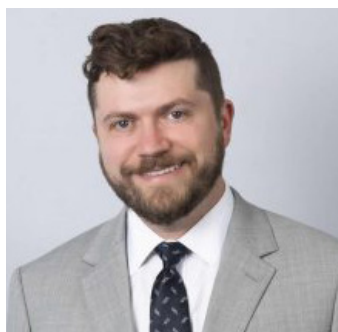


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Appellate Practice Report

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“A Word” About the Precedential Effect of Older Michigan Court of Appeals Decisions

MCR 7.215(J)(1) provides that “[a] panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals.” The Court of Appeals’ recent decision in *Plachta v Plachta*, ___ Mich App ___, ___ NW2d ___, 2026 WL 151934 (Ct. App. Jan. 20, 2026) (Docket No. 374260), serves as a good reminder that although current Court of Appeals panels are not *required* to follow a published decision issued *before* November 1, 1990, they are still “binding, precedential decisions under stare decisis.”¹

Plachta involved a trial court’s determination in a child custody dispute that a change in the child’s (“AP’s”) custody was required because the parents were unable to make joint decisions about AP’s care. The Court of Appeals found there to be ample support for the trial court’s finding that the parents had “an established history of hostility when dealing with issues involving the child, and that there was no end in sight to this acrimony.”² This triggered application of a principle recognized years ago in *Fisher v Fisher*, 118 Mich App 227; 324 NW2d 582 (1982). In *Fisher*, the Court of Appeals recognized that “[i]f two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children.”³

This, the *Plachta* Court observed, was “precisely what the trial court found” to justify its decision to award sole custody to the child’s mother.⁴ Nevertheless, because the trial court failed to explain the burden of proof it applied to its custody determination, the Court of Appeals remanded for the trial court to “articulate whether the proposed change to sole legal custody changed AP’s established custodial environment, and if so, whether it had granted defendant sole legal custody based upon clear and convincing evidence.”⁵

As relevant here, the *Plachta* Court then paused to provide “a word about *Fisher*, a pre-November 1, 1990 decision.”⁶ The Court explained that under the “plain terms” of MCR 7.215(C)(2), such decisions “are binding, precedential decisions under stare decisis,” and “are *not* merely persuasive and are not on par with unpublished decisions.”⁷ On the contrary, “these pre-November 1, 1990 decisions are binding unless



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Phil is a past Chair of the Governing Council of the State Bar of Michigan’s Appellate Practice Section, and is consistently recognized in Best Lawyers and Michigan Super Lawyers in the area of appellate practice. Phil is co-chair of the Michigan Appellate Bench Bar Conference and a contributing author to the Institute for Continuing Legal Education’s *Michigan Appellate Handbook*. Before joining the firm, Phil served as a law clerk for former Michigan Supreme Court Chief Justice Robert P. Young, Jr., and was a staff attorney at the Michigan Court of Appeals.

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Appellate Practice Report, cont.

the Court is convinced that a decision is no longer correct, and warrants reversal under the relevant stare decisis considerations.”⁸ Put another way, “older published opinions should be followed by this Court unless ‘important prudential considerations’ compel us to do otherwise.”⁹ *Plachta* summarized:

Under these rules, there is no difference in the precedential effect of a pre- versus post-1990 decision. Instead, the only difference between a pre- and post-November 1, 1990 decision is that the latter must be followed by a subsequent panel unless it is overruled by a conflict panel or the Supreme Court, while the former must be followed unless a subsequent three-judge panel concludes it is distinguishable or warrants reversal. MCR 7.215(C)(1) & (2). This is unlike unpublished opinions, which are not required to be followed under any circumstance.¹⁰

Plachta certainly is not the first time in recent years that the Court of Appeals has addressed the precedential value of pre-November 1, 1990 decisions, while also reiterating an unpublished decision’s lack of precedential value. In fact, *Plachta* cited

a couple of those decisions.¹¹ That the Court did so once again suggests that it saw a continuing need to provide guidance. Indeed, there can be a tendency among some practitioners to view older published Court of Appeals decisions as being of lesser value than more recent ones, even if the recent decision is unpublished. *Plachta* serves as a reminder that this is not the case.

Endnotes

1 *Id.*, 2026 WL 151934, *3.

2 *Id.* at *2.

3 *Id.* at 233.

4 *Plachta*, 2026 WL 151934, *2.

5 *Id.* at *3.

6 *Id.*

7 *Id.* (emphasis in original).

8 *Id.*

9 *Id.* (citation modified).

10 [*Id.*]

11 See *Hudson v Dep’t of Corrections*, ___ Mich App ___, ___; ___ NW3d ___; 2025 WL 2147427 (2025) (Docket No. 367902), slip op at 5; *People v Sims*, ___ Mich App ___, ___; ___ NW3d ___; 2026 WL 118585 (2026) (Docket No. 371876), slip op at 5 n 3; see also MCR 7.215(C)(1) (“An unpublished opinion is not precedentially binding under the rule of stare decisis.”).

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