STATE OF MICHIGAN

COURT OF APPEALS

NUCARE THERAPY, LLC, Plaintiff-Appellee,	UNPUBLISHED January 07, 2025 12:53 PM
v	No. 366779 Macomb Circuit Court
LIBERTY MUTUAL INSURANCE COMPANY, Defendant-Appellant.	LC No. 2022-002115-NF

Before: N. P. HOOD, P.J., and CAMERON and LETICA, JJ.

PER CURIAM.

In this no-fault dispute, defendant appeals by leave granted[1] the trial court's opinion and order denying defendant's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact).[2] We reverse and remand.

I. FACTUAL BACKGROUND

On April 17, 2021, the injured party, Gerell Morgan, was seated in his parked car, an uninsured 2012 Cadillac Escalade, on the side of a roadway in Detroit, Michigan. While Morgan was speaking on his cellphone, another vehicle struck the rear driver's side of Morgan's car. Morgan was subsequently transported to the hospital for treatment after sustaining numerous

[1] See *NuCare Therapy LLC v Liberty Mutual Insurance Company*, unpublished order of the Court of Appeals, entered December 8, 2023 (Docket No. 366779). The aforementioned order granted defendant's application for leave to appeal "limited to the issue [of] whether the injured party, Gerell Morgan, was related by marriage to the insured, Thaddeus Willis, at the time of the accident."

[2] In this case, defendant moved for summary disposition pursuant to MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted) and (C)(10), however, because the parties looked beyond the pleadings in arguing the motion, as did the trial court in denying the motion, this Court treats the motion as though it were made pursuant to MCR 2.116(C)(10) only. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 544; 904 NW2d 192 (2017).

bodily injuries. Thereafter, he received physical therapy from plaintiff to treat his neck, shoulders, right knee, and lower back, three times per week.

Because Morgan's car was uninsured, Morgan sought payment of no-fault benefits under an insurance policy held between defendant and a person named Thaddeus Willis. Willis was married to Morgan's sister, Regina Morgan-Willis (Regina), until her death in 2020, resulting in an affinal relationship between Morgan and Willis. Morgan also resided with Willis for approximately 35 years, including the time after Regina's death and the date of the accident. After Regina died, Willis maintained the insurance on Regina's car, a 2017 Chevrolet Equinox, through defendant.

In June 2022, plaintiff filed a complaint alleging that: (1) on April 17, 2021, Morgan sustained accidental bodily injuries due to a motor vehicle collision, (2) Morgan assigned all rights, privileges, and remedies concerning payment for healthcare services to plaintiff under the no-fault act, MCL 500.3101 *et seq*., and (3) defendant was first in order of priority to compensate plaintiff for expenses arising out of Morgan's care, including personal injury protection (PIP) benefits. Defendant filed an answer generally denying the allegations, and raising as affirmative defenses that defendant was not the highest ranked insurer in the order of priority to indemnify Morgan's PIP benefits, and plaintiff failed to state a claim upon which relief may be granted.

Later, defendant filed a motion for summary disposition under MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted) and (C)(10) (no genuine issue of material fact). More specifically, defendant contended that it was not first in priority under MCL 500.3114(1) because Morgan was not a named insured, the named insured's spouse, or a relative of the named insured or insured's spouse under the language of its policy. Defendant recognized that Regina was previously married to Willis, but Michigan caselaw established that, after Regina's death, Morgan and Willis were no longer legally related by affinity.

Plaintiff opposed defendant's motion, citing *Patmon v Nationwide Mut Fire Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 23, 2014 (Docket No. 318307), to support its argument that Morgan and Willis remained related by marriage after Regina's death, permitting Morgan to recover as a "family member" of the "insured" under defendant's policy.

Following oral argument, the trial court issued an opinion and order denying defendant's motion for summary disposition. The court recognized that *Patmon* did not constitute binding caselaw, but found it persuasive given the nature of the relationship between the parties and the primary issue in both matters concerned whether affinal relatives were eligible for no-fault benefits. Defendant filed a motion for reconsideration, which the trial court denied. This appeal ensued.

