

Court of Appeals, State of Michigan

ORDER

Michael Bak v Henry Ford Macomb Hospital Corporation

Docket No. 342483

LC No. 2016-003094-NH

Kathleen Jansen
Presiding Judge

Elizabeth L. Gleicher

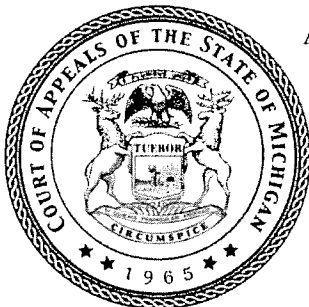
Colleen A. O'Brien
Judges

The Court orders that the application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

The Court on its own motion orders this matter STAYED until further order of this court.

The motion to supplement the record is GRANTED. Exhibits 16 – 21, attached to the motion filed on June 27, 2018, are accepted as additions to the record on appeal. The Clerk of the Court is directed to include the material with the record on appeal.

Gleicher, J., would deny the motion to supplement the record and would deny leave to appeal. Dr. Mitsias' testimony creates a genuine issue of material fact regarding whether Bak would have undergone revascularization had defendants conformed to the standard of care. Dr. Kazmierczk's testimony further supports the existence of a fact question. As the Supreme Court pointed out in *Martin v Ledingham*, 488 Mich 987, 988; 791 NW2d 122 (2010), a treating physician's "avermment that he would have acted in a manner contrary to [the] standard of care presents a question of fact and an issue of credibility for the jury to resolve." Evidence exists in this case that the standard of care required emergent revascularization, and that defendant Henry Ford Hospital could have achieved a revascularization in time to preserve plaintiff's vascular function. On this record, and viewing the evidence in the light most favorable to plaintiff, a jury should decide proximate cause. Further, defendant failed to present any persuasive argument that the circuit court had not abused its discretion by refusing to permit defendant to add Dr. Sanders as a witness, given the lateness of his addition and the prejudice to plaintiff.



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

JUL 25 2018

Date


Chief Clerk