STATE OF MICHIGAN

COURT OF APPEALS

JOYS MALCOLM KING, JR.,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant-Appellee,

and

JOHN DOE, MICHIGAN ASSIGNED CLAIMS PLAN, and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants.

UNPUBLISHED
August 25, 2026
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No. 375797
Wayne Circuit Court
LC No. 22-013145-NI

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this no-fault insurance case, plaintiff, Joys Malcolm King, Jr., appeals as of right the stipulated order dismissing his claims against defendants, MemberSelect Insurance Company (MemberSelect) and the Michigan Automobile Insurance Placement Facility (MAIPF), with prejudice. In substance, plaintiff seeks reversal of the trial court's earlier order granting MemberSelect's motion for partial summary disposition dismissing Counts 2 and 3 of his amended complaint, which asserted claims for underinsured motorist (UIM) and uninsured motorist (UM) coverage under an insurance policy by MemberSelect. Pursuant to *Stanley v Farmers Ins Exch*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374881), we dismiss this appeal for lack of jurisdiction.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from a motor-vehicle accident that occurred on June 11, 2022, in Detroit, Michigan. Plaintiff was walking on the sidewalk near Joy Road and Rosemont Avenue when he was struck by a hit-and-run driver. Plaintiff contends that he sustained significant injuries and incurred medical expenses and other losses because of the collision. At the time of the accident, plaintiff did not own a vehicle or have his own no-fault insurance, but his mother did through MemberSelect.

Following MemberSelect's denial of plaintiff's claims for personal injury protection (PIP) benefits as well as UM and UIM claims, plaintiff filed the underlying action alleging five counts: a third-party negligence claim against John Doe, the hit-and-run driver (Count 1); third-party UM and UIM claims against MemberSelect for damages permitted under the policy (Counts 2 and 3); a first-party claim for PIP benefits against MemberSelect (Count 4); and a first-party claim for PIP benefits against the MAIPF in the event he was ineligible for benefits from MemberSelect (Count 5). During the lower court proceedings, defendants questioned where plaintiff was domiciled at the time of the accident to determine whether plaintiff was covered by the MemberSelect policy issued to plaintiff's mother and the order of priority for his first-party claims for PIP benefits. Because there was conflicting evidence about whether plaintiff was domiciled with his mother or his girlfriend at the time of the accident, the trial court ultimately denied the MAIPF's and MemberSelect's competing motions for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) as to the first-party claims (Counts 4 and 5).

MemberSelect further moved for partial summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and (C)(10) as to plaintiff's UM and UIM motorist claims (Counts 2 and 3), arguing that the policy did not cover plaintiff, but that, even if it did, plaintiff was not entitled to UM or UIM coverage under MemberSelect's policy because plaintiff failed to make a "written report" of the hit-and-run accident to "local law enforcement" within 24 hours or "as soon as it is reasonably possible." MemberSelect further asserted that this requirement served to limit fraud. Plaintiff responded that the 911 call and Detroit Fire Department report authored the day of the accident met the policy's requirements and satisfied the antifraud purpose of that policy provision.

Following a hearing, the trial court agreed with MemberSelect and granted partial summary disposition under MCR 2.116(C)(10), ruling that plaintiff's failure to file a police report complying with MemberSelect's policy barred plaintiff's recovery of benefits. The court's order dismissed Counts 2 and 3 against MemberSelect with prejudice, and it specified that it was not a final order. The parties subsequently entered into a stipulated order dismissing the remaining claims against MemberSelect and the MAIPF with prejudice. That order closed the case, contained no language preserving any right to appeal prior orders, and constituted the final order from which plaintiff now appeals.

II. STANDARD OF REVIEW

"The jurisdiction of the Court of Appeals is governed by statute and court rule." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). The interpretation of statutes and court rules is a question of law subject to de novo review. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). "Hence, whether this Court has jurisdiction is a question of law that this Court reviews de novo." *Chen*, 284 Mich App at 191.

III. JURISDICTION

Plaintiff appeals from a stipulated order dismissing his remaining claims against MemberSelect and the MAIPF with prejudice. This Court lacks jurisdiction over plaintiff's appeal because plaintiff is not an aggrieved party under *Stanley*.

MCR 7.203(A)(1) provides that this Court's jurisdiction over an appeal of right is limited to appeals filed by an aggrieved party from a final judgment or final order. But as explained in *Stanley*, ___ Mich App at ___; slip op at 2 (quotation marks and citations omitted):

> A party is not aggrieved, however, by an order to which that party has consented. Indeed, it is well settled that a party may not appeal from a consent judgment or stipulated order because such an order reflects the parties' agreement rather than a judicial determination of contested rights. Consistent with that principle, a party cannot stipulate a matter and then argue on appeal that the resulting action was error.
>
> Stipulated orders that are accepted by the trial court are generally construed under the same rules of construction as contracts, because they are agreements reached by and between the parties. Accordingly, when a party expressly reserves the right to appeal a prior ruling in a stipulated dismissal, that reservation may be enforced. Conversely, where a party agrees to a final dismissal with the same opposing party and fails to reserve appellate rights, the stipulated dismissal extinguishes any claim of appeal from earlier rulings involving that party. In that circumstance, the appellant is not an aggrieved party within the meaning of MCR 7.203(A)(1), and this Court lacks jurisdiction over the appeal.

