

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

v

MSC No. 158259

COA No. 336187

Trial Ct No. 14-018862-FC

ANTHONY RAY MCFARLANE JR.,

Defendant-Appellant.

FRANK E. VANDERVORT (P42938)
Child Advocacy Law Clinic
University of Michigan Law School
701 S. State Street
Ann Arbor, MI 48109
(734) 763-5000
vort@umich.edu

CHRISTOPHER R. NOYES
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 295-6823

MARK A. FORD
MIKE BROWN
ELIZABETH DRISCOLL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

*Counsel for Amici Curiae
American Professional Society on the
Abuse of Children, American Academy of
Pediatrics, Michigan Chapter of the
American Academy of Pediatrics*

**MOTION OF THE AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF
CHILDREN, THE AMERICAN ACADEMY OF PEDIATRICS, AND THE MICHIGAN
CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS FOR LEAVE TO
PARTICIPATE AS AMICI CURIAE AND FILE A BRIEF TO SUPPORT EXPERT
TESTIMONY DIAGNOSING ABUSIVE HEAD TRAUMA**

Pursuant to MCR 7.312(H)(1) the American Professional Society on the Abuse of Children (“APSAC”), the American Academy of Pediatrics (“AAP”), and the Michigan Chapter of the American Academy of Pediatrics (“MIAAP”), by their attorneys, move this Court for leave to file the attached brief as amici curiae, and to otherwise participate as amici curiae in this matter as the Court may direct. In support of this motion, APSAC, AAP, and MIAAP state as follows:

1. APSAC is a not-for-profit organization focused on serving children and families impacted by child maltreatment, including both abuse and neglect. For over 30 years, APSAC has been focused on combatting child maltreatment through evidence-based principles. APSAC’s members include nurses, physicians, attorneys, child protective service workers, law enforcement officers, researchers, teachers, psychologists, clergy, and administrators.
2. AAP is a non-profit professional membership organization made up of 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. AAP is dedicated to the health and well-being of infants, children, adolescents, and young adults. AAP is focused on improving child health through policy, advocacy, and education. AAP also publishes policy statements and provides professional education to ensure that its members are aware of best practices.
3. MIAAP is a diverse group of over 1,400 pediatricians. Members include general pediatricians, sub-specialists, and academicians. MIAAP members are dedicated to the attainment of the optimal physical, mental, and social health of Michigan’s infants, children, adolescents, and young adults. MIAAP seeks to ensure that critical issues

affecting children in the state, such as abusive head trauma, are met with scientific, evidence-based policies that will improve the lives of affected children.

4. APSAC, AAP, and MIAAP regularly file amicus briefs in cases where child maltreatment is at issue. Specifically, APSAC, AAP, and MIAAP aim to participate in those cases where the views of their professional members can be of assistance to the courts in understanding how a particular discipline handles issues of child welfare. APSAC, AAP and MIAAP regard this as one of those cases.
5. APSAC, AAP and MIAAP's leadership feel compelled to participate as amici in this matter because the Court is addressing the permissibility of expert testimony that a child was medically diagnosed with "abusive head trauma" ("AHT"). APSAC, AAP, and MIAAP believe that they can assist the Court's understanding of the process by which medical professionals diagnose AHT, and how qualified experts can and should be allowed to offer such a diagnosis to a jury.
6. APSAC, AAP, and MIAAP respectfully ask that the Court consider this amicus brief in determining the merits of the appeal. Specifically, APSAC, AAP, and MIAAP file this brief addressing in part the first of the Court's two questions on appeal. APSAC, AAP, and MIAAP believe their specialized viewpoints will aid the Court in answering the question on appeal of "whether the prosecution's medical expert invaded the province of the jury by using phrases like 'abusive head trauma' . . . to label her diagnosis[.]" *People v McFarlane*, ___ Mich ___; 933 NW2d 692, 692 (2019) (Docket No. 66).

Accordingly, APSAC, AAP, and MIAAP respectfully request this Court grant their motion to appear as amici curiae so that APSAC, AAP, and MIAAP can provide the specialized knowledge

of their members in determining whether the prosecution's medical expert invaded the province of the jury by providing a diagnosis of "abusive head trauma."

Dated: January 6, 2020

Respectfully submitted,

/s/ Frank Vandervort
FRANK VANDERVORT (P42938)
Child Advocacy Law Clinic
University of Michigan Law School
701 S. State Street
Ann Arbor, MI 48109
(734) 763-5000
vort@umich.edu

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WILMER CUTLER PICKERING
HALE AND DORR LLP
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CERTIFICATE OF SERVICE

On this 6 day of January, 2020, I filed the foregoing motion electronically using the Court's MiFILE system, which will send copies by e-mail to all counsel of record.

/s/ Frank Vandervort

FRANK VANDERVORT (P42938)
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