



Alerts

Appellate Court Holds That Plaintiff Failed to Prove But For Causation, Reversing Award in Plaintiff's Legal Malpractice Action

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Drendall Law Office, P.C. v. Mundia, No. 19A-PL-582, 2019 Ind. App. LEXIS 523 (Ct. App. Dec. 2, 2019)

Brief Summary

The Court of Appeals in Indiana overturned a malpractice jury verdict of \$312,000 in favor of a mother who brought suit against her former law firm based on allegations that the firm had mishandled her case involving the stabbing death of her six year old daughter. The appellate court ruled that the jury verdict was clearly erroneous because the mother failed to prove that a concrete settlement was available to her in the underlying litigation against the City of South Bend and County of St. Joseph.

Complete Summary

Plaintiff, Lucy Mundia ("Mundia"), filed a legal malpractice action against Drendall Law Office, PC ("Drendall"), following the death of her 6 year-old daughter who was killed by her estranged husband. Mundia argued, and the jury agreed, that Drendall failed to timely file a tort claims notice against the City of South Bend ("City") and County of St. Joseph ("County").

Edward Mwuara, Mundia's estranged husband, was arrested on May 28, 2013 for invasion of privacy and violating a protective order. Despite the protective order, the police declined to file charges against Mwuara and released him from jail on the night of his arrest. Within 72 hours, Mwuara returned to Mundia's house and stabbed Mundia and her daughter, ultimately killing the child and inflicting severe injuries to Mundia.

Following the untimely death of her daughter, Mundia hired an attorney to represent her in negligence and wrongful death claims against the City and County. The Indiana Torts Claim Act requires notice of any claim to be filed against government entities to be filed with those entities within 180 days of the loss. As Mundia's claims were against the City and County, notice of the pending tort claim was required. Drendall, who took over Mundia's case from her former lawyer with forty-five days remaining within the notice period, failed to file the required notice with the City and County. Upon learning of this failure

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—and a failure to file the tort claim itself—Mundia filed a legal malpractice claim against Drendall.

During the trial, Drendall did not present any evidence in their defense, but rather moved for summary judgment following Mundia's presentation of evidence. Drendall argued that the evidence presented by Mundia was insufficient to sustain a claim of legal malpractice, especially in light of the fact that the City and County would have likely had immunity against the tort claims by Mundia.

Mundia's experts had testified that they were unable to rule out the possibility that the County or City would be willing to offer some sort of settlement to Mundia following the horrific death of her daughter. The trial court agreed, and the jury returned a \$312,000 verdict in Mundia's favor.

On appeal, the appellate court determined that in order to sustain the legal malpractice action against Drendall, specific evidence was required to show that a settlement would have been received. Speculation from Mundia's expert—and Drendall's own admission that there was a chance the City or County would offer some sort of settlement for "public relations reasons"—was not enough to sustain the legal malpractice claim. The court ruled that without evidence of the requisite proximate cause, Mundia's claims against Drendall failed.

The appellate court emphasized the importance of Mundia's admission that, as a matter of law, the City and County both had immunity for the underlying events on which Mundia's tort claims would have been based. After conceding the issue of immunity, Mundia was unable to prove that Drendall's failure to file the notice of tort claim was the proximate cause of her inability to recover from the City or County. Mundia was left with the sole argument that the City and County may have offered a gratuitous settlement in light of a spelling error on the protective order which led to Mwuara's release from jail the night of his arrest. The appellate court rejected this as sufficient proximate cause for Mundia's legal malpractice claims against Drendall, concluding that the trial court should have dismissed the case upon Drendall's motion for summary judgment.

Significance of Opinion

This case serves as a refresher on the basic concept of but for causation. When defending a law firm facing a claim of legal malpractice, the importance of fully developing the defense of lack of proximate cause cannot be overstated. It also reinforces the longstanding requirement that in order to prevail in a legal malpractice action based on an alleged failure to secure a settlement, a plaintiff must do more than speculate that but for the attorney's negligence, he or she would have obtained a more favorable result.