



Alerts

Illinois Court Holds Plaintiff Failed to Show Her Attorneys Mishandled Discovery or That She Would Have Prevailed in Underlying Case

April 12, 2022

Lawyers for the Profession

Gallo v. Bellas, 2022 IL App (1st) 210104-U

Brief Summary

In Illinois, the First District Appellate Court affirmed summary judgment granted in defendants' favor, concluding a dermatologist failed to show she would have prevailed in her underlying litigation (the "case-within-a case") or that her attorneys mishandled her underlying case by failing to take certain depositions and propound further discovery.

Complete Summary

Plaintiff, Elisa S. Gallo, M.D. is a board-certified physician, specializing in dermatology. She was employed as a dermatologist at the Mayo Clinic. After less than a year at Mayo, plaintiff met with her supervisor, Dr. White, in order to discuss performance issues. Plaintiff then resigned. Plaintiff and Mayo ultimately agreed to a separation agreement, a letter of reference was provided to the plaintiff, and both parties agreed not to make any disparaging remarks about the other.

Subsequently, while at a medical conference, plaintiff contacted Dr. Manini, the medical director of Refuah Health Center in New York (RHC). RHC extended an offer of part-time employment to plaintiff. Protracted employment negotiations began, and Dr. Manini became frustrated with plaintiff, writing to her colleagues she "can't stand [plaintiff]" and "[plaintiff] is driving us nuts." After plaintiff sent an email raising eighteen separate concerns about her contract, Dr. Manini sent an internal email stating: "I'm happy to rescind the contract."

After eventually becoming licensed in New York, plaintiff still had to go through a credentialing process to work at another hospital, Mount Sinai, in order to also work at RHC. Part of this credentialing process involved Mount Sinai sending an affiliation verification to Mayo, which required Mayo to rate plaintiff's performance. At the direction of Mayo's counsel, Dr. White completed and returned this form. He ranked plaintiff "superior" or "good" in all categories but the following two: (1) accepting feedback and (2) cooperativeness – in which he ranked her "fair." Less than a month after completing this form, plaintiff's offer of

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employment at RHC was rescinded.

Plaintiff retained defendants and sued Dr. White and Mayo for violating the separation agreement. Plaintiff argued the credentialing form was different than the agreed letter of reference. Thus, by providing the form to Mount Sinai, Dr. White and Mayo breached the separation agreement. Plaintiff hired defendants to represent her.

During discovery, defendants deposed the chair of the dermatology at Mount Sinai, Dr. Lebowhl. He testified he had called plaintiff and told her she was not negotiating effectively and that Dr. Manini viewed her as unreasonable. Dr. Lebowhl also testified he called Dr. White at Mayo regarding the "fair" ratings, and Dr. White spoke positively of plaintiff. Dr. Lebowhl also testified plaintiff's employment offer was rescinded only as a result of the drawn-out negotiations. Further, Mayo submitted a declaration from Dr. Manini, which stated the decision to rescind plaintiff's employment offer was because of the drawn-out negotiations and because RHC already had a dermatologist.

Mediation occurred, which resulted in a settlement (in principle). But, plaintiff refused to sign. Shortly thereafter, defendants were granted leave to withdraw, and plaintiff retained new counsel. Subsequently, Mayo prevailed on its motion for summary judgment. Plaintiff appealed, but the Seventh Circuit affirmed, holding there was undisputed evidence showing plaintiff was passed over by RHC due to the drawn-out negotiations. The court held plaintiff failed to demonstrate that the credentialing form, even if technically prohibited by the settlement because it was not the agreed reference letter, caused her any harm.

Undeterred, plaintiff then sued defendants for alleged malpractice. Plaintiff argued defendants breached their duty of care by failing to take the depositions of Dr. Manini and Dr. Kim, and failed to engage in discovery which would have allegedly refuted Mayo's defense that the credentialing form was not the cause of plaintiff's lost employment offer. Plaintiff also alleged defendants tried to coerce her into settling the underlying dispute to hide their alleged negligence.

Defendants moved for summary judgment, arguing their actions did not cause plaintiff to lose her underlying case. The trial court granted the motion, finding that the separation agreement did not apply to the credentialing form. Thus, it did not prohibit Mayo from completing the form, and the appellate court affirmed.

Plaintiff argued the defenses of Mayo and Dr. White went "almost totally unchallenged" because they: (a) failed to take the deposition of Dr. Manini, (b) waived the argument that the "fair" ratings amounted to derogatory or disparaging remarks and (c) failed to put the reference letter into evidence. The court disagreed and noted defendants engaged in extensive discovery efforts to substantiate plaintiff's alleged claims. The court also noted that documents produced by RHC showed that taking the deposition of Dr. Manini would have been counter-productive - given her frustration with plaintiff. The court also found the arguments regarding the "fair" ratings and failure to put the reference letter into evidence also failed because the Seventh Circuit (and district court) had already determined that the separation agreement did not apply to credentialing inquiries.

Notably, the court recognized that the doctrine of "judgmental immunity" or the "error in judgment" rule applied. Judgmental immunity distinguishes between negligence and mere errors of judgment. Going beyond judgmental immunity, the court noted that *even if* defendants were negligent, plaintiff still failed to prove that "but for" their alleged negligence, she would have prevailed in the underlying litigation and would not have suffered damages. The court concluded there were no facts which would have shown plaintiff's employment offer was rescinded because of the credentialing form or because of defendants' alleged negligence. Summary judgment for defendants was thus affirmed.

Significance of Decision

This decision provides a good explanation (again) of the critical necessity that a plaintiff be able to prove "but for" causation (or the "case within a case") requirement in order to prevail in a legal malpractice action. *See also Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill.2d 218, 226 (2006). This decision also discusses judgmental immunity or the "error in judgment" rule, which generally insulates attorneys from malpractice claims based on the good faith exercise of professional judgment.



Hinshaw & Culbertson LLP attorneys Barry F. MacEntee and Peter D. Sullivan represented Defendant Pines in the trial court at summary judgment and on the appeal.