In accordance with these principles, the *Stanley* Court examined whether the plaintiff was barred from challenging a prior order granting partial summary disposition, when the order appealed from was a stipulated dismissal broadly dismissing the plaintiff's remaining claims against the defendant with prejudice and did not "exclude the claims affected by the earlier summary disposition ruling or otherwise preserve any appellate issue arising from that ruling." *Id.* at ___; slip op at 3. The Court distinguished the matter from *Jaber v P & P Hospitality, LLC*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 363572), noting that *Jaber* involved an appellant seeking review of an earlier order concerning one defendant, despite later entering into a stipulated order with a different defendant. *Stanley*, ___ Mich App at ___; slip op at 3. The *Stanley* Court clarified that because the *Jaber* defendant who benefited from the earlier ruling was not a party to the subsequent stipulated dismissal, that defendant could not require the plaintiff to preserve appellate rights in an agreement to which it was not party. *Id.* *Stanley*, by contrast, involved a plaintiff who entered into a stipulated dismissal with the same party that obtained the earlier ruling. *Id.* Accordingly, this Court reasoned, the plaintiff was required to expressly preserve any appellate challenge to that ruling in the stipulated dismissal, and because the plaintiff failed to do so, her "consent to the final dismissal forecloses appellate review, and this Court lacks jurisdiction over the appeal." *Id.*

Much like *Stanley*, here, plaintiff contests an earlier summary disposition ruling involving the same party with whom plaintiff subsequently entered into a stipulated dismissal with prejudice, i.e., MemberSelect, and the stipulated order omitted language preserving plaintiff's right to appellate review of the previous ruling. Plaintiff attempts to differentiate this case from *Stanley* by asserting that the claims addressed in the prior summary disposition ruling were distinct from those resolved by the stipulated dismissal. But *Stanley* contains no such limitation. Instead, the Court broadly held that when a plaintiff seeks to challenge a prior interlocutory ruling involving the same defendant with whom the plaintiff later enters into a stipulated order of dismissal, the plaintiff must preserve its appellate rights in that stipulated order. *Id*. Otherwise, the plaintiff is not an "aggrieved party" entitled to appellate review under MCR 7.203(A)(1). *Id*. Accordingly, under *Stanley*, the dispositive consideration is whether the plaintiff stipulated to the final dismissal with the same party that obtained the prior interlocutory ruling—not whether the claims addressed in the prior ruling were identical to those resolved by the stipulated dismissal. Thus, like *Stanley*, this Court lacks jurisdiction over the present appeal.[1]

Dismissed.

/s/ Matthew S. Ackerman
/s/ Mariam S. Bazzi

[1] Plaintiff argues that this Court should convene a conflict panel under MCR 7.215(J) "to resolve the friction between *Stanley* and *Jaber* and establish a clear and universal precedent as to what is required to preserve an issue or issues for appeal while resolving other issues in the trial court." We decline plaintiff's request to initiate conflict-panel proceedings.

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JOYS MALCOLM KING, JR., Plaintiff-Appellant,	UNPUBLISHED August 25, 2026 1:07 PM
v	No. 375797 Wayne Circuit Court LC No. 22-013145-NI
MEMBERSELECT INSURANCE COMPANY, Defendant-Appellee,	
and JOHN DOE, MICHIGAN ASSIGNED CLAIMS PLAN, and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, Defendants.	

Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

ACKERMAN, P.J. (*concurring*).

I concur with the majority opinion because I agree that under *Stanley v Farmers Ins Exch*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 374881), we lack jurisdiction over this appeal. I write separately because I believe *Stanley* was wrongly decided and because its reasoning exposes related uncertainty in our caselaw governing this Court's appellate jurisdiction. I respectfully suggest that these issues warrant the Supreme Court's attention because that Court is uniquely positioned to resolve them.

I. *STANLEY* WAS WRONGLY DECIDED

For this Court to have jurisdiction over an appeal, the appellant must be aggrieved by the trial court's decision. See *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290-291; 715 NW2d 846 (2006). In *Stanley*, the plaintiff brought various claims against the defendant, and the trial court granted partial summary disposition in the defendant's favor. *Stanley*, ___ Mich App at ___; slip op at 1-2. The parties then entered into a stipulated order dismissing the plaintiff's remaining claims, from which she claimed an appeal. *Id*. at ___; slip op at 2. We dismissed the appeal for lack of jurisdiction, holding that she was not aggrieved because she had consented to the final order and had not expressly reserved the right to appeal the earlier summary disposition ruling. *Id*. at ___; slip op at 2-3.

I do not believe that a party's consent to a final judgment should, by itself, resolve whether that party remains aggrieved by an earlier ruling. An aggrieved party is one who has "some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency," and, in the appellate context, one who can "demonstrate an injury arising from . . . the actions of the trial court." *Federated Ins Co*, 475 Mich at 291 (citation omitted). A party's agreement to dismiss what remains of a case does not mean that the party cannot "demonstrate an injury arising from" *prior* "actions of the trial court." Construing a consent judgment as consent not only to the matters actually agreed upon, but also to every prior adverse ruling in the case, is inconsistent with modern litigation practice and our court rules.

In 1963, the General Court Rules introduced mandatory joinder of some claims and permissive joinder of others, along with liberal provisions governing counterclaims and cross-claims. See GCR 1963, 203.1-.3. Our current rules retain that basic arrangement. MCR 2.203(A)-(D). Parties are therefore invited, and sometimes required, to bring multiple claims against an opposing party in a single civil action.

Some of those claims may be more worthwhile—whether in terms of expected monetary recovery or simply personal significance—than others, yet the rules permit, and sometimes require, all of them to be litigated together. Motion practice may then dispose of some claims while leaving others unresolved. If the claims disposed of first are the most valuable or important ones, it does not seem consistent with "the just, speedy, and economical determination of every action," MCR 1.105, to require a party to litigate lesser claims through trial merely to preserve appellate review of the rulings that matter most. If a party is prepared to abandon those remaining claims to obtain a final judgment and pursue their appeal of right, our jurisdiction should not depend on requiring the party to continue litigating claims that neither side has an economic or practical reason to pursue.