II. SUMMARY DISPOSITION

Defendant argues that the trial court erred when it denied defendant's motion for summary disposition because it improperly concluded that Morgan was entitled to coverage under defendant's no-fault insurance policy and that defendant was first in priority under MCL 500.3114. We agree.

"Insofar as [a] motion for summary disposition involves questions regarding the proper interpretation of a contract, this Court's review is de novo." *Duato v Mellon*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 362823); slip op at 3 (quotation marks and citation omitted). "Statutory interpretation is a question of law" that an appellate court reviews de novo. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010). This Court further reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "De-novo review means that we review the legal issue independently, without deference to the lower court." *Bowman v Walker*, 340 Mich App 420, 425; 986 NW2d 419 (2022) (quotation marks and citation omitted).

In this case, defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10); however, because the parties looked beyond the pleadings in arguing the motion, as did the trial court in denying the motion, we treat the motion as though it were made pursuant to MCR 2.116(C)(10) only. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 544; 904 NW2d 192 (2017). "A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim." *El-Khalil*, 504 Mich at 159. Summary disposition pursuant to MCR 2.116(C)(10) is appropriate when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *El-Khalil*, 504 Mich at 160. "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id*. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id*., quoting *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citation omitted).

"[I]nsurance policies are subject to the same contract construction principles that apply to any other species of contract." *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). "The general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002) (quotation marks and citation omitted). "[U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written." *Rory*, 473 Mich at 461. "When interpreting an insurance policy, [t]he policy and the statutes relating thereto must be read and construed together as though the statutes were a part of the contract, because the parties are presumed to have contracted with the intention of executing a policy that complies with the related statutes." *Yang v Everest Nat'l Ins Co*, 507 Mich 314, 321; 968 NW2d 390 (2021) (quotation marks and citations omitted). "When interpreting a statute, courts must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Id*. at 322 (quotation marks and citation omitted).

Under MCL 500.3114(1), a personal protection insurance policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." In the context of MCL 500.3114(1), "relative" means "a person related by marriage, consanguinity, or adoption." *Lewis v Farmers Ins Exch*, 315 Mich App 202, 215; 888 NW2d 916 (2016) (quotation marks and citation omitted). A relationship by affinity or marriage encompasses

> the relation existing in consequence of marriage between each of the married persons and the blood relatives of the other, and the degrees of affinity are computed in the same way as those of consanguinity or kindred. A husband is related, by affinity, to all the blood relatives of his wife, and the wife is related, by affinity, to all the blood relatives of the husband. [*Id*. (quotation marks and citation omitted).]

The contested insurance policy in the instant matter listed Willis as the named insured, Regina as an authorized driver, and a 2017 Chevrolet Equinox—Regina's car—as the covered vehicle. The "Medical Payments Coverage" section of the policy provided that coverage included reasonable expenses incurred for necessary medical and funeral services arising out of "bodily injury" caused by a motor vehicle accident and sustained by an "insured." The policy further detailed:

> B. "Insured" as used in this Part means:
>
> 1. You or any "family member:"
>
> a. while "occupying;" or
>
> b. as a pedestrian when struck by;
>
> a motor vehicle designed for use mainly on public roads or a trailer of any type.
>
> 2. Any other person while "occupying" "your covered auto."

The policy further defined the term "[f]amily member" as "a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child." Thus, the issue presented in this case is whether Morgan maintained his affinal relationship with Willis at the time of the motor vehicle collision or whether the brother-in-law affiliation ended when Regina died under the language of the insurance policy, MCL 500.3114(1), and our caselaw.

Our appellate courts have consistently opined that the death of a spouse terminates a marriage. *In re Certified Question from the United States Dist Court for the Western Dist of Mich*, 493 Mich 70, 79; 825 NW2d 566 (2012) (Marriage ceases to be legally cognizable upon the death of a spouse.); *In re Combs Estate*, 257 Mich App 622, 623; 669 NW2d 313 (2003) ("[A] 'spouse' is a married person," and the death of one's spouse ends the marriage.); *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997) ("Marriage is a status that legally terminates only upon the death of a spouse or upon entry of a judgment of divorce."). However, there is limited authority detailing the consequences of a spouse's death on affinal bonds, particularly with regard to the ability of such relatives to pursue claims dependent on the survival of a relationship by marriage.

