



Alerts

Utah Supreme Court Vacates an Award of Non-Economic Damages Arising from a Legal Malpractice Action

August 27, 2018

Lawyers for the Profession®

Brief Summary

In a case of first impression for Utah's highest court, the court vacated a jury award of non-economic damages for emotional distress allegedly sustained by plaintiff as a result of the alleged malpractice. The court concluded that such damages could not be recovered on a breach of contract claim where the nature of the contract (*i.e.*, to obtain monetary compensation) and the explicit language of the contract did not contemplate non-economic damages, and the damages were not foreseeable at the time the parties contracted. Further, because plaintiff could not support her breach of fiduciary duty claim, neither non-economic damages nor attorneys' fees should have been awarded.

Complete Summary

The Underlying Action

Plaintiff suffered injuries when her car collided with two trucks. She retained defendant lawyer and his firm (collectively "defendants") to represent her in a personal injury action. Despite filing the complaint twice, defendants failed to properly serve the truckers within the statutory sixty days; the second time the failure was fatal to plaintiff's claim, because the statute of limitations had run. Plaintiff's action was subsequently dismissed with prejudice.

Instead of advising plaintiff that her claim was time-barred, defendants spent the next ten months attempting to revive the claim with no success. Ultimately, the lawyer revealed to plaintiff that he had failed to bring a valid action within the applicable statute of limitations, and that she could no longer bring a successful action against the truckers.

The Malpractice Action

Plaintiff commenced an action against defendants alleging legal malpractice, breach of contract, breach of fiduciary duty, fraudulent non-disclosure, and negligent hiring training and supervision. Plaintiff also sought punitive damages. The case was tried and the jury ruled in favor of plaintiff on all but her fraudulent non-disclosure claim, awarding her \$750,000 to compensate for the injuries

Attorneys

Terrence P. McAvoy

Service Areas

Lawyers for the Profession®



suffered in the underlying action. She also received an additional \$2.75 million for non-economic damages sustained as a result of defendants' malpractice. Defendants unsuccessfully moved for a JNOV seeking to negate the \$2.75 million award. The trial court confirmed the award, agreeing with plaintiff that although non-economic damages were not available on her malpractice or negligent hiring, training and supervision claims, they were available under her breach of contract and breach of fiduciary duty claims.

Thereafter, upon her application for attorneys' fees and expenses, plaintiff was awarded costs and an additional \$1,166,666.67, representing the contingency fee she agreed to pay her malpractice lawyers. The court declined to award plaintiff \$177,911.64 in litigation expenses.

Defendants appealed the award of non-economic damages and attorneys' fees in the amount of the full contingency fee. Plaintiff cross-appealed the denial of her litigation expenses, as well as the trial court's decision to exclude at trial two disparaging statements made by defendants about plaintiff during the course of the representation.

Non-Economic Damages

In examining the award of non-economic damages, the court noted that the case was one of first impression, as it had never considered whether malpractice damages were available beyond those damages available in the underlying case, *i. e.*, "the case within the case." Citing a recent Utah court of appeals decision, the court noted that in most legal malpractice cases—whether brought under negligence, breach of contract or breach of fiduciary duty theories—a plaintiff's damages are generally limited to the amount the plaintiff would have recovered if successful in the underlying case.

Breach of Contract

The general rule is that there is no recovery of damages for mental anguish stemming from breach of contract; a contract action is designed to place the aggrieved party in the economic position it would have been in but for the breach. In the context of legal malpractice, that means the only emotional damages recoverable under a breach of contract theory are those stemming from the injury in the underlying case—but there are limited exceptions.

For a breach of contract claim, damages for mental or emotional distress are only available where such damages are both the foreseeable result of the breach of contract and were *explicitly* within contemplation of the parties from the nature and language of the contract at the time it is entered into. (Emphasis in original). Here, there was nothing in the "nature" of the contract between the parties that signaled emotional distress damages were a foreseeable result of a breach—the contract did not involve a "peculiarly personal subject matter," such as wrongful conviction or custody of a child. Rather, defendants' contractual obligation was solely to obtain monetary compensation for plaintiff, not to protect her personal interests. Further, the specific language of the parties' contract did not show emotional distress damages were explicitly contemplated, and again, dealt solely with plaintiff's pecuniary interests. Accordingly, the court concluded that the trial court erred in awarding non-economic damages arising from the malpractice action.

Breach of Fiduciary Duty

Plaintiff's breach of fiduciary duty claim was also insufficient to support the award of non-economic damages. The court determined that plaintiff had not established the elements of a breach of fiduciary duty claim because any alleged emotional distress arose not from defendants' concealment of the dismissal of the underlying action, but from the very fact of the dismissal. Consequently, plaintiff failed to demonstrate the connection between causation and damages essential to establishing a breach of fiduciary duty claim.

Thus, because the attorneys' fees were dependent upon the viability of the breach of fiduciary duty claim, there was no longer any basis to support plaintiff's recovery of the \$1,166,666.67 contingency fee, or to reverse the trial court's denial of additional litigation expenses. Accordingly, the court vacated the award of attorneys' fees and affirmed the trial court's denial of litigation expenses.

Plaintiff further sought to support her claim for punitive damages by arguing that the trial court improperly excluded two disparaging statements made by defendants. The court declined to reach this issue because her breach of fiduciary duty claim failed, so punitive damages could not be awarded, regardless of the admission of the statements.



Significance of Opinion

Generally, plaintiffs are not entitled to recover damages for emotional distress or mental anguish in legal malpractice actions. This court held that for a breach of contract claim, emotional distress damages must be both the foreseeable result of the breach and *explicitly* within contemplation of the parties from nature and language of the contract at the time of the retention, which would seem to be extremely rare.