The better inquiry focuses on "what the party agreed to in the judgment or order and the injury that the party complains of on appeal." *Jaber v P & P Hospitality, LLC*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 363572); slip op at 7, quoting *Sandoval v Farmers Ins Exch*, ___ Mich App ___, ___ (2024) (Docket Nos. 361166 and 361176) (O'BRIEN, J., dissenting); slip op at 6. If an appellant does not challenge anything to which the appellant actually stipulated, but instead seeks review of an earlier adverse judicial ruling, the fact that the appellant later agreed to terminate the remaining litigation should not erase the injury caused by that earlier ruling.

Nor do I regard *Stanley*'s recognition that parties may expressly reserve appellate rights in a stipulated order as an adequate solution. Requiring an express reservation gives the opposing party an opportunity to refuse to stipulate unless the reservation is removed. That creates a "potential for gamesmanship" because "aggrieved parties might decline to agree to consent judgments or stipulated orders of dismissal as a result." *Jaber*, ___ Mich App at ___; slip op at 10, citing *Jaber v P & P Hospitality, LLC*, ___ Mich App ___, ___ n 11 (2024); slip op at 14-15 n 11. The consequence is that one party may effectively condition an efficient end to the remaining trial court litigation on the other party's surrender of their right to appellate review.

I do not see why appellate review that would otherwise be available should turn on that bargaining dynamic. A party should not lose an appeal of right simply because the party pleaded multiple claims as permitted, or even required, by MCR 2.203, or because the requested relief was sufficiently complex that the trial court could summarily dispose of the most valuable or important components while leaving less significant avenues of relief to be litigated to an unprofitable conclusion.

Stanley also appears not to have considered an important provision of our court rules. Under our summary disposition motion practice, when a motion "is denied, or if the decision [on the motion] does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment." MCR 2.116(J)(1). A party aggrieved by the court's decision then has a choice: seek immediate interlocutory review *or* "proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment." MCR 2.116(J)(2)(a), (c).

The rule thus gives an aggrieved party two appellate paths. The party may seek immediate review by application for leave to appeal, or the party may proceed to final judgment and obtain review in an appeal of right from that judgment. In the latter circumstance, the aggrievement produced by the summary disposition ruling necessarily persists through entry of final judgment; otherwise, the second option would be illusory.

Nothing in MCR 2.116(J)(2)(c) conditions that second path on the final judgment having been *adversely litigated*. The rule says that a party may proceed to "final judgment," not to a final judgment entered after trial, a contested final judgment, or a final judgment containing an express reservation of appellate rights. So long as a party remains aggrieved by the earlier summary disposition ruling, the text suggests that entry of final judgment supplies the procedural event necessary to obtain review of that earlier ruling.

Stanley produces a different result. Under its reasoning, a party aggrieved by a summary disposition ruling may initially elect the option expressly preserved by MCR 2.116(J)(2)(c)—waiting for a final judgment rather than pursuing interlocutory review—but then lose that appellate option if the final judgment happens to be stipulated. Put differently, *Stanley* concludes that the form of the eventual final judgment can extinguish the very aggrievement that MCR 2.116(J)(2) recognizes. That effectively reads into the rule an exception for stipulated final judgments that its text does not contain.

The rule can instead be read more straightforwardly. Once a party is aggrieved by a trial court's ruling on a motion for summary disposition, MCR 2.116(J)(2)(c) permits that party to preserve the issue for an appeal taken after final judgment. On that reading, the subsequent entry of a stipulated final judgment does not transform the earlier adverse judicial ruling into something to which the party consented.

That said, the Supreme Court is the best arbiter of whether MCR 2.116(J)(2) has that effect. The provisions in MCR 2.116(J)(2) were introduced in 1985 with the Michigan Court Rules to "clarify[] the appellate options of a party aggrieved by a court's decision." MCR 2.116, 419A Mich 38, 44 (staff comment). There is an argument that MCR 2.116(J)(2) should be understood as abrogating earlier caselaw that suggested—albeit *only* suggested, as Judge O'BRIEN disputed this characterization in *Sandoval*—that a party who agrees to a consent judgment forfeits every grievance concerning *any* aspect of the trial court proceedings. See, e.g., *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958); *Chapin v Perrin*, 46 Mich 130, 131; 8 NW 721 (1881). But the Supreme Court is in the best position to decide whether Judge O'BRIEN is correct, whether MCR 2.116(J)(2)'s "clarification" has the effect that I posit it has, or whether *Stanley* was correctly decided. In the meantime, *Stanley* is a published opinion, and we are bound by it. I therefore agree that it must be applied here and that this appeal must be dismissed for lack of jurisdiction.

II. RELATED JURISDICTIONAL PROBLEMS

Stanley holds that an appellant in plaintiff's position is not aggrieved and therefore cannot maintain an appeal of right in this Court. For the reasons already explained, I disagree. But the caselaw relating to aggrieved parties and consent judgments has two additional and related problems. And because of the nature of those problems, it may be difficult, if not impossible, for a panel of this Court to create a conflict under MCR 7.215(J)(1) that would permit us to resolve them internally. Here too, Supreme Court guidance may be necessary.

Our recent decision in *Jaber* suggests that when this Court lacks jurisdiction over an appeal of right, the problem can be cured by treating the claim of appeal as an application for leave to appeal. See *Jaber*, ___ Mich App at ___; slip op at 10-11 (noting that "this Court may exercise its discretion to treat a claim of appeal as a granted application for leave to appeal for reasons of judicial economy" and that "this Court has treated a portion of a claim of appeal as a granted application for leave to appeal when considering a challenge to subject-matter jurisdiction") (cleaned up). To be sure, MCR 7.203(A) says that this Court "has jurisdiction of an appeal of right filed by an aggrieved party from" certain trial court orders, while MCR 7.203(B) says that we "may grant leave to appeal from" certain orders without repeating the requirement that the appealing party be aggrieved. But proceeding by application should not cure an absence of aggrievement.