In *Shippee v Shippee's Estate*, 255 Mich 35, 36-37; 237 NW 37 (1931), our Supreme Court examined whether the plaintiff continued an affinal relationship with her mother-in-law after the death of the plaintiff's husband, such that the plaintiff was entitled to recover for services she provided to her mother-in-law from her mother-in-law's estate. The Court explained that, if the plaintiff's affinal relationship with the decedent continued, it gave rise to a presumption that the

services plaintiff provided were gratuitous[.]" *Id*. at 37. The *Shippee* Court recognized that there was ample authority to support the proposition that the " '[d]eath of the spouse terminates the relationship by affinity; if, however, the marriage has resulted in issue who are still living, the relationship by affinity continues.' " *Id*., quoting 2 C J, p 379. The Court applied this rule, reasoning:

> If there was living issue of the marriage, then the relation by affinity survived the death of plaintiff's husband, for in such event the mother-in-law was the grandmother of such issue. If there was no issue, then the affinity ended at the death of the connecting spouse. There was issue, for a daughter of plaintiff, a granddaughter of the deceased, was a witness. [*Id*.]

The aforementioned rule concerning the termination of affinal relationships has been applied in subsequent caselaw, as recognized by our Supreme Court. See *In re Grablick Trust*, 512 Mich 890, ___; 993 NW2d 401, 403 (2023)[3] (CLEMENT, C.J., concurring) ("[T]he general trend in Michigan, for better or worse, has been toward a uniform rule that affinal relationships arise from marriage and end with the dissolution of a marriage unless issue of the marriage survive").

In this case, the circuit court relied upon *Patmon* to deny defendant's motion for summary disposition. However, *Patmon* is an unpublished case, and, therefore, not binding. MCR 7.215(C)(1); see *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017) (Although "unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value"). Moreover, as discussed by the *Patmon* dissent, the *Patmon* majority neglected to address or recognize the holding of *Shippee*, namely, an affinal relationship may only remain after death if there is a surviving issue. *Patmon*, unpub op (O'CONNELL, J., dissenting) at 1-2. And this Court recently addressed, in a published decision, whether a stepchild, whose natural parent was divorced from her stepparent, was permitted to recover a portion of her stepparent's estate under the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*. *In re Grablick Trust*, 339 Mich App 534, 542; 984 NW2d 517 (2021).[4] The *Grablick* panel distinguished *Patmon*, noting the dissenting opinion authored by Judge O'CONNELL, and it reaffirmed that *Shippee* continued to govern questions pertaining to affinity in Michigan. *In re Grablick Trust*, 339 Mich App at 550-555.

This Court as well as the circuit court is bound by stare decisis to follow the decisions of our Supreme Court. *Pellegrino v AMPCO Sys Parking*, 486 Mich 330, 354 n 17; 785 NW2d 45 (2010) ("It is the Supreme Court's obligation to overrule or modify caselaw, and until it takes such action, the Court of Appeals and all lower courts are bound by that authority"); *Griswold Props*,

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[3] A Supreme Court order "is binding precedent if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012). However, "Concurring opinions are not binding." *Henderson v Dept of Health & Human Servs*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 359840); slip op at 5.

[4] *In re Grablick Trust* is the case in which Chief Justice Clement authored the concurrence previously discussed to our Supreme Court's order denying leave to appeal.

LLC v Lexington Ins Co, 276 Mich App 551, 563; 741 NW2d 549 (2007). Because *Shippee* recognizes that affinal relationships terminate upon the death of spouse unless there are living issue, and because there was no indication Morgan and Regina had surviving issue, Morgan and Willis ceased to be related by marriage when Regina died. Accordingly, Morgan was ineligible for PIP benefits under defendant's insurance policy and MCL 500.3114.

Reversed and remanded to the circuit court for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Anica Letica

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N. P. HOOD, P.J. (*concurring*).

