



## Alerts

### Defendants Entitled to Summary Judgment on Lack of Proximate Causation Because Plaintiffs' Expert Opinions were Conclusory

August 31, 2020

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*White Rock Exploration, Inc. et. al. v. Freeman Mills, et. al.*, 06-20-00005-CV,  
Court of Appeals, Sixth Appellate District of Texas at Texarkana

#### Brief Summary

Summary judgment entered in the attorney defendant's favor on grounds of lack of causation in a legal malpractice case was upheld by a Texas court of appeal where plaintiffs' expert's opinions regarding proximate cause were deemed to be unfounded and conclusory.

#### Complete Summary

Plaintiffs (White Rock) hired Palestine Water Well Service (Palestine) to drill an exploratory well. As the project progressed, White Rock became increasingly dissatisfied with Palestine, believing that it did not have the necessary equipment, personnel, or expertise to drill the well, and had misrepresented its capabilities. The disputes escalated to a physical altercation between the presidents of both companies. Richard Clay, White Rock's president, accused Palestine's president, J. Alan Pritchett, of assaulting him at Pritchett's trailer at the well site. After staging the scene in his trailer, Pritchett falsely represented to law enforcement that Clay attacked him with a knife. As a result, Clay was arrested and charged with aggravated assault with a deadly weapon. The charges were later dropped after a grand jury determined that there were no adequate grounds for them.

Clay claimed that both he and White Rock (plaintiffs) retained defendants to sue Palestine and Pritchett for malicious prosecution and slander. Defendants mistakenly informed plaintiffs that the statute of limitations for malicious prosecution and slander was two years. Additionally, defendants advised Clay to sue only Palestine and to delay suit on his individual claims against Pritchett. Clay followed their advice.

Later in the suit, defendants advised plaintiffs to settle the Palestine action through a mutual release and walk-away agreement. Relying on this advice—and on defendants' earlier representation that his individual claims against Pritchett would still be within the statute of limitations—plaintiffs consented.

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Clay later discovered that the statute of limitations for malicious prosecution and slander was in fact one year, and had passed.

Plaintiffs sued defendants for legal malpractice and negligent misrepresentation. Among other things, they alleged that defendants negligently allowed the statute of limitations to expire on Clay's claims and negligently advised his company, White Rock, to settle its claims against Palestine.

Defendants moved for summary judgment, primarily on causation. They argued that plaintiffs had no evidence to demonstrate that defendants' advice was negligent. They further argued that neither White Rock nor Clay would have won at trial in the underlying claims against Palestine or Pritchett, and could not prove what their recovery would have been.

Plaintiffs opposed the motion with several declarations and exhibits, including an expert affidavit attesting in pertinent part that:

"7. Defendants breached the duties which they owed to Plaintiffs by ... failing to properly pursue the claims against [Palestine and Pritchett], failing to preserve the statute of limitations on Clay's claims ... and by inaccurately informing Plaintiffs of the proper statute of limitations on Plaintiffs' claims.

8. Defendants' negligence proximately caused ("but for") Plaintiffs' damages that they suffered and complain of..."

Defendants objected and argued the expert's statements were conclusory because they did not explain the bases of his opinions. Plaintiffs countered that the statements were made after a review of the pleadings and briefs, including exhibits which contained the pertinent factual information for each of their claims. The content of these exhibits, plaintiffs urged, must therefore be read into the expert's statements. The trial court disagreed and granted defendants' summary judgment motion.

The appellate court affirmed. It noted that plaintiffs, as former clients, bore the burden of proving proximate causation, *i.e.*, that "but for" the attorney's alleged negligence, they would have prevailed on the underlying action. Explaining this causal link typically requires expert testimony, particularly to rebut a defendant's motion for summary judgment challenging the causation element. The expert testimony must have a reasoned basis and cannot be based on mere conjecture, guess or speculation. To defeat a summary judgment motion, the expert's opinions must be probative and raise a fact issue.

Here, the court agreed with the trial court and concluded that plaintiffs' expert's affidavit was wanting in these particulars. The expert failed to explain why, in the absence of negligence, a better settlement would have been achieved in the Palestine action, or alternatively, why White Rock would have prevailed against Palestine at trial. Nor did the expert explain what the outcome of Clay's personal claims would have been against Pritchett. Without such specifics, the testimony was held conclusory.

Because the required expert testimony for plaintiffs' alleged claims was lacking, summary judgment was properly granted.

## Significance of the Decision

This case underscores the importance and necessity of qualified expert testimony to establish not only a defendant's negligence, but also for causation. The expert must be able to point to the factual and legal bases for his or her opinions.