In *Federated Ins Co*, 475 Mich at 290-292, the Supreme Court indicated that "aggrieved party" status is a *constitutional* requisite of justiciability. The Court again emphasized the relationship between aggrievement and justiciability in *League of Women Voters v Secretary of State*, 506 Mich 561, 575-576; 957 NW2d 731 (2020). Accordingly, the fact that MCR 7.203(B) does not repeat the phrase "aggrieved party" cannot mean that a person who has suffered no judicially cognizable injury may nevertheless invoke this Court's jurisdiction simply by proceeding through an application for leave. If *Jaber* is understood to suggest that an application for leave can cure a constitutional absence of aggrievement, then I believe it is mistaken.

I also question *Jaber*'s suggestion that this Court may treat a claim of appeal as an application and grant it. I have addressed that practice before and explained why I believe it is unsupported both formally and prudentially. See *Velocity MRS—Fund IV, LLC v 411 Help, LLC*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2026 (Docket

No. 371811) (ACKERMAN, P.J., concurring in the judgment).[1] But I have a few more thoughts to add to that discussion here.

When this Court was first established, the statutory statement of our jurisdiction was fairly simple. See MCL 600.308 and 600.309, as enacted by 1964 PA 281. At that time, MCL 600.308(1)-(2) gave this Court jurisdiction over certain "final judgments," while MCL 600.308(3) gave this Court jurisdiction over "[s]uch other judgments or interlocutory orders as the supreme court may by rule determine." Under MCL 600.309, appeals from final judgments, in turn, were a matter of right, while other appeals were available "by right or by leave as provided by the statute or the rules promulgated by the Supreme Court." See also *People v Brothman*, 4 Mich App 709, 713; 145 NW2d 355 (1966) ("Section 308 declares that the Court of Appeals has jurisdiction on appeals from all final judgments of the circuit court. Section 309 states that all appeals permitted by the act to the court of appeals from final judgments are by right. The logical conclusion is that all final judgments of the circuit court are appealable by right to the court of appeals.").

As this Court observed, under that arrangement, there was "no exception made by this statute for cases that originated in a lower tribunal but terminated with a final circuit court judgment." *Id*. This Court likewise exercised jurisdiction over appeals from the traffic and ordinance division of recorder's court. See *Walber v Wayne Circuit Judge*, 2 Mich App 145, 149; 138 NW2d 772 (1966). The Legislature promptly changed that arrangement. Following an amendment, this Court had jurisdiction over "final judgments from the circuit courts, court of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court." MCL 600.308(1), as amended by 1968 PA 116. Final judgments from the traffic and ordinance division of recorder's court, along with final judgments "from all other courts," were instead appealable to the circuit court, "upon which further review may be had *only upon application for leave to appeal granted by the court of appeals*." *Id*. (emphasis added). In short, 1968 PA 116 was intended to alter the jurisdictional arrangement reflected in cases such as *Brothman* and *Walber* and to restrict this Court's jurisdiction.

The scope of our jurisdiction under MCL 600.308 has evolved over the years, but the Legislature's intent to impose meaningful limits on that jurisdiction has been present ever since. Admittedly, the statutory text does not define what it means for this Court to grant leave to appeal. The precise mechanics of that requirement therefore are not prescribed by statute; what is clear is that the requirement was intended to operate as a limitation.

The Supreme Court has supplied the ordinary procedure by rule. Under MCR 7.205(E)(2)-(3), an application is submitted to a motion panel and, if granted, placed in the queue for

[1] Formally, our jurisdiction over cases requiring discretionary review exists only within the limits the Legislature has prescribed, and the statutory requirement of an "application for leave to appeal granted by the court of appeals," MCL 600.308(2)(c), should not be treated as though it were interchangeable with the filing of a claim of appeal. Prudentially, converting an improper claim of appeal to a granted application rewards parties who bypass the requirements governing discretionary review, creates poor incentives for future litigants, consumes judicial resources, and prevents the law governing our jurisdiction from developing as it should.

consideration by a merits panel. I do not suggest that this precise sequence is itself part of the sine qua non of an "application for leave to appeal granted by the court of appeals" within the meaning of the statute. In theory, I could imagine an arrangement consistent with the statutory text in which a merits panel treated a claim of appeal as an application for leave, granted it, and then *returned the case to the queue* for the merits of the appeal to be decided by a future panel. But even if such an arrangement arguably complied with the *statute*, it would create the undesirable incentives I wrote about in *Velocity MRS—Fund IV, LLC* and would still be *imprudent*.

I likewise disagree with this Court's suggestion in *Guzowski v Detroit Racing Ass'n*, 130 Mich App 322, 325; 343 NW2d 536 (1983), that "[w]hen a litigant mistakenly claims an appeal by right, . . . the nonappealing party's failure to assert the jurisdictional defect in the first responsive pleading or motion should be deemed to waive the defect." In other words, *Guzowski* said that such a defect should be "analyzed as a personal jurisdiction problem" to justify treating a claim of appeal as an application. *Id*. I disagree; in my view, these defects are clearly subject-matter jurisdiction problems.

