



Alerts

Sixth Circuit Affirms that Expert Testimony is Necessary to Establish Attorney's Standard of Care and Breach

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EQT Production Company v. Dale Phillips, 2019 U.S. App. LEXIS 9229 (6th Cir. 2019)

Brief Summary

The Sixth Circuit became the latest court to affirm the idea that expert witness testimony is generally required to establish an attorney's standard of care along with the attorney's breach of that standard. Plaintiff, an oil production company, sued an attorney—who previously provided title opinions—after a court entered judgment of \$14 million against the plaintiff for operating oil wells on land it had previously conveyed to another company. The Sixth Circuit affirmed the summary judgment entered in favor of the attorney, holding that expert testimony was necessary because the issues presented by title opinions were outside the general knowledge of lay people. The court also rejected the plaintiff's expert declaration because it failed to adequately establish the standard of care or that the defendant breached it.

Complete Summary

The Underlying Action

In 2001, plaintiff ("EQT") sold or leased land in Kentucky to Journey Acquisition-II, L.P. ("Journey"). EQT continued oil and gas exploration activities in Kentucky. From 2003 to 2009, EQT retained attorney Dale Phillips to perform title examinations prior to drilling particular wells. EQT did not provide Phillips with any documents related to its 2001 conveyance to Journey. EQT then drilled wells on the properties covered by Phillips' title opinions. Journey believed that EQT was wrongfully drilling on portions of land it had conveyed to Journey. In 2012, Journey sued EQT seeking a declaration that it held the oil and gas working leasehold for the property, and that EQT had willfully trespassed on the property. After a trial, the district court entered a final judgment of \$14 million in favor of Journey.

The Malpractice Action

EQT then filed its malpractice action against Phillips, arguing that he breached his standard of care duty since he only examined the oil and gas ownership estate and failed to search and certify the lessee title for the working interest

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estate. Phillips moved for summary judgment on the grounds that EQT failed to establish an issue of fact because EQT did not provide sufficient expert testimony to establish a breach. The district court granted summary judgment primarily on two grounds: (1) expert testimony was necessary because analyzing the alleged negligence involved a complex assessment of the extent and completeness of a title examination and (2) EQT's expert report was simply a description of the expert's practice for one client—not an opinion on the standard of care.

On appeal, the Sixth Circuit noted that Kentucky law requires expert testimony to prove legal malpractice except "where the negligence is so apparent that a lay person with general knowledge would have no difficulty recognizing it." The Sixth Circuit agreed with the district court that expert testimony was necessary in this case to establish duty and breach because the "title examinations were complex, involved multiple terms of art, and relied upon intricacies of mineral interests and estates."

The Sixth Circuit examined the expert opinion of James Kaiser in support of EQT's opposition to the motion for summary judgment. The opinion provided no explanation of the standard of care and failed to offer an opinion that Phillips breached the standard. Instead, it simply described Mr. Kaiser's practice rendering similar title opinions for EQT. The Sixth Circuit found that the district court had not abused its discretion in finding that the report failed to comply with Rule 26.

Significance of Opinion

This opinion joins a series of other case holdings to the effect that expert testimony is necessary to establish both the standard of care and an attorney's breach of that standard. The proposition is straightforward: technical legal questions outside the knowledge of a lay person must be addressed by expert testimony. Expert opinions that simply state the expert's personal practice—without further analysis—are insufficient to establish the standard of care.

For more information please contact Casey A. Hatton or Terrence P. McAvoy