



Alerts

Illinois Appellate Court Holds Legal Malpractice Claim is Barred by Statute of Repose, Rejects Plaintiff's Tolling Argument

July 22, 2021

Lawyers for the Profession®

Dema v. O'Hara, 2021 IL App (1st) 201003-U

Brief Summary

An Illinois appellate court held that the statute of repose barred a plaintiff's legal malpractice claim, and that the plaintiff's claim of fraudulent concealment to toll the statute failed. The court also rejected (again) the continuous course of representation doctrine to toll the statute.

Complete Summary

In 2011, the plaintiff retained the defendant (and her firm) to represent her in marriage dissolution proceedings. When contemplating a settlement agreement, the plaintiff maintained she would only agree to settle if she was provided with permanent maintenance. Defendant erroneously informed plaintiff that maintenance would only terminate under the agreement upon her cohabitating with another person, death, or remarriage. However, the agreement actually linked the continuance of maintenance payments to her former husband's employment status. Defendant did not advise plaintiff that maintenance payments would cease if her former husband retired. A judgment of dissolution of marriage, which incorporated the settlement agreement, was entered on January 9, 2013.

Plaintiff further alleged that on July 17, 2013, defendant advised and assured her that she had to wait until her former husband retired to enter the Qualified Illinois Domestic Relations Order (QILDRO) calculation order to begin receiving funds. In September 2013, defendant informed plaintiff that she was no longer practicing law and would not be entering the QILDRO calculation order and referred plaintiff to another attorney.

In 2015, plaintiff's former husband retired, and she no longer received maintenance payments. The defendant informed the plaintiff that the maintenance clause in the settlement agreement was a standard provision and loss of employment was always a risk. Defendant then informed the plaintiff that she no longer had the paperwork on the file but that the plaintiff's maintenance was permanent and she would receive it.

Attorneys

Terrence P. McAvoy

Service Areas

Lawyers for the Profession®

Litigators for the Profession®

Professional Liability



In October 2017, the domestic relations court did not amend the QILDRO as requested by plaintiff. In December 2017, after consulting a new attorney, plaintiff learned that the defendant might have committed legal malpractice. Plaintiff alleged defendant fraudulently concealed her malpractice by assuring plaintiff that she should have permanent maintenance. According to plaintiff, defendant reassured her of this on numerous occasions, most recently on January 10, 2017.

Plaintiff then filed the legal malpractice claim in December 2019. Defendant argued plaintiff's claims were time-barred by the statute of limitations and repose, and the fraudulent misrepresentation claim was not adequately pled. The trial court granted defendants' motion to dismiss, finding that the statute of repose barred the claims and the fraudulent concealment claim was not well-pled.

Plaintiff appealed and argued that the statute of repose did not bar the claims because the final act of malpractice occurred in 2017 when the defendant assured the plaintiff that she would receive permanent maintenance. The court disagreed, holding that the last negligent act upon which the malpractice claim was founded occurred in 2013 when the judgment of dissolution was entered. The court also held (again) that the statute of repose was not tolled by the continuation of the attorney-client relationship or defendant's alleged continuing misrepresents.

The court also held that the defendant's alleged fraudulent concealment did not toll the statute of repose when the plaintiff discovered the alleged fraud 14 months before the statute of repose expired. The court reasoned that Illinois courts would not toll a statute of repose based on fraudulent concealment when the plaintiff discovers the fraudulent concealment or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period. As a result, plaintiff's legal malpractice claim was barred.

Significance of Decision

This decision illustrates that once a client knows—or reasonably should have known—that they were injured and the injury was wrongfully caused, they must act promptly to pursue possible claims or be forever barred.

"The application of a statute of limitations [and statute of repose], especially in legal malpractice claims, can be tricky and technical, and, as this case shows, deadly to those who fail to adequately anticipate its possibility." (See, e.g., *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶1.)