Under the current version of MCL 600.308(1), this Court has jurisdiction over an appeal of right from a final judgment as defined in rules adopted by the Supreme Court.[2] An appellee's failure to object to an improper claim of appeal does not transform a nonfinal order into a final one; that is an objective reality that cannot be altered by the parties. The situation is therefore not analogous to personal jurisdiction, where a party can waive a jurisdictional defect by submitting to the court's authority. "Lack of subject-matter jurisdiction may be raised at any time, and parties to an action can neither confer jurisdiction by their conduct or action nor waive the defense by not raising it." *Winters v Dalton*, 207 Mich App 76, 79; 523 NW2d 636 (1994). We have consistently described this Court's jurisdiction in the same terms. See, e.g., *Walsh v Taylor*, 263 Mich App 618, 622; 689 NW2d 506 (2004) ("The question of jurisdiction is always within the scope of this Court's review.").

These two strands of our caselaw present an unusual institutional problem. Because both relate to this Court's discretionary docket, a panel that believes the cases are wrong can generally avoid applying them without ever reaching an outcome that creates a cognizable conflict. A panel that does not believe an application for leave can cure the absence of aggrieved party status can simply decline to grant leave. Similarly, a panel that does not believe it is legitimate or prudent to treat a claim of appeal as an application and grant it can simply decline to exercise that supposed discretion. In either circumstance, the panel can avoid the disputed proposition, leaving no rule for it to follow "only because it is required to do so." MCR 7.215(J)(2).

The same problem persists at the next stage of our conflict procedure. Even if a conflict were declared, the judges of this Court would then be polled on whether to convene a special panel,

[2] It would be preferable for the Legislature to specify expressly that this Court has jurisdiction to entertain an appeal by leave where there could also have been an appeal of right. As written, MCL 600.308 can be read to suggest that the circumstances are mutually exclusive, which could in turn imply that we lack authority to grant leave when an appeal of right was available. I see little purpose in such a distinction, however, and a party who files an unnecessary application for leave when an appeal of right was available should not be punished for exercising caution.

and "[s]pecial panels may be convened to consider outcome-determinative questions only." MCR 7.215(J)(3)(a). Because a panel majority that rejects either the efficacy of applications as a means of curing the absence of aggrievement or the legitimacy of treating a claim of appeal as an application can ordinarily prevent those doctrines from becoming outcome-determinative simply by declining discretionary review, it seems inevitable that when polled, the judges of this Court would not consider the doctrine outcome-determinative.

The result is that this Court's procedures force it to shadowbox with these jurisdictional questions rather than confront them directly. The disputed propositions will therefore likely continue to appear in our caselaw while remaining unusually resistant to correction through this Court's conflict procedure. That structural difficulty provides an additional reason for Supreme Court review.

III. CONCLUSION

I agree that *Stanley* controls this case and requires dismissal, but I believe it was wrongly decided. Aggrievement should turn on the judicial injury an appellant seeks to challenge, not on the appellant's later agreement to terminate the remaining litigation. Whether changes in Michigan pleading standards or the "clarification" of an aggrieved party's appellate options in MCR 2.116(J)(2) alter the effect of earlier Supreme Court decisions such as *Dora* or *Chapin* is ultimately a question the Supreme Court is best positioned to answer.

Related questions likewise warrant the Supreme Court's attention. This Court's conflict procedure is poorly suited to resolve whether this Court may treat a claim of appeal as an application for leave to appeal and grant it, or whether doing so can cure a jurisdictional defect arising from the appellant's lack of aggrievement. Because those questions may evade resolution through this Court's ordinary mechanisms for correcting conflicting precedent, uncertainty may persist unless the Supreme Court intervenes. For the sake of clarity and certainty in the law governing our jurisdiction, I respectfully urge it to do so.

/s/ Matthew S. Ackerman

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

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Before: ACKERMAN, P.J., and BAZZI and LIEVENSE, JJ.

LIEVENSE, J. (*dissenting*).

Before oral argument, we ordered the parties to file supplemental briefs addressing whether this Court had jurisdiction considering its recent holding in *Stanley v Farmers Ins Exch*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374881); slip op at 2, that "where a party agrees to a final dismissal with the same opposing party and fails to reserve appellate rights, the stipulated dismissal extinguishes any claim of appeal from earlier rulings involving that party." Because I believe *Stanley* is distinguishable and does not require us to dismiss this case for lack of jurisdiction, and I would address the merits of this appeal, I dissent.

I. JURISDICTION AND *STANLEY*

For context relevant to jurisdiction, and as the majority summarizes, plaintiff's complaint included five counts: a third-party negligence count against John Doe, the unknown hit-and-run driver (Count 1); third-party UM and UIM counts against MemberSelect for damages permitted under the policy (Counts 2 and 3); a first-party count for PIP benefits against MemberSelect (Count 4); and a first-party count for PIP benefits against the MAIPF in the event plaintiff was ineligible for benefits from MemberSelect (Count 5). The trial court first granted partial summary disposition and dismissed Counts 2 and 3 against MemberSelect in a nonfinal order. Later, after resolving the PIP claims, plaintiff, MemberSelect, and the MAIPF stipulated to dismiss Counts 4 and 5.[1]

The plaintiff in *Stanley* filed a first-party one count complaint for PIP benefits against Auto-Owners Insurance Company and the MAIPF. *Id*. at ___; slip op at 1. Auto-Owners denied liability, and Farmers Insurance Exchange was assigned as the servicing insurer for the assigned-claims plan and assumed defense of the case. *Id*. at ___; slip op at 1-2. After the trial court dismissed Auto-Owners from the case, Farmers moved for partial summary disposition, arguing that the plaintiff could not recover money for certain medical bills because plaintiff had assigned her rights to be paid for those bills to the medical provider. *Id*. at ___; slip op at 2. Following a hearing, the trial court agreed with Farmers and granted partial summary disposition, ruling the plaintiff could not pursue claims to recover money for those medical bills. *Id.* The plaintiff and Farmers later agreed to a stipulated order dismissing the plaintiff's complaint for PIP benefits with prejudice pursuant to an agreement to submit the matter to binding arbitration. *Id.* Because the plaintiff did not include a reservation of rights to appeal the earlier order granting partial summary disposition to Farmers for those specific medical bills, this Court held plaintiff was not an aggrieved party within the meaning of MCR 7.203(A)(1), and that it lacked jurisdiction over the appeal. *Id*. at ___; slip op at 3.