I respectfully concur. I join the majority because we appear to be bound by the definition of affinal relations that our Supreme Court provided in *Shippee v Shippee's Estate*, 255 Mich 35, 36-37; 237 NW 37 (1931) approximately 93 years ago. I write separately for three reasons. First, the definition of relation by affinity as stated in *Shippee*, though controlling, is antiquated, outmoded, and not reflective of the present reality of many people's lives. That is illustrated here by the injured party's relationship with the policyholder, who for all intents and purposes was his brother-in-law, a man with whom he cohabitated for 35 years, including the year after his sister, the policyholder's late wife, died. Second, if we were not bound by the definition of relation by affinity as stated in *Shippee*, I would, like the trial court, adopt the reasoning and analysis on which this Court relied in *Patmon v Nationwide Mut Fire Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued December 23, 2014 (Docket No. 318307). I am persuaded that, but for the omission of *Shippee* and *Bliss v Tyler*, 149 Mich 601, 607; 113 NW 317 (1907), our reasoning in *Patmon* was sound. See *Patmon*, unpub op at 1-2 (O'CONNELL, dissenting; acknowledging agreement with the *Patmon* majority in principle, if the Court "were writing on a clean slate."). Third, and finally, our antiquated interpretation of affinal relationships appears to be unique to the civil context. We have not applied such rigid definitions of affinity in other contexts. See, e.g., *People v Armstrong*, 212 Mich App 121, 125; 536 NW2d 789 (1995). For these reasons, and those stated below, I concur in the result.

I. BACKGROUND

The majority accurately states the background of this case. Critically, in 2021, a vehicle rear-ended the injured party, Gerell Morgan, who was seated in his parked car. Because Morgan's car was uninsured, Morgan sought payment of no-fault benefits under an insurance policy held between defendant and Thaddeus Willis. Willis's late wife, Regina Morgan-Willis (Morgan-Willis), was Morgan's sister. She died in 2020. Morgan resided with Willis for approximately 35 years, including the time after Morgan-Willis's death and the date of the accident. After Morgan-Willis died, Willis maintained the insurance on her car, a 2017 Chevrolet Equinox, through defendant.

II. LEGAL FRAMEWORK

Defendant argues that the trial court erred when it denied defendant's motion for summary disposition because it improperly concluded that Morgan was entitled to coverage under defendant's no-fault insurance policy and that defendant was first in priority under MCL 500.3114. I would disagree.

The majority accurately states the standard of review and our principles of construction. We interpret insurance policies with the same principles of construction as other contracts. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). "The general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002) (quotation marks and citation omitted). "[U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written." *Rory*, 473 Mich at 461. When interpreting an insurance policy, we read and construe the policy and related insurance statutes together "as though the statutes were a part of the contract, because the parties are presumed to have contracted with the intention of executing a policy that complies with the related statutes." *Yang v Everest Nat'l Ins Co*, 507 Mich 314, 321; 968 NW2d 390 (2021) (quotation marks and citations omitted). "When interpreting a statute, courts must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Id.* at 322 (quotation marks and citation omitted).

Relevant here, under MCL 500.3114(1), a personal protection insurance policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." That statute defines "relative" as "a person related by marriage, consanguinity, or adoption." *Lewis v Farmers Ins Exch*, 315 Mich App 202, 214; 888 NW2d 916 (2016) (quotation marks and citation omitted). A relationship by affinity or marriage encompasses

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The contested insurance policy in the instant matter listed Willis as the named insured, Regina as an authorized driver, and a 2017 Chevrolet Equinox—Regina's car—as the covered vehicle. The "Medical Payments Coverage" section of the policy provided that coverage included reasonable expenses incurred for necessary medical and funeral services arising out of "bodily injury" caused by a motor vehicle accident and sustained by an "insured." The policy further detailed:

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> 2. Any other person while "occupying" "your covered auto."

The policy further defined the term "[f]amily member" as "a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child."

This case, therefore, asks whether Morgan and Willis had an affinal relationship at the time of the car wreck. Put differently, did their relationship as brothers-in-law end when Morgan-Willis died?

