

STATE OF MICHIGAN
COURT OF APPEALS

JAMES P. HARKINS, JR.,

Plaintiff,

and

DIANE DICKOW D'AGOSTINI and
KIMBERLY SMALL,

Plaintiffs-Appellants,

v

THOMAS R. PAXTON and GARAN, LUCOW,
MILLER, P.C.,

Defendants-Appellees.

UNPUBLISHED
March 22, 2012

No. 301576
Wayne Circuit Court
LC No. 08-018282-NM

Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

O'CONNELL, P.J. (*dissenting*).

I respectfully dissent.

In *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253-258; 571 NW2d 716 (1997), our Supreme Court explained that absent certain circumstances not present in this case, an attorney is not liable to nonparties for malpractice. In this case, plaintiffs-appellants were witnesses in the underlying lawsuit.¹ They were not parties to the underlying litigation, they were not being sued for any wrongdoing, and they were not subject to any sanctions or judgment by the underlying court. The fact that their "interests" may be similar to the interests of the defendants in the underlying lawsuit does not give rise to a cause of action against the attorneys who represented those defendants. Plaintiffs-appellants have failed to identify any recognized cause of action that

¹ Plaintiffs-appellants are asking this Court to extend the protections of the attorney-client relationship to nonparty witnesses. Their theory, that they have suffered the same or similar damages as the parties to the underlying lawsuit, has some poignant merit, but I am unaware of any case law that supports such a legal theory.

gives rise to a duty owed to the witnesses in the underlying lawsuit. Because no relationship exists that could give rise to either a contractual or a tort-based duty to plaintiffs-appellants, I would affirm the decision of the lower court.

/s/ Peter D. O'Connell