In its supplemental brief in this case, MemberSelect argues that *Stanley* bars plaintiff's appeal because it is not an aggrieved party. Plaintiff disagrees, arguing in the alternative that: (1) *Stanley* was wrongly decided; (2) *Stanley* is distinguishable because here the prior order addressed two distinct counts separate from the count dismissed in the stipulated order; and (3) even if this Court lacks jurisdiction, it should exercise its discretion and consider the merits of the case as if on leave to appeal or remand the case to the trial court to consider other relief.

I agree that *Stanley* is distinguishable. While *Stanley* contains broad language regarding the impact of a stipulated dismissal order involving the same parties that does not reserve appellate rights, the complaint in that case only included one count, for PIP benefits, and the earlier grant of partial summary disposition pertained to specific claims for money to cover certain medical expenses as part of the PIP benefits that had been assigned to a medical provider, not dismissal of any counts. Thus, *Stanley* held the plaintiff was no longer "aggrieved" and we lacked jurisdiction when the subsequent stipulated order dismissed the one count on which the plaintiff had sought and was denied coverage for the specific medical bills, and did not reserve appellate rights. Important to the analysis in *Stanley* was that the plaintiff was not "aggrieved" by "an order to which that party had consented." *Stanley*, ___ Mich App ___, slip op at 2.

Here, on the other hand, plaintiff had not consented to the earlier nonfinal order granting partial summary disposition dismissing Counts 2 and 3 for UM and UIM benefits. And Counts 2 and 3 were third party claims brought in part because the motorist was unidentified, and those counts sought relief distinct from the PIP benefits sought in Counts 4 and 5 that plaintiff later agreed to dismiss in the stipulated order. There is a difference between an earlier order that

[1] It is not clear whether the trial court ever addressed Count 1.

dismisses entire counts like in this case, and the earlier order in *Stanley* that precluded recovery for certain medical bills sought in the single-count[2] complaint that the plaintiff then agreed to dismiss in the subsequent stipulated order without reserving appeal rights.

Thus, while plaintiff settled Count 5 for PIP benefits with MAIPF and later agreed to dismiss that count, that settlement did not include potential recoverable damages in plaintiff's third-party claims against the unknown motorist (Count 1) or against MemberSelect for UM or UIM coverage, where MemberSelect stood in the shoes of the tortfeasor, the unknown driver who committed the hit-and-run (Counts 2 and 3). No one thought plaintiff was giving up his right to appeal the dismissal of his third-party UM or UIM counts when he agreed to dismiss his PIP counts. I would therefore conclude that plaintiff is an aggrieved party under MCR 7.203(A)(1) and that we have jurisdiction, and address the merits of this case.

II. MERITS ANALYSIS

As to the merits, the trial court dismissed plaintiff's UM and UIM counts against MemberSelect after finding that plaintiff had not fulfilled MemberSelect's policy requirement that plaintiff make a written report to local law enforcement to make such a claim. Considering the merits requires more details as to the facts of the case.

A. RELEVANT FACTUAL BACKGROUND

When plaintiff was struck by a hit-and-run driver on June 11, 2022, no one witnessed the accident, but a bystander saw plaintiff laying injured on the ground and called 911. For unknown reasons the Detroit Police Department did not respond. Instead, the Detroit Fire Department was dispatched to the scene at around 11:00 p.m. to treat plaintiff, who "couldn't or wouldn't explain what happened." The DFD report also detailed that the bystander recognized plaintiff as "someone

[2] Part of the problem applying *Stanley* is its use of the term "claims" and whether that necessarily means the same as "counts," when the two words do not mean the same thing but are sometimes used interchangeably. *Compare* the definition of "Claim" and "Count" in Black's Law Dictionary: CLAIM, *Black's Law Dictionary* (12th ed) ("1. A statement that something yet to be proved is true. 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional. 3. A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for."); COUNT, *Black's Law Dictionary* (12th ed) ("In a complaint or similar pleading, the statement of a distinct claim.").

The majority says that the stipulated dismissal order in *Stanley* "broadly dismiss[ed] the plaintiff's remaining *claims* against the defendant with prejudice." (emphasis added). But *Stanley* involved a one-*count* complaint for PIP benefits, and so the *claims* for certain medical expenses that were the subject of the earlier partial summary disposition order were part of the same *count* that the plaintiff subsequently agreed to dismiss without reserving appellate rights. Here, counts 2 and 3 were separate counts from those dismissed by the final stipulated order.

Another problem applying *Stanley* may be what words are enough to preserve appellate rights and what words are not. That problem is not at issue here, however.

who normally hangs out in the area." The report went on to list the following injuries: "Pt has 2in deep laceration on left forehead, and abrasions that look like road rash on left thigh. Abrasions on left forearm. Pt complained of hurting all over. 10/10. No other specific complaints."

Plaintiff was transferred by ambulance to the emergency department at Beaumont Hospital in Dearborn, where he underwent surgery for a fractured pelvis. His medical records stated "[b]ased on injuries sustained, it is most likely the patient was struck by a car." After his discharge from the hospital and rehabilitation facility, plaintiff did not have any additional known contact with the police about the hit-and-run accident.

