

# Court of Appeals, State of Michigan

## ORDER

Michael John Lukitsch v Marie Louise Sagan Yewah

Cynthia Diane Stephens  
Presiding Judge

Docket No. 350880

Kirsten Frank Kelly

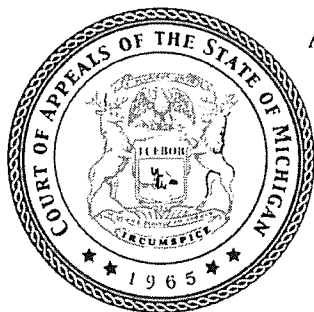
LC No. 17-013520-NI

Karen M. Fort Hood  
Judges

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Pursuant to MCR 7.205(E)(2), in lieu of granting the application, the Court orders that the portion of the Wayne Circuit Court's September 11, 2019 order precluding defendants "from asserting a liability defense" at trial against the presumption of negligence under MCL 257.402(a) is REVERSED. The "presumption of negligence may be rebutted with a showing of an adequate excuse or justification under the circumstances," *White v Taylor Distrib Co, Inc*, 275 Mich App 615, 621; 739 NW2d 132 (2007) (quotation marks and citation omitted), and if the defendant's rebuttal evidence "is less than clear, positive and credible, the question whether such presumption has been overcome should be settled—on proper instruction of course—in the jury room," *Szymborski v Slatina*, 386 Mich 339, 341; 192 NW2d 213 (1971) (quotation marks and citation omitted). In all other respects, the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 30 2020

Date

  
Chief Clerk