

Order

Michigan Supreme Court
Lansing, Michigan

October 19, 2007

Clifford W. Taylor,
Chief Justice

131035

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

HARVEY GRACE,
Plaintiff-Appellant,

v

SC: 131035
COA: 257896
Oakland CC: 2002-045572-NM

BRUCE LEITMAN and BRUCE
LEITMAN, P.C.,
Defendants-Appellees.

On order of the Court, leave to appeal having been granted and the briefs and oral arguments of the parties having been considered by the Court, we VACATE our order of March 30, 2007. The application for leave to appeal the March 16, 2006 judgment of the Court of Appeals is DENIED, because we are no longer persuaded that the questions presented should be reviewed by this Court.

KELLY, J., dissents and states as follows:

I would reverse the judgment of the Court of Appeals and remand this case to the trial court for further proceedings. An attorney's exercise of judgment on matters of trial strategy, including which witnesses to call, does not *ipso facto* immunize the attorney from malpractice liability. Rather, counsel must exercise the same reasonable professional judgment "as would an attorney of ordinary learning, judgment, or skill under the same or similar circumstances." *Simko v Blake*, 448 Mich 648, 658 (1995). The defendants here have not shown as a matter of law that attorney Leitman exercised reasonable judgment such that no rational jury could grant plaintiff relief.

YOUNG, J., joins the statement of KELLY, J.



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I, Corbin R. Davis, 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 19, 2007

Corbin R. Davis

Clerk