As mentioned by the majority, MemberSelect moved for partial summary disposition under MCR 2.116(C)(8) and (C)(10) as to plaintiffs UM and UIM motorist counts (Counts 2 and 3), arguing plaintiff was not entitled to UM or UIM coverage under MemberSelect's policy because plaintiff failed to make a "written report" of the hit-and-run accident to "local law enforcement" within 24 hours or "as soon as it is reasonably possible."

After holding oral argument on the motion, the trial court allowed the parties to file supplemental briefs on whether plaintiff complied with the "written report" to "local law enforcement" provision of the policy, and they did so. At another hearing, counsel for MemberSelect conceded and the trial court agreed that the purpose of the provision was to prevent insurance fraud. The trial court ultimately issued an order granting MemberSelect's motion for summary disposition for "reasons stated on the record," and dismissed Counts 2 and 3 against MemberSelect with prejudice. The reasons stated on the record were:

> I understand arguments on both sides, I do. I understand why the defense wants to make sure that the provisions outlined in the terms of the insurance coverage are followed, but I also look at the intent of it. And the intent really is to make certain that somebody isn't trying to claim benefits under an . . . underinsured motor vehicle coverage when there is no proof that an accident even occurred by a hit and run driver.
>
> * * *
>
> Well the Court in this case will find that the Defendant does not satisfy that burden under a (C)(8) standard because there is a question. The report that was filed by EMS. It was not technically under the Detroit Police Department, but EMS is an arm. That call was made from 911 and apparently, according to this report before this Court, there is, you know, the 911 operator operates through the city of Detroit. It's dispatched through the city of Detroit. Okay. They're law enforcement. The concern that . . . the Defendant has is the notice provision so that there's not fraud, because that's a valid concern.
>
> With respect to (C)(10), a motion brought under MCR 2.116(C)(10) . . . And here's what bothers or troubles this Court. . . . [A]nd I agree with the Plaintiff. Plaintiff sustained serious injuries warranting a surgery. After the surgery, he spent some time in the hospital. After the hospital stay, spent some

time for the rehab. So obviously the Plaintiff could not comply with the 24-hour period.

But that policy also indicates that when it's . . . reasonable to do so. Obviously, somebody who's just suffered some injuries as a result of a motor vehicle accident might be in a hospital setting, as is the case here. However, this case has been going on for two years. There should have been a police report made. It should have been filed and it wasn't.

And while I appreciate the position the Plaintiff's in, it's not up to this Court to do the job of the Plaintiff and it's not also up to this Court to usurp the very plain language of the [policy] and interpret it by finding that the EMS report satisfies that requirement.

So there is no genuine issue of material fact for the trier of fact . . . to decide. There wasn't a police report filed, and I'm not persuaded by the Supplemental Briefs that that changes anything.

So the Court's gonna go ahead and grant the Partial Motion For Summary Disposition.

A few months after the trial court dismissed Counts 2 and 3, plaintiff settled his first-party counts for PIP benefits against MAIPF (Count 5). On May 5, 2025, upon stipulation of the parties, the trial court dismissed "[p]laintiff's claims against [d]efendants Memberselect [] and [MAIPF]" with prejudice, presumably referring to Counts 4-5, the only remaining counts against those defendants. This final order closed the case and plaintiff appealed, challenging the trial court's earlier decision to dismiss Counts 2 and 3 and arguing that the trial court erred in granting MemberSelect's motion for summary disposition under MCR 2.116(C)(10) when it held the 911 call and DFD report were insufficient to satisfy MemberSelect's policy requirements. I agree and would reverse and remand for further proceedings.

B. STANDARD OF REVIEW

Although MemberSelect moved for summary disposition under MCR 2.116(C)(8), the trial court allowed the parties to file supplemental responses to MemberSelect's motion, it considered the exhibits attached to those briefs in making a decision, and it decided MemberSelect's motion under MCR 2.116(C)(10). See *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 206-207; 920 NW2d 148 (2018). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152; 934 NW2d 665 (2019). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*. "A question of fact exists when reasonable minds could differ as to the conclusions to be drawn from the evidence." *Dextrom v Wexford Co*, 287 Mich App 406, 415-416; 789 NW2d 211 (2010). This Court reviews the grant or denial of summary disposition de novo. *Id*. at 118.

C. ANALYSIS

"Insurance policies are interpreted in accordance with the principles of contract interpretation." *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 433; 773 NW2d 29 (2009). "[W]hether contract language is ambiguous is a question of law that we review de novo." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Similarly, "the proper interpretation of a contract is also a question of law that we review de novo." *Id*.

This Court's "main goal in interpreting a contract is to honor the parties' intent." *Davis v LaFontaine Motors, Inc*, 271 Mich App 68, 73; 719 NW2d (2006). "Courts must discern the parties' intent from the words used in the contract and must enforce an unambiguous contract according to its plain terms." *Id*. "A contract is to be construed in favor of the insured only when an ambiguity exists." *Smejkal v Beck*, 351 Mich App 274, 279; 35 NW3d 649. "If a relevant term is undefined, this does not make the policy ambiguous, and the fact that dictionaries define words differently will not create an ambiguity." *Id*. Rather, "[a]n insurance contract is ambiguous when its provisions are capable of conflicting interpretations." *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Because UM and UIM coverage is not required by the no-fault act, MCL 500.3105, "interpretation of the policy dictates under what circumstances those benefits will be awarded." *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 524-525; 502 NW2d 310 (1993).

