Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2019

156622

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

W A FOOTE MEMORIAL HOSPITAL,
d/b/a ALLEGIANCE HEALTH,
Plaintiff-Appellant,

v

SC: 156622
COA: 333360
Kent CC: 15-008218-NF

MICHIGAN ASSIGNED CLAIMS PLAN
and MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY,
Defendants-Appellees,

and

JOHN DOE INSURANCE COMPANY,
Defendant.
_____/

On October 2, 2019, the Court heard oral argument on the application for leave to appeal the August 31, 2017 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we AFFIRM the holding of the Court of Appeals that this Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191 (2017), applies retroactively. Nonetheless, we VACATE that part of the judgment of the Court of Appeals stating that this Court's decision in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503 (2012), "effectively repudiated" the application of the "threshold question" and "three-factor test" set forth in *Pohutski v City of Allen Park*, 465 Mich 675 (2002), in the context of judicial decisions of statutory interpretation. In concluding that the Court was not setting forth a new law, the Court in *Spectrum Health* engaged in an analysis that is consistent with the analysis required by *Pohutski*'s threshold question. *Spectrum Health* did not purport to repudiate *Pohutski*'s framework, and the Court of Appeals erred by concluding to the contrary. Applying *Pohutski* to the instant case, because this Court's decision in *Covenant* did not clearly establish a new principle of law, *Covenant* does not satisfy *Pohutski*'s threshold question, and the *Covenant* decision therefore applies retroactively.

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.

October 25, 2019

Clerk

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