

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL T. DOE and PATSY R. DOE,

Plaintiffs-Appellees,

v

JOHN HENKE, MD and ANN ARBOR
ORTHOPEDIC SURGERY,

Defendants-Appellants,

and

TRINITY HEALTH, d/b/a ST. JOSEPH MERCY
HEALTH SYSTEM, d/b/a ST. JOSEPH MERCY
HOSPITAL,

Defendant.

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

BANDSTRA, J. (*concurring*).

I concur with the decision of the majority that plaintiffs should not be disallowed from bringing their lawsuit because of the bankruptcy proceedings. The arguments defendants make to the contrary are premised on the notion that the interests of the bankruptcy court, the bankruptcy trustee and the bankruptcy estate must be protected from any adverse consequences that might result from allowing this cause of action to be prosecuted and resolved in state court. However, those very entities have clearly disavowed any interest in such protection. The bankruptcy court entered an order that compelled the trustee to abandon plaintiffs' claims against defendants *nunc pro tunc* to the date plaintiffs originally filed their petition for bankruptcy. That order further specifies that, should plaintiffs succeed, they must turn over any proceeds of their lawsuit against defendants to the trustee for the benefit of the bankruptcy estate. Quite apart from the reasoning of the majority, there is thus ample reason to reject defendants' arguments.

/s/ Richard A. Bandstra