III. *SHIPPEE* LIKELY CONTROLS

I agree with the majority that there is limited authority detailing the consequences of a spouse's death on affinal bonds, particularly regarding the ability of such relatives to pursue claims dependent on the survival of a relationship by marriage. I also agree that the broad pronouncements in *Shippee* likely control the outcome in this case. See *Shippee*, 255 Mich at 36-37. There, our Supreme Court held that the plaintiff, the widow of the decedent's son, still had an affinal relationship with the decedent because the plaintiff and late son had children. *Id.* In reaching this conclusion, the Court held that the death of a spouse terminates a relationship by affinity. *Id.* at 37.

The facts provide some context. In *Shippee*, the decedent moved in with the plaintiff (her son's widow), under an agreement to pay $40 per month for room and board. *Id.* at 36. The decedent became partially paralyzed and "practically helpless," requiring substantial care, which the plaintiff claimed she provided. *Id.* The plaintiff later presented a claim for nursing and care of the decedent, which the probate court disallowed. *Id.* The issue before our Supreme Court was "whether it was necessary for plaintiff to show an express contract for nursing and care" in order to recover from the estate. *Id.* Our Supreme Court noted that "[t]his involves consideration of whether the relation by affinity survived the death of plaintiff's husband." It stated that if the relation by affinity did not survive, "then no family relation, giving rise to the presumption that the services were gratuitous, is applicable." *Id.* at 36-37. In other words, if the plaintiff was still

the decedent's daughter-in-law, then there was a presumption that the plaintiff cared for her without expecting to be paid. See *id.* The Court further explained that "[i]f there was a living issue of the marriage, then the relation by affinity survived the death of plaintiff's husband." *Id.* at 37. And because the plaintiff had a daughter with her late husband, the relation by affinity continued, *id.*, citing 2 C J, p 379, and presumption of gratuity applied, *Shippee*, 255 Mich at 37. The Court concluded that the probate court properly denied the plaintiff's claim because there was no express contract for nursing services. See *id*., citing *Harris v Harris*, 106 Mich 246; 64 NW 15 (1895) (denying recovery to daughter-in-law who performed services in the home of her father-in-law in the absence of an express contract).

In this context, our Supreme Court reached the conclusion that the *Shippee* plaintiff could not recover. It also broadly stated the principle that now controls this case: the death of a spouse terminates a relation by affinity (unless there are living children). *Shippee*, 255 Mich at 36-37.

The majority correctly notes our Supreme Court has applied the principle stated in *Shippee* concerning the end of affinal relationships in at least one other case. See *In re Grablick Trust*, 512 Mich 890, 891 (2023)[1] (CLEMENT, C.J., concurring) ("[T]he general trend in Michigan, for better or worse, has been toward a uniform rule that affinal relationships arise from marriage and end with the dissolution of a marriage unless issue of the marriage survive"). Like *Shippee*, *Grablick* was a probate case involving a claim on a decedent's estate. See *id.*

Acknowledging more recent reliance on *Shippee*, at least in the probate context, I observe that this Court has acknowledged that "Michigan caselaw may provide limited support for such an extension of affinity principles beyond their traditional confines." *Lewis*, 315 Mich App at 212. For example, in the criminal context, this Court has recognized, "the term 'affinity' is not capable of precise definition." *Armstrong*, 212 Mich App at 125. "Rather, at common law, whether someone was related to another by affinity depended upon the legal context presented." *Id*. Furthermore, our Supreme Court expressed, in its first opinion defining affinity, the difficulty of setting explicit boundaries as to what constitutes affinity, as the principle of a relationship by marriage "grew out of the canonical maxim that sexual union makes man and woman one flesh. The application of the maxim, especially as affecting marriage, divorce, and the legitimacy of children, gave rise to rules, the intricacy of which is proof of the amazing ingenuity of the churchmen." *Bliss*, 149 Mich at 607. Additionally, the Court noted, "[such] rules varied with different periods[,]" *id*., which is particularly pertinent considering the significant developments in familial structures since the publication of both *Bliss* and *Shippee*. See *In re Grablick Trust*, 512 Mich at 903 (WELCH, J., concurring) ("I find *Shippee*'s holding—that a family is connected only through living children between the decedent and surviving spouse—to be antithetical to a modern understanding of how we view 'family' "); see also *Youngblood v DEC Properties*, 204 Mich App 581, 583; 516 NW2d 119 (1994) ("Such a restricted definition of 'family' does not

[1] A Supreme Court order "is binding precedent if it constitutes a final disposition of an application and contains a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012). However, "[c]oncurring opinions are not binding." *Henderson v Dep't of Health & Human Servs*, 347 Mich App 36, 46; ___ NW3d ___ (2023).

comport with the reality of the nature of families existing in today's society[,]" extending beyond "just a nuclear or extended family whose members are related by consanguinity, marriage, or adoption").

