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Decisions That Have Been Reversed or Vacated "On Other Grounds": Do They Still Have Precedential Value?

Many of us have at one time or another found ourselves citing a decision that had been either reversed or vacated "on other grounds." But are those decisions precedential? Does it matter whether the decision was "reversed" or "vacated"? Although Michigan and federal courts agree that a decision that has been vacated lacks precedential effect, even if on other grounds or without addressing the merits of the decision being vacated, it can be trickier when it comes to decisions that have been reversed—at least in Michigan.

Vacated Decisions Never Have Precedential Value, Even if Vacated "On Other Grounds"

Federal courts have often said that "[a] decision may be reversed on other grounds, but a decision that has been vacated has no precedential authority whatsoever." *Durning v Citibank, N A,* 950 F2d 1419, 1424 n 2 (CA 9, 1991), citing *O'Connor v Donaldso*n, 422 US 563, 578 n 12; 45 L Ed 2d 396; 95 S Ct 2486 (1975) ("Of necessity our decision vacating the judgment of the Court of Appeals deprives that court's opinion of precedential effect, leaving this Court's opinion and judgment as the sole law of the case.").

This is also the general rule in Michigan. As the Michigan Court of Appeals has explained: "'[A] Court of Appeals opinion that has been vacated by the majority of the Supreme Court without an expression of approval or disapproval of this Court's reasoning is not precedentially binding.'" *People v Mungo*, 295 Mich App 537, 554; 813 NW2d 792 (2012). See also *Miller v Farm Bureau Ins Co*, 218 Mich App 221, 232 n 3; 553 NW2d 371 (1996) ("To the extent that the *Mattson* panel relied on *Miller I*, its holding has no precedential value because that decision was ultimately vacated by the Supreme Court.").

Of course, this is not to say that courts always practice what they preach. Both the Michigan Supreme Court and Court of Appeals have treated decisions as having precedential value notwithstanding the fact that they had been "vacated on other grounds." For example, in *People v Hendrickson*, 459 Mich 229; 586 NW2d 906 (1998), the Supreme Court relied on the Eighth Circuit's decision in *United States v Hawkins,* 59 F3d 723, 730 (CA 8, 1995), vacated on other grounds 516 US 1168 (1996), in deciding whether a crime victim's statement that she had just been beaten was sufficiently contemporaneous to warrant admission under the present sense impression exception to the hearsay rule. *Id.* at 237. Similarly, in *Bennett v Mackinac Bridge Auth*, 289 Mich App 616; 808 NW2d 471 (2010), the Court of Appeals relied in part on *Juncaj v C & H Industries*, 161 Mich App 724, 734; 411 NW2d 839 (1987), vacated on other grounds 432 Mich 1219, 434 NW2d 644 (1989), to hold that the doctrine of res judicata "must not be applied when its application would subvert the intent of the Legislature." *Id.* at 630. The Sixth Circuit Court of Appeals has likewise relied on vacated decisions as precedential. See, e.g., *Talley v Family Dollar Stores of Ohio, Inc*, 542 F3d 1099, 1110 (CA 6, 2008) (relying on a decision that had been "vacated on other grounds").

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Decisions That Have Merely Been Reversed "On Other Grounds" May Be Precedential, and Then Again Maybe Not

So, what about decisions that have been reversed "on other grounds"? Such decisions are commonly cited and relied upon by parties and courts alike, but Michigan courts have suggested that this may not always be appropriate. In *Maurer v Oakland Co Parks & Recreation (On Remand)*, 201 Mich App 223; 506 NW2d 261 (1993), rev'd 449 Mich 606 (1995), the Court of Appeals held that steps leading to a restroom at a park had to be viewed as part "of" the building for purposes of the public building exception to governmental immunity because the steps were "intimately associated, or connected, with the building itself, because it is impossible to enter or leave the building without going up or down them." *Id*. at 230. In reaching that decision, the *Maurer* Court also rejected application of the open-and-obvious doctrine. *Id*. at 227.