I begin with the relevant language in MemberSelect's policy that details what the insured must do in case of an accident or loss:

> 2. A person claiming Personal Injury Protection under Part II or Uninsured and Underinsured Motorists Bodily Injury Coverage under Part III must promptly:
>
> * * *
>
> e) under Part III – Uninsured and Underinsured Motorists Bodily Injury Coverage:
>
> 1) make a written report of a hit-and-run accident within 24 hours to local law enforcement;
>
> 2) allow us to inspect the car occupied by the insured person; and
>
> 3) file with us within 30 days written notice of the hit-and-run accident.
>
> 4) if it is shown that it is not reasonably possible to give such notice within the prescribed time as described in 1) and 3) above, notice must be given as soon as it is reasonably possible.

Plaintiff argues the term "local law enforcement" is undefined by the contract and is therefore ambiguous, and that, even if this Court were to disagree, the supplied DFD report and 911 call at least demonstrate "substantial compliance" with the terms of the contract, citing the substantial compliance doctrine. See *Rodgers v JP Morgan Chase Bank NA*, 315 Mich App 301, 310; 319 NW2d 381 (2016) ("if a good-faith attempt to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished."). MemberSelect argues the contract is unambiguous and therefore not open to judicial construction. And, because plaintiff undisputedly did not make a written report to the police, and because "law enforcement agency," as defined by statutes and caselaw, does not include 911 operators or EMS personnel, MemberSelect argues the DFD report and 911 call were insufficient to satisfy the policy's requirements.

I agree with MemberSelect that the contract is unambiguous, but I would hold that plaintiff's statements to the DFD, which resulted in the written DFD report, are sufficient to meet the policy requirements. The parties do not dispute that, because plaintiff was injured, it was not plaintiff's fault that the Detroit Police Department or some other police agency did not arrive at the scene in response to the 911 call, nor do they dispute that because of his injuries plaintiff could not have gone to a police station to make a written report within 24 hours of the hit-and-run accident. And since plaintiff did not go to a police station later, there is no need to decide the meaning of the alternative contract provision of giving notice "as soon as it is reasonably possible."

As to the "make a written report" requirement, the policy does not specify whether the claimant must be the one to write the report, whether it must be handwritten or typed, or whether it must include a written statement from the claimant. These open questions do not mean the language is ambiguous. Who "writes" the report does not matter—the common understanding of "make a written report" is that the person must somehow communicate with someone, and that communication results in a written report. MemberSelect generally agreed at oral argument.

Similarly, the "to local law enforcement" contract provision needs to be applied to determine whether plaintiff complied with it. Here, what happened satisfied the policy requirements. A bystander saw plaintiff injured on the ground and called 911 and the fire department responded. Although, according to the report, plaintiff "couldn't or wouldn't explain what happened," he at least communicated to someone presumably in uniform, to the best of his ability, that he "hurt all over." Plaintiff's communication at the scene resulted in a written report by DFD of a hit-and-run accident. The report was generated the same day as the accident and included a statement from a bystander.

In these circumstances and given the policy provision's purpose is to prevent fraud, the DFD report is a more credible confirmation that a hit-and-run accident happened than if plaintiff had gone to the Detroit Police Department after being released from a medical facility a few days or weeks later.

Neither party has cited a case that has decided this exact question. MemberSelect cites *Hall v Auto Club Ins Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2025 (Docket No. 369422), pp 1-2. *Hall* involved identical policy language, and this Court reversed the trial court's denial of the insurer's motion for summary disposition where the plaintiff failed to make a written report to law enforcement within 24 hours of a hit-and-run accident. In *Hall*, the plaintiff allegedly called the police after the hit-and-run accident, but no one responded to the scene and the plaintiff eventually left. *Hall*, unpub op at 1-2.

But unlike here where we have a report, the plaintiff in *Hall*, unpub op at 2, never reported what happened to anyone leading to a written report. And, notably, MemberSelect does not argue that the information in the DFD report is insufficient to meet the purpose of the "make a written report" provision, as was the case in *Hall* where no writing existed. Nor does MemberSelect suggest the DFD report is fraudulent such that it is invalid. MemberSelect even acknowledged at oral argument that had the report containing the same information come from the Detroit Police Department, it potentially would satisfy MemberSelect's policy.

MemberSelect argues the definitions of "law enforcement agency" and "law enforcement officer" in Michigan statutes do not include a firefighter or fire department, so a fire department cannot be considered "local law enforcement" under the contract.[3] MemberSelect ignores, however, that MCL 750.411a(4) of the Michigan Penal Code equally criminalizes making false reports of medical emergencies to police departments, fire departments, and other first responders:

> A person shall not intentionally make or intentionally cause to be made a false report of a medical or other emergency to a peace officer, police agency of this state or of a local unit of government, firefighter or fire department of this state or a local unit of government of this state, 9-1-1 operator, medical first responder, or any governmental employee or contractor or employee of a contractor who is authorized to receive reports of medical or other emergencies.

The fact that our state punishes these false statements equally means that the DFD report satisfies the text and purpose of the policy provision at issue.

I believe there is no genuine dispute that the DFD report met the requirement of a written report to local law enforcement, and I would reverse the order granting MemberSelect's motion for partial summary disposition dismissing Counts 2 and 3 and remand for further proceedings on those claims.

/s/ Andrew J. Lievense

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[3] See the Commission on Law Enforcement Standards Act, MCL 28.602. MemberSelect also identifies *People v Lucas*, unpublished per curiam opinion of the Court of Appeals, issued December 23, 2025 (Docket No. 372439), which states that statements made to EMS were insufficient to fall within the scope of MCL 768.27c(1)(e) of statements made to "law enforcement officer[s]." MCL 768.27c, however, concerns the circumstances where hearsay statements made by a declarant may be admissible in domestic violence cases, and the statute's use of "law enforcement *officer*" is different from the contract's use of "local law enforcement."