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Lack of Proximate Cause Dooms Plaintiff's Appeal of Adverse Summary Judgment

February 2, 2024
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Brief Summary

The Washington Court of Appeals held that when the facts are undisputed, proximate cause is an issue of law to be decided by the court. The plaintiff alleged his former attorney failed to send him a case scheduling order, which resulted in the plaintiff failing to appear at trial, and a judgment was entered against him.

Due to the fact that the plaintiff was a sophisticated businessman and he consented to the attorney's withdrawal, the appellate court held that the attorney's alleged negligence was simply too far removed or insubstantial to be the proximate cause of the plaintiff's claimed damages.

Complete Summary

On January 29, 2016, Thomas Flanigan, Kathryn DePriest, and Patrick McDermott (collectively, the "Lessees") entered into a lease agreement for a retail cannabis store with Jerry McNairy (the "Lessor"). The lease agreement gave the Lessees an option to terminate the lease prior to April 16, 2016, by providing the Lessor with written notice of their failure to obtain a license to operate a retained cannabis store.

The Lessees were unable to obtain the necessary license but failed to provide the Lessor with timely notice. On June 8, 2016, the Lessor brought suit against the Lessees for breach of the lease agreement. The Lessees retained the defendant to represent them. When they initially met with the defendant, the Lessees informed him that Flanigan (*i.e.*, the plaintiff) would be solely responsible for the cost of defense and any settlement, as he was the only one with the means to do so. Thereafter, the Lessees' filed a motion for summary judgment and attended a mediation with the Lessor, both of which were unsuccessful.

On November 21, 2017, the defendant filed a notice of intent to withdraw and mailed copies to the parties. The plaintiff signed a declaration on December 8, 2017, consenting to the defendant's withdrawal. In the declaration, the plaintiff struck the language that he received the defendant's notice. The trial court allowed the defendant's withdrawal on December 19, 2017, and directed him to

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mail a copy of the case scheduling order to each of the Lessees. The scheduling order showed that the trial was scheduled to begin on March 26, 2018.

The defendant mailed the scheduling order to the plaintiff at his business address, but the plaintiff allegedly never received the case scheduling order and did not appear for trial. Consequently, the court entered judgment against him in the amount of $115,883.20. The plaintiff later learned of the judgment and settled with the Lessor for $47,000.

The plaintiff then filed suit against the defendant for legal malpractice and breach of fiduciary duty and requested consequential damages and disgorgement of the defendant's legal fees. The defendant moved for summary judgment on the basis that his alleged malpractice and breach of duty were not the proximate cause of the plaintiff's damages. The trial court granted the defendant's motion, and the plaintiff appealed.

On appeal, the plaintiff argued that the trial court erred in granting the defendant's motion for summary judgment because proximate cause is an issue that the trier of fact should decide. The appellate court disagreed and affirmed the trial court's decision. It noted that " '[w]here the facts are not in dispute, legal causation is for the court to decide as a matter of law.'" *Flanigan v. Herman,* 2024 Wash. App. LEXIS 44, *5 (Wash. Ct. App. Jan. 11, 2024) quoting *N.L. v. Bethel School District,* 186 Wn.2d 422, 437 (2016):

> "The remoteness between the negligent act and the injury can be dispositive of the question of legal causation." *Flanagan,* 2024 Wash. App. LEXIS at *6. "'In deciding whether a defendant's breach of duty is too removed or insubstantial to trigger liability as a matter of legal cause, [the court] evaluate[s] mixed considerations of logic, common sense, justice, policy, and precedent.'" *Id.*

The court concluded that the plaintiff was a sophisticated businessman who had been an area manager and mortgage banker for nearly thirty (30) years. It was not disputed that the plaintiff was not aware of the trial date on March 26, 2018, but he was aware that he was primarily responsible for paying the Lessor's damages. He also consented to the defendant's withdrawal and had ample opportunity to:

> "protect his financial interests – either by calling [defendant] … to inquire of the status of the litigation, or by simply hiring how own attorney. Yet [plaintiff], a sophisticated businessman, did nothing." *Flanagan,* 2024 Wash. App. LEXIS at *6-7. The court held that "logic, common sense, and justice support [the] conclusion that [defendant's] failure to provide [plaintiff] the case scheduling order should not result in [defendant's] liability for [plaintiff's] damages." *Id.* at *6.

Significance of Decision

This decision once again demonstrates that a plaintiff in a legal malpractice action must establish that the attorney's alleged negligence is the "but for" proximate cause of the plaintiff's claimed damages. It also highlights a plaintiff's responsibility to follow their own case and scheduling orders.