According to Horace and Taylor, if a decision is reversed in its entirety on a dispositive issue such that the rest of the lower court's decision has been rendered irrelevant, then the decision is not precedential and may only be considered as persuasive authority. The only potential exception appears to be, as suggested in Michigan Millers and Stein, that a decision reversed on other grounds may retain precedential value if the reversal contains some statement suggesting that it did not necessarily affect the lower court's discussion of other issues, such as if the reversal was only "in part."

Addressing the precedential value of *Maurer* in *Horace v City of Pontiac*, 456 Mich 744; 575 NW2d 762 (1998), the Michigan Supreme Court observed that *Maurer* was subsequently reversed, with the Supreme Court "finding that the claim was barred by the open and obvious doctrine" and reinstating the trial court's grant of summary disposition to the defendant on that basis. *Horace*, 456 Mich at 754. In light of that holding, the Supreme Court in *Maurer* "specifically did not address the governmental immunity issue." *Id*. According to the *Horace* Court, "under such circumstances, no rule of law remained from the Court of Appeals opinion." *Id*. The *Horace* Court explained that "[t]he Court of Appeals statements regarding the building exception became no more than dictum upon this Court's reversal under the open and obvious danger doctrine. Whether the area where the fall occurred came within the building exception became irrelevant when this Court found the claim barred by the open and obvious danger doctrine." *Id*. at 754-755.

In *Taylor v Kurapati*, 236 Mich App 315; 600 NW2d 670 (1999), the Court of Appeals reached a similar conclusion regarding its prior decision in *Blair v Hutzel Hospital*, 217 Mich App 502; 552 NW2d 507 (1996), rev'd on other grounds 456 Mich 877 (1997). In *Blair*, the Court of Appeals recognized the viability of "wrongful birth claims" and held that the plaintiff should be permitted to have a jury consider her claim "that she was deprived of a substantial opportunity to learn of the defective condition of her fetus when her physician negligently failed to provide MSAFP screening." *Id*. at 512. The Supreme Court reversed and reinstated the trial court's grant of summary disposition to Hutzel Hospital on the basis of its decision in *Weymers v Khera*, 454 Mich 639; 563 NW2d 647 (1997), in which the Court declined to recognize a claim for the loss of an opportunity to avoid physical harm less than death.

Although the Supreme Court in *Blair* did not address the *Blair* panel's discussion of the continuing viability of "wrongful birth claims," the *Taylor* panel concluded that because the *Blair* panel's decision had been reversed "in its entirety . . . under the plain language of MCR 7.215([J])(1), nothing in the *Blair* panel's opinion is binding precedent under that subrule." *Taylor*, 236 Mich App at 346 n 42. The *Taylor* panel observed "that MCR 7.215([J])(1) establishes a bright-line test and that such a test cannot be maintained if every opinion is to be parsed into its smallest components." *Id*.

However, there are also cases going the other way and giving precedential effect to a decision reversed on other grounds. In *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482; 496 NW2d 373 (1992), overruled in part on other grounds in *Wilkie v Auto-Owners Ins Co*, 469 Mich 41 (2003), the Court of Appeals found a prior decision to have "precedential value" even though it had been reversed. In the view of the *Michigan Millers* panel, this was because the Supreme Court had "expressly declined" to address the part that was dispositive of the issue at hand:

> The next question is whether this Court's decision in *Polkow* [*v Citizens Ins Co of America*, 180 Mich App 651; 447 NW2d 853 (1989), rev'd on other grounds 438 Mich 174 (1991)] remains good law. *Polkow* was later reversed by our Supreme Court. *Polkow*, 438 Mich 174 (1991). The Supreme Court did not, however, address the merits of this Court's holding that the administrative mechanisms that had come into play amounted to a "suit" that triggered a duty to defend, but rather expressly declined from review of the issue and reversed the decision on other grounds. See *Polkow*, 438 Mich at 177, n 2. We reject the insurers' argument, made in a supplemental brief, that the Supreme Court's reversal of this Court's opinion in *Polkow* renders the opinion complete[ly] without precedential value. [*Id*. at 490.]

