; 93 S Ct 739; 35 L Ed 2d 201 (1973)

conformance with the public policy of Michigan and the Constitution as declared by United State Supreme Court in Roe v. Wade.

While frozen embryos lack any recognized characteristics with which scientists and medical practitioners could determine whether something is alive or "live", having no heartbeat, circulatory function, movement, respiratory function, cellular respiration, a nervous system, a brain or a brain stem, see MCL 750.90g(6)(a) and MCL 333.1033[2], Dr. Condic's affidavit is irrelevant to the subject matter jurisdiction of the trial court or the contract dispute of the parties and otherwise cannot assist the court in determining any issue in the case. The relevancy application of Rule 104(b) cited by Plaintiff at page 4 of her Response clearly prevents the inclusion of the affidavit of Maureen Condic and any analysis regarding the affidavit as the content fails to address any "condition of fulfillment of facts" regarding the contract dispute of the parties. Its inclusion demonstrates Plaintiff's counsel failure to conduct any reasonable inquiry pursuant to MCR 2.114(E). .

Plaintiff's bizarre citation to ***Black's Law Dictionary*** is meritless and unpersuasive. In Michigan, the courts sometime use dictionaries to assist in understanding word *usage* in the absence of clear definition, ***it is not legal authority***. Halloran v Bhan, 470 Mich 572, 577; 683 NW2d 129 (2004)(Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, and a dictionary may be consulted for this purpose). See e.g. Nuculovic v Hill, 287 Mich App ___; __ NW2d __ (No. 280216, issued 1/5/2010), slip op at 5 (The

[2] "Capability of living; the state of being viable; usually connotes a fetus that has reached 500 g in weight and 20 gestational weeks." STEDMAN'S MEDICAL DICTIONARY 1714 (25th ed. 1990).

Metropolitan Transportation Authorities Act of 1967 (the Act) does not define "claim." However,[citation omitted] this Court, relying on Black's Law Dictionary, defined the term "claim" as the aggregate of operative facts giving rise to a right enforceable by a court. The statute at issue in this case requires that a claim be "based upon injury to persons or property."). In Horace v. City of Pontiac, 575 N.W.2d 762 (Mich. 1998), the Supreme Court explains the process of utilizing dictionaries in appellate opinions,

> "our quoting the Black's Law *Dictionary definition of the word "of" did not do away* with MCL 8.3a; MSA 2.212(1), which provides: "All words and phrases shall be construed and understood according to the common and approved usage of the language." One does not need a legal dictionary to understand the meaning of a nonlegal term such as "of." Thus, when considering a nonlegal word or phrase that is not defined within a statute, resort to a layman's dictionary such as Webster's is appropriate. This is because the common and approved usage of a nonlegal term is most likely to be found in a standard dictionary and not a legal dictionary. Review of Webster's Collegiate Dictionary shows that the word "of" can have many different meanings, depending on the context."

Plaintiff's Malignment and Misrpresentations Warrant Sanctions

Taking the Defendant and the Court down another rabbit-hole, reflective of Plaintiff's gaslighting and larger religious and political agenda, Plaintiff slips in a non sequitur: "'Fetus' is simply a latin/medical term adopted by the abortion advocates in order to attempt to further de-humanize unborn children".

First and foremost, this case has absolutely nothing to do with the termination of a pregnancy – this case is solely a contract dispute between parties. See Court of Appeals Opinion in this case.

Second, and personally importantly to Defendant, there are no facts regarding any announcement by Defendant of any position, for or against, on the issue of abortion. The clear implication and pejorative of Plaintiff's bad-faith statement ("de-humanize") is just more abuse and harassment against Defendant who has been subject to continuing ad hominem attack by Plaintiff throughout this case. Again, the courts have no authority to determine whether Roe v Wade, 410 US 113; 93 S Ct 705; 35 L Ed 2d 147 (1973) and several federal and state decisions issued subsequent to Roe, were "correctly decided". People v. Jones, —— Mich.App ——; —— NW2d —— (2016) (Docket No. 3322018)(J. Murray concurring). Returning to the first point above, this is not at issue in case. Defendant will not be gaslighted, he offers no opinion, nor is he required.