While there is no binding precedent addressing the specific circumstances under which affinal relationships persist after death, there is persuasive authority examining the matter. In a recent Supreme Court order denying leave to appeal, two Justices authored concurrences expressing their grievances with the lasting effects of *Bliss* and *Shippee*, as the opinions have been applied in various contexts concerning the death of a spouse or former spouse. See *In re Grablick Trust*, 512 Mich at 892 (CLEMENT, C.J., concurring) ("I am very skeptical, however, that adherence to *Shippee*'s rule in all legal contexts is in keeping with the common-law development of affinity."); see also *id*. at 904 (WELCH, J., concurring) ("It is troubling, then, that we are forced to continue to apply a rule enunciated at a time when so many aspects of family law—and families—that now seem self-evident were not just controversial, but illegal."). In her concurrence, Chief Justice CLEMENT detailed the history of affinity in the common law, explaining that the concept of affinity was "first used by the medieval church in the context of laws prohibiting incest" and the principle was subsequently expanded in secular English law to address bias issues in jury selection. *Id*. at 893 (CLEMENT, C.J., concurring). The general rule governing the termination of affinal relationships in the aforementioned contexts was the standard iterated in *Shippee*, "that affinal relationships arise from marriage and end with the dissolution of a marriage unless issue of the marriage survive." *Id*. at 891. However, Chief Justice CLEMENT advanced, "the unity in [the] American application of affinity was not long-lasting, and eventually there was a new line of cases analyzing workers' compensation acts and insurance policies issued by mutual-benefit societies[,]" which established that the "tie of affinity" was not always severed upon the death of a spouse. *Id*. at 893-894.

Chief Justice CLEMENT further cited to matters arising out of the United States Court of Appeals for the Seventh Circuit, *Steele v Suwalski*, 75 F2d 885, 887-888 (CA 7, 1935), and the Supreme Court of Washington, *In re Bordeaux Estate*, 37 Wash 2d 561, 580; 225 P2d 433 (1950), as illustrations of jurisprudence addressing the viability of affinal relationships after the death of one of the parties to a marriage.[2] *In re Grablick Trust*, 512 Mich at 893-894 (CLEMENT, C.J., concurring). In *Steele*, 75 F2d at 887-889, the Seventh Circuit resolved whether an affinal relationship may persist between a widow and her deceased brother-in-law for purposes of the brother-in-law's war insurance policy, considering the prior death of the widow's husband. The *Steele* Court concluded that the surviving spouse was eligible to receive benefits under the decedent brother-in-law's policy, opining:

> Where the relationship by affinity is in fact, as it was in this case, continued beyond the death of one of the parties to the marriage which created the relationship, and where the parties continue to maintain the same family ties and relationships, considering themselves morally bound to care for each other, the

[2] "Caselaw from sister states and federal courts is not binding precedent but may be relied on for its persuasive value." *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719, 726 n 5; 957 NW2d 858 (2020).

> District Court properly found that the relationship continued to exist and that appellee, in this case, was the sister-in-law of the deceased veteran within the meaning of 38 USCA § 511.
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> * * *
>
> In common usage we frequently hear the term "brother-in-law" or "sister-in-law" applied to a person whose marriage has been dissolved by death or divorce. Such a relationship by affinity, once created, is not generally regarded as terminated by the death of one of the parties to the marriage or by a divorce. Nor have lexicographers recognized that the word has any such limited meaning. See Webster's New International Dictionary. [*Steele*, 75 F2d at 888-889.]

