



Alerts

Despite Supreme Court's Critical Language, Expert Testimony in Legal Malpractice Case Required on Standard of Care

February 1, 2012

Lawyers for the Profession® Alert

To view or download, click on "[Download PDF](#)"

Grimm v. Fox, 303 Conn. 322, ___ A.3d ___ (2012)

Brief Summary

The Supreme Court of Connecticut held that despite its critical language of defendants (plaintiff client's former attorneys) for violating basic rules of appellate procedure, the former client was still required to present expert testimony in his legal malpractice action to establish the standard of care and breach.

Complete Summary

After the former client's underlying divorce case ended, he filed a legal malpractice action against his attorneys and law firm, alleging that they failed to provide an adequate record for the direct appellate review of the divorce judgment, and that they inadequately briefed his appellate claims. On the day of the trial, the trial court granted defendants' motion for summary judgment because the former client did not disclose an expert.

The former client claimed that statements made by the Supreme Court of Connecticut in its opinion in his divorce case, wherein the court indicated its disapproval of defendants' actions in failing to provide an adequate record for review and inadequately briefing the former client's alleged claims, were sufficient evidence upon which the jury could reasonably have found that defendants committed malpractice. The former client thus argued that an expert witness was not necessary. Defendants argued, however, that the language of the Court's opinion was insufficient, on its own, to establish that they breached the standard of care.

The Court first noted that the determination of whether expert testimony is needed to support a claim of legal malpractice presents a question of law. As a general rule, for a plaintiff to prevail in a legal malpractice action, he or she must present expert testimony to establish the standard of care and a breach. There is an exception, however, where there is such an obvious and gross want of care and skill that neglect is clear even to a lay person.

Attorneys

Terrence P. McAvoy

Service Areas

Counselors for the Profession

Lawyers for the Profession®

Litigators for the Profession®



The Court agreed with defendants' arguments, noting that the critical language in its opinion in the underlying divorce case did express its dissatisfaction with the state of the record and the briefing of the issues. The Court did not, however, set forth the standard of care that is required of attorneys in similar situations, nor did it address the reasonableness of defendants' actions within the context of the factual circumstances of that case. On the basis of the record, the Court did not opine as to the reasonableness of defendants' strategic process or their ultimate decisions throughout the litigation of that case. Summary judgment was thus affirmed.

Significance of Opinion

This opinion highlights the importance of retaining qualified experts in legal malpractice actions, even if it appears that the defendants' alleged negligence is "obvious." It may not be as obvious to another reasonably well-qualified attorney or judge.

For further information, please contact [Terrence P. McAvoy](#).

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.