Third, even if this case were a proper forum for review of this issue (but it is not), Plaintiff's counsel insertion of the non sequitur belies inadequate and superficial review or outright ignorance of the long history of judicial and legislative usage of the term demonstrating that even the presentation of the non sequitur is devoid of legal merit. See e.g. Tunnicliffe v. Bay Cities Consol. Ry. Co., 61 N.W. 11 (Mich. 1894); LaBlue v Specker, 358 Mich. 558; 100 N.W.2d 445 (1960) (dramshop action allowable for fetus of dead father); O'Neil v. Morse, 385 Mich 130 (1971) (cited previously by Plaintiff), Toth v. Goree, 237 N.W.2d 297 (Mich. Ct. App. 1975); and statutes cited previously by Defendant. In Thomas v. Stubbs, 455 Mich. 853; 564 NW2d 463 (1997), the Michigan Supreme Court acknowledged that "[s]ince at least 1975 it has been held that a *nonviable fetus* is not a 'person' within the meaning of the wrongful death act." Cf. Thomas v. Stubbs, 218 Mich.App 46; 553 NW2d 634 (1996)(holding that a fetus "born

alive," although not viable, is a "person" within the meaning of the wrongful-death statute).

The use of term "fetus" has a generally understood meaning and is regularly relied upon by courts, litigants, medical experts and legislatures operating in this field of law. If the a court or the Legislature were to seek such a definition to understand the application of law, the usage of a medical term would suggest the application of a medical dictionary. See Horace v. City of Pontiac, cited above. A common medical dictionary, STEDMAN'S MEDICAL DICTIONARY (25th ed. 1990)3 defines an embryo at 501: "[i]n humans, the developing organism from conception until approximately the end of the second month" and fetus: "[i]In humans, the product of conception from the end of the eighth week to the moment of birth" thusly. Id. at 573. ***Rights, privileges, and responsibilities are a juridical matter***, *not to be determined an absurd progression of definitions by a mere dictionary*, but more importantly, ***not at issue in this case***.

Sanctions are required to restrain Plaintiff's counsel legally remiss efforts to hijack this case beyond the confines of the limited issue on remand. Defendant's Response/(canned brief) never claimed that Plaintiff's Motion does not conform to the Michigan Rules of Court (sic) generally, but rather that Plaintiff's Motion violates MCR 2.114(E) and (F), MCR 2.625(A) and MCL 600.2591 because Plaintiff's request for the

[3] See e.g. April 4, 2005 Attorney General Opinion No. 7174, Application of Legal Birth Definition Act to abortion procedures, Footnote 3. Undefined in the Legal Birth Definition Act, "Introitus" is defined in Stedman's on-line medical dictionary as "[t]he entrance into a canal or hollow organ, as the vagina." http://216.251.232.159/semdweb/internetsomd/ASP/1529851.asp.

appointment of a GAL is inconsistent and irrelevant with the limited issue remanded by the Court of Appeals in this case.

There are no facts or circumstances in the contract dispute of the parties that present any foundation for Plaintiff's request for a GAL according to any of the statutes cited by Plaintiff. As cited by Plaintiff in her response, "Dovetailing on MCR 2.114(F), MCL 600.2591(3) provides that an action or defense is "frivolous" when at least 1 of the following conditions is met: (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party. (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true. (iii) The party's legal position was devoid of arguable legal merit."

As previously stated in Defendant's Response, Plaintiff is merely maligning Defendant, and misleading the Court, with Plaintiff's and Plaintiff's advocates' political and religious agendas beyond the scope of the MCOA remand order. Whether it be for political gain or profit, Plaintiff's fake issues have no place in this litigation. There is no place for Plaintiff's Motion for the appointment of a GAL over the joint property of the parties while the trial court determines its subject matter jurisdiction on remand from the Court of Appeals.

To Plaintiff's chagrin, "Property" cannot have a property interest in the contract dispute of the parties as contemplated by MCL 600.2045 or any other statute proffered by Plaintiff without any analysis. Plaintiff's "theory of this case" and the request for GAL has zero legal or factual viability. **Plaintiff has never even filed a pleading in support**

<u>of her "theory of the case</u>." Moreover, there is no Michigan Supreme Court order in this case as falsely claimed by Plaintiff in her Response at page 4.

Plaintiff cannot place her head in the clouds, put her fingers in her ears, and ignore the appellate mandate in this case. Justice McCormick's concurrence is not a Michigan Supreme Court order in this case as falsely claimed by Plaintiff in her Response at page 4. An order of the Michigan Supreme Court can constitute binding precedent if it meets certain criteria. The Michigan Constitution states: Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent. Const 1963, art 6, § 6. Therefore, under art 6, § 6, "[a]n order of [the Supreme Court] is binding precedent on the Court of Appeals if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision.". <u>DeFrain</u> v <u>State Farm Mut Auto Ins Co</u>, 491 Mich 359, 371; 817 NW2d 504 (2012). I