In *Bordeaux*, 37 Wash 2d at 562-565, the Washington Supreme Court examined whether the stepchildren maintained an affinal relationship with their stepfather after the death of the children's natural parent, in order to determine the proper amount of inheritance tax to be assessed against a property. The *Bordeaux* Court distinguished between the different circumstances in which relationships by marriage were previously discussed, asserting, "Unless the jury and incest cases are lumped together with the insurance cases, the weight of authority does not stand for the proposition that the tie of affinity ceases upon the death of the spouse whose marriage gave rise to it." *Id*. at 587. Furthermore, the alleged common-law rule that affinal relationships promptly cease upon the death of a spouse was unsupported "either in the English common law, which continued the tie for purposes of forbidding marriage between a man and his affinity relatives, or in the American common law, which has continued it for purposes of holding beneficiaries under insurance policies and workmen's compensation laws competent to take as relatives." *Id*. at 591. The *Bordeaux* Court ultimately concluded that the stepchildren had remained stepchildren of the decedent despite the death of their biological parent. *Id*. at 593.

Based on the rationale of the aforementioned two matters, Chief Justice CLEMENT reasoned because there were different definitions of affinity, "one that American courts have applied in incest and jury-selection cases . . . and another in the workers' compensation and insurance context," the Court maintained discretion to determine which rule applied to the underlying matter. *In re Grablick Trust*, 512 Mich at 894 (CLEMENT, C.J., concurring). Chief Justice CLEMENT determined "the inheritance issue in this case is clearly more akin to the inheritance tax at issue in *Bordeaux* and the workers' compensation and insurance-policy line of cases[.]" *Id*. Thus, "[a]s a result of that classification, it follows that in the instant context affinal relationships can continue beyond the dissolution of the marriage if the two individuals continue to maintain their prior affinal relationship." *Id*.

These authorities point to two conclusions. Presently, *Shippee* is controlling authority on affinal relationships. But that authority is almost certainly outdated, outmoded, and untethered from the present reality of affinal relationships. Because we appear to be bound by *Shippee*, I concur in the result.

IV. *PATMON*'S REASONING WAS OTHERWISE SOUND

But for our Supreme Court's decision in *Shippee*, I would adopt the analysis that this Court employed in *Patmon*. See *Patmon*, unpub op at 3-9. In *Patmon*, the unpublished opinion cited by plaintiff and the trial court, this Court similarly examined the cases just discussed, including *Steele* and *Bordeaux*, before concluding that the stepchild's affinal relationship with her stepparent persisted after her mother's death, entitling the stepchild to no-fault benefits as a "relative" under the stepparent's insurance policy. *Patmon*, unpub op at 3-9. The *Patmon* majority opined:

> The weight of this authority persuades us that the common understanding of the term "related by marriage" can encompass a stepparent relationship even absent the biological parent. Heeding [the] admonition that we must place the words in context before interpreting them further convinces us that the Nationwide policy affords coverage to a stepchild who continues to reside with a stepparent, even after the death of the stepparent's spouse.
>
> The No-Fault Act requires that insurers provide PIP benefits to "relative[s]" domiciled in the same household as the named policy holder. MCL 500.3114(1). The insurance policy extends first-party coverage to those "regularly liv[ing]" with the insured who are "related to [the insured] by . . . marriage." The statute and the policy look to the domiciliaries of a "household" as candidates for coverage. Patmon was domiciled with Jordan for most of her life. They maintained a close familial, "household" relationship even after Patmon's mother's death. Given that the common use and understanding of the term "stepchildren" encompasses a relationship that persists even after the biological parent's death, the policy affords coverage when a stepchild's domicile remains with the named insured, as here. [*Patmon*, unpub op at 6-7 (footnote omitted).]

However, Judge O'CONNELL dissented in *Patmon*, expressing, "If I were writing on a clean slate, in principle I would agree with my colleague's well-written opinion. But, while the opinion reaches an equitable result in a heart-tugging factual situation, it is legally unsound[,]" considering the published authority providing that a marriage terminates upon the death of a spouse. *Id*. at 1-2 (O'CONNELL, J., dissenting). Judge O'CONNELL advanced, because our jurisprudence indicated that a surviving spouse was no longer related to a deceased spouse's children,

> [i]n this case, [the stepchild] is not entitled to recover under the language of the policy because she is not related to [her stepparent] by blood, affinity, or marriage. While a former step-child may remain close and still maintain an emotional relationship with the former step-parent, at law, they are no longer related. The "why" is uncomplicated—marriage terminates on divorce or the death of a spouse. The legal relationship formed as a result of that marriage does not survive the spouse's death. [*Id*. at 2.]

