



Alerts

Florida Appellate Court Reverses Summary Judgment for Attorneys Where They Could Have Remedied Prior Counsel's Mistakes and Salvaged Plaintiff's Case

December 20, 2022

Lawyers for the Profession®

Baum v. Becker & Poliakoff, P.A., 47 Fla. L. Weekly D2374 (Fla. 5th DCA November 18, 2022)

Brief Summary

Plaintiff sued her attorneys for malpractice, arguing that they failed to correct her previous attorneys' mistakes in order to salvage her claims. The attorneys argued that they were not counsel of record when plaintiff's prior counsel made their mistakes and thus could not be blamed for not rectifying them. The circuit court granted summary judgment in the attorneys' favor, but the appellate court reversed.

Complete Summary

Plaintiff's lawyers filed two probate actions regarding her father's \$100 million estate from which she had been disinherited. However, plaintiff's lawyers failed to effect timely service of process on the personal representative of the estate, her brother. Plaintiff's brother therefore moved to drop all parties not served, including himself, and dismiss the probate actions.

In response, plaintiff retained two new law firms to represent her in responding to her brother's motions: Hoffman & Hoffman, P.A. and Becker & Poliakoff. These firms moved to combine plaintiff's two actions into one, but their motion did not address the failure of plaintiff's previous attorneys to serve process on time. Thus, plaintiff hired yet another firm—The Boldt Law Firm—to represent her at the hearing on her brother's motions. The Boldt Law Firm also did not attempt to show good cause or excusable neglect for the failure of service. The probate court therefore granted the motions. The Boldt Law Firm filed a motion for rehearing and clarification, and it was only here that they attempted to explain the prior attorneys' failure to serve process in the probate actions. They also asserted a legal error in the probate court's decision. The motion was denied, and plaintiff filed a malpractice suit against all the attorneys who represented her at any time during this probate litigation, including Hoffman & Hoffman, P.A., Becker & Poliakoff, and The Boldt Law Firm (Appellees).

Attorneys

Terrence P. McAvoy

Matthew L. Pagano

Service Areas

Counselors for the Profession

Lawyers for the Profession®



Appellees argued in the circuit court that plaintiff's probate actions were sunk by her predecessor counsels' failure to effect service, something for which Appellees could not be blamed. Plaintiff countered that Appellees could have shown good cause or excusable neglect before or during the hearing on her brother's motions but made no effort to do so. The circuit court entered summary judgment in favor of the Appellees, and plaintiff appealed.

The appellate court agreed with plaintiff and reversed. It explained that "[t]he fact that the deadline for serving process was missed obviously did not by itself terminate [plaintiff's] probate litigation. In fact, according to [plaintiff's] affidavit opposing summary judgment, Appellees were retained, at least in part, to take reasonable steps to avoid the adverse consequences of [plaintiff's] predecessor counsel's failure to effect service of process." The appellate court concluded that because "Appellees made no attempt, prior to or during the March 18, 2014 hearing, to prove good cause or excusable neglect for failing to timely serve process," there remained a clear dispute concerning whether Appellees did all they reasonably could to revive Baum's claims.

Significance of Decision

When attorneys take over a case from prior counsel, they also take on responsibility for attempting to correct prior counsel's mistakes wherever possible in order to salvage the underlying case.