

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2018

Stephen J. Markman,
Chief Justice

155464

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

DONALD HEMPHILL,
Plaintiff-Appellee,

v

SC: 155464
COA: 335351
Wayne CC: 16-001303-NH

JIAB SULEIMAN, D.O., JIAB SULEIMAN, D.O.,
D.O., P.C., and PREMIER ORTHOPEDICS, L.L.C.,
Defendants-Appellants.

By order of September 12, 2017, the application for leave to appeal the February 7, 2017 order of the Court of Appeals was held in abeyance pending the decision in *Jendrusina v Mishra* (Docket No. 154717). On order of the Court, leave to appeal having been denied in *Jendrusina* on January 12, 2018, 501 Mich 958 (2018), the application is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

MARKMAN, C.J. (*dissenting*).

I respectfully dissent from this Court's order denying leave to appeal and instead would grant leave. This case was held in abeyance pending a decision in *Jendrusina v Mishra*, 500 Mich 987 (2017), which involved the application of the "discovery rule" set forth in MCL 600.5838a(2) ("[A]n action involving a claim based on medical malpractice may be commenced at any time within the applicable period prescribed in section 5805 or sections 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later."). Although this Court in a divided decision voted to deny leave to appeal in *Jendrusina*, I continue to believe that the Court of Appeals seriously misapplied the discovery rule in that case. See *Jendrusina v Mishra*, 501 Mich 958 (2018) (MARKMAN, C.J., dissenting). In my judgment, granting leave to appeal in this case would afford us the opportunity to thoroughly assess the proper contours of the discovery rule. For these reasons, I would grant leave to further consider and delineate the proper application of the discovery rule.

ZAHRA and WILDER, JJ., join the statement of MARKMAN, C.J.



d0710

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 13, 2018