The *Michigan Millers* panel reasoned that "'[j]ust as the discovery of one rotten apple in a bushel is no reason to throw out the bushel, one overruled proposition in a case is no reason to ignore all other holdings appearing in that decision.'" *Id*.

at 491, quoting *Rouch v Enquirer & News of Battle Creek, Michigan*, 137 Mich App 39, 54, n 10; 357 NW2d 794 (1984), aff'd 427 Mich 157 (1986). In *Straman v Lewis*, 220 Mich App 448; 559 NW2d 405 (1996), the Court of Appeals cited *Michigan Millers* for the proposition that "holdings of this Court not addressed on the merits by the Supreme Court remain binding despite reversal on other grounds." *Id*. at 451. See also *Holland Home v City of Grand Rapids*, 219 Mich App 384, 394; 557 NW2d 118 (1996) ("When the Supreme Court reversed *Retirement Homes I* on other grounds, it left intact this Court's conclusion in *Retirement Homes I* that the correct burden of proof for showing that a party is a class member is by a preponderance of the evidence.").

> "'[A] Court of Appeals opinion that has been vacated by the majority of the Supreme Court without an expression of approval or disapproval of this Court's reasoning is not precedentially binding.'"

Since *Taylor* and *Horace*, the Court of Appeals has sought to clarify the precedential value of decisions reversed on other grounds, with mixed results. In *Dunn v DAIIE*, 254 Mich App 256; 657 NW2d 153 (2002), the Court of Appeals addressed the interplay of *Taylor*, *Horace*, and *Michigan Millers*. The Court read *Taylor* and *Horace* as meaning that if the Supreme Court reverses a Court of Appeals decision on "a dispositive issue," then the Supreme Court has "entirely reversed the Court of Appeals and rendered any discussion by the Court of Appeals [as to any remaining issues] to be without precedential value." *Dunn*, 254 Mich App at 266. The *Dunn* Court noted *Michigan Millers*, but distinguished it in light of *Michigan Miller*'s observation that "because the Supreme Court *explicitly* declined to review the issue that had been before the Court of Appeals, the entire decision was not without precedential value." *Id.* at 264.

> So, what about decisions that have been reversed "on other grounds"? Such decisions are commonly cited and relied upon by parties and courts alike, but Michigan courts have suggested that this may not always be appropriate.

More recently, in *Stein v Home-Owners Ins Co*, 303 Mich App 382; 843 NW2d 780 (2013), the Court of Appeals explained that if the Supreme Court reverses a Court of Appeals decision only "in part," this leaves the decision's discussion of other issues "intact." *Id*. at 389. In reaching that determination, *Stein* reasoned that *Horace* and *Dunn* are only pertinent to situations in which the Court of Appeal's decision has been "reversed in [its] entirety – not partially reversed." *Id*. But see *Tyrrell v Univ of Mich*, 335 Mich App 254, 260; 966 NW2d 219 (2020) ("Though the Supreme Court did not expressly overrule the *Progress I* Court's holding that a failure to comply with MCL 600.6431(1) implicates governmental immunity, its reasoning effectively mooted the question and rendered this Court's discussion of whether MCL 600.6431 implicated governmental immunity to be without precedential value.").

Lesson: Use Caution When Citing Decisions That Have Been Vacated or Reversed, Even if "On Other Grounds"

So, what does this all mean? Practitioners should certainly be careful about citing any decision that has been vacated, even if on other grounds, recognizing that it is not precedential even if the higher court did not address the merits of the decision at all. At the same time, such decisions may still have persuasive value. See, e.g., *Jackson v Georgia Dep't of Transp*, 16 F3d 1573, 1578 n 7 (CA 11, 1994) (noting that although an opinion from another circuit had been "vacated on unrelated grounds . . . its reasoning does have persuasive value").

As for decisions that have been reversed, it appears to be more complicated, at least when it comes to decisions from the Michigan Court of Appeals. To be sure, one cannot necessarily assume that a decision reversed "on other grounds" is binding precedent simply because a particular ruling on an issue of law was not specifically addressed in the reversal. According to *Horace* and *Taylor*, if a decision is reversed in its entirety on a dispositive issue such that the rest of the lower court's decision has been rendered irrelevant, then the decision is not precedential and may only be considered as persuasive authority. The only potential exception appears to be, as suggested in *Michigan Millers* and *Stein*, that a decision reversed on other grounds may retain precedential value if the reversal contains some statement suggesting that it did not necessarily affect the lower court's discussion of other issues, such as if the reversal was only "in part."