In this case, the Michigan Supreme Court merely denied Defendant's application for leave to appeal. It did not contain any facts or reasons in its denial. Moreover, to be binding, a decision must be signed by a majority of the Supreme Court for which the concurrence of Justice McCormick was not. "[D]ecisions in which no majority of the justices participating agree with regard to the reasoning are not an authoritative interpretation under the doctrine of stare decisis." <u>Rowland v Washtenaw Co Rd Comm</u>, 477 Mich 197, 206 n 7; 731 NW2d 41 (2007). "'[O]biter dictum' is defined as '1.

an incidental remark or opinion. 2. a judicial opinion in a matter related but not essential to a case.'" Allison v AEW Capital Management, LLP, 481 Mich 419, 437; 751 NW2d 8 (2008) "A statement that is dictum does not constitute binding precedent under MCR 7.215(J)(1)." Id. at 436–437. ***There is only a contract dispute between the parties*** and this Court is to determine subject matter jurisdiction on this sole issue as a preliminary matter according to the remand order of the Court of Appeals.

The rule of mandate "*embodies the well-accepted principle . . . that a lower* court must strictly comply with, and may not exceed the scope of, a remand order." Int'l Business Machines Corp v Dep't of Treasury, 316 Mich App 346, 352 (2016) (citations omitted). In Allison v AEW Capital Management, LLP, 481 Mich 419; 751 NW2d 8 (2008), the Michigan Supreme Court held that a statement contained only in a footnote of a published Michigan Court of Appeals decision could constitute a rule of law for purposes of MCR 7.215(J)(1). "Language set forth in a footnote can constitute binding precedent if the language creates a 'rule of law' and is not merely dictum." In the Court of Appeals Majority Opinion in this case, Footnote 6 states "... all of plaintiff's arguments are based on her misconception that this is a custody dispute rather than a contract dispute...." Plaintiff's charade and torment of Defendant must end. The endless one-track chicanery by Plaintiff and her counsel can only end if Plaintiff and her counsel have consequences.

Plaintiff and her counsel should be sanctioned and held in contempt.

CONCLUSION

Plaintiff is seeking to reframe the parties' alleged contract dispute with unwarranted political and religious banter, blatant misrepresentations, erroneous legal references, absurdly crafted dictionary arguments, as well as, non admitted alleged scientific references, all irrevelant to the limited issue before the trial court. Plaintiff's ongoing ad hominem is just one more example of Plaintiff's pattern of abuse and harassment against Mr. Ejalu in this litigation. Mr. Ejalu should not be forced to finance Plaintiff's attorneys' political and religious agenda, nor suffer the concurrent emotional distress, and loss of time and resources caused by the filing of Plaintiff's Motion and having to respond to it. This litigation is an inappropriate venue for Plaintiff's beliefs and feelings. ***"The Michigan Legislature is the proper institution in which to make [ ] public policy determinations, not the courts."*** Huron Ridge LP v. Ypsilanti Twp., 275 Mich.App. 23, 45, 737 N.W.2d 187 (2007). If anything, Plaintiff's vexatious efforts against Mr. Ejalu would be better redirected to a citizen initiative petition pursuant to Const 1963, art 2, § 9.

Defendant is in full agreement with the final sentence of Plaintiff's Response , where in her conclusion she states: "***The conduct of Plaintiff literally screams out for the imposition of sanctions***" as her conduct has been extreme, vexatious and defies both reason and logic. See *Plaintiff's* Response to Motion to Strike Pleadings, fees, and Motion for Bond, page 8. Defendant and his counsel simply cannot make this stuff up as Plaintiff herself filed pleadings admitting that her own

conduct "screams out for the imposition of sanctions" Freudian or not, the phrase ***'res ispa loquitor'"*** rings true here.

Accordingly, the Court need not decide whether frozen embryos have the legal status of "individuals", "children" or "unbom children" under the Michigan Estates and Protected Individuals Code, Article V, part 3, MCL 700.5301 et seq. MCL 600.2045 or the other statutes cited by Plaintiff. Plaintiff's Motion for the appointment of a GAL should be denied in its entirety and Plaintiff's request for sanctions against Defendant be denied as they are without any factual or legal merit. Defendant's Motion for *Summary Disposition should be granted*, however, *the Court* should *impose sanctions* against Plaintiff and Plaintiff's counsel in accordance with on-going vexatious and frivolous work product presented by Plaintiff and her counsel. Plaintiff and her counsel are just wrong. All of her presented arguments are devoid of any legal merit and lack any good faith basis, analysis or justification.

The Court should award financial sanctions against Plaintiff and or Plaintiff's Counsel pursuant to MCR 2.114(D), MCR 2.114(E) and MCR 7.216(C)(1)(b) and the other court rules and statutes cited regarding frivolous and vexatious work product proffered by Plaintiff and her counsel in this case.

Respectfully Submitted,

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Attomey for Defendant