Judge O'CONNELL recognized that the aforementioned conclusion may lead to unfair results, but "this is the law in Michigan, and we are not free to avoid it." *Id*.

I acknowledge that *Patmon* is unpublished and thus nonbinding. See MCR 7.215(C)(1); see also *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017) (providing that while "unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless

consider such opinions for their instructive or persuasive value"). But the circumstances in *Patmon* are analogous to this case, considering the nature of the relationship between the parties, as Morgan and Willis shared a home for 35 years and the two maintained a bond after Morgan-Willis's death, and the fundamental issue in both cases concerns whether affinal relatives are eligible for no-fault benefits. The *Patmon* majority, however, neglected to address or recognize the holdings of *Bliss* and *Shippee*, namely, an affinal relationship may only remain after death if there is a surviving issue. Further, this Court recently addressed, in a published decision, whether a stepchild, whose natural parent was divorced from her stepparent, was permitted to recover a portion of her stepparent's estate under the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*. *In re Grablick Trust*, 339 Mich App 534, 542; 984 NW2d 517 (2021).[3] The *Grablick* panel distinguished *Patmon*, noting the dissenting opinion authored by Judge O'CONNELL, and it reaffirmed that *Bliss* and *Shippee* continued to govern questions of affinity in Michigan. *In re Grablick Trust*, 339 Mich App at 550-555.

V. AFFINAL RELATIONS IN OTHER CONTEXTS

Finally, I write separately to highlight that we appear to apply a significantly more rigid definition of relation by affinity in the civil or probate context than we have in the criminal context, where the stakes are immeasurably higher. Compare *Shippee*, 255 Mich at 36-37, with *Armstrong*, 212 Mich App at 125. As stated, in *Armstrong*, we broadly construed affinity in the criminal context. *Armstrong*, 212 Mich App at 122-129. There, we reviewed a conviction of second-degree criminal sexual conduct, under MCL 750.520c(1) ("The actor is related by blood or affinity . . . to the victim."). *Armstrong*, 212 Mich App at 125. The question was whether a victim of sexual assault and her stepbrother, the perpetrator of the sexual assault, qualified as relatives by affinity under MCL 750.520c(1), despite the fact that under the definition of affinity in *Bliss*, 149 Mich At 608, they would not be related by affinity. *Armstrong*, 212 Mich App at 122-129. Relying on authority from another state, this Court concluded that "the term 'affinity' is not capable of precise definition" and further stated that "at common law, whether someone was related to another by affinity depended upon the legal context presented." *Id.* at 125. Ultimately, we concluded that, within the statutory context of the case, "the relation between a stepbrother and a stepsister" was one of affinity. *Id*. at 128.

It would appear that we have applied a broader definition of relation by affinity in the criminal context. See *id.* at 125. But *Armstrong* also suggest that the statutory context is important. See *id.* at 128. Considering that the statutory context here is the no-fault act, I have reservations about the extent to which *Shippee*'s definition of affinity applies. Cf. *Turner v Auto Club Ins. Ass'n*, 448 Mich 22, 28, 528 NW2d 681 (1995) (stating the liberal rule of construction applicable to the no-fault act, i.e., "[T]he [no-fault] act is remedial in nature and must be liberally construed in favor of the persons intended to benefit from it").

[3] *In re Grablick Trust* is the case in which Chief Justice Clement and Justice Welch authored the concurrences to our Supreme Court's order denying leave to appeal as previously discussed. *In re Grablick Trust*, 512 Mich at 890.

V. CONCLUSION

Relying on the rule as it is broadly stated in *Shippee*, that affinal relationships terminate upon the death of spouse unless there are living issue, I must agree with the outcome stated in the majority opinion. See *Pellegrino v AMPCO Sys Parking*, 486 Mich 330, 354 n 17; 785 NW2d 45 (2010). For this and the aforementioned reasons, I respectfully concur in the result.

/s/ Noah P. Hood