



Alerts

Trial Court's Error Constituted an Intervening Cause of Plaintiff's Claimed Damages

March 28, 2014

Lawyers for the Profession® Alert

Huang v. Brenson, et al., 2014 IL App (1st) 123231

Brief Summary

Plaintiff retained Defendant to defend him in a legal malpractice action brought by a former client. After a jury awarded the former client \$4 million for noneconomic damages, Plaintiff discharged Defendant, retained new counsel, and successfully appealed the judgment. Plaintiff then brought a legal malpractice action against Defendant arguing that he was negligent in his representation during pretrial discovery, in preparing for trial, and at the trial itself. The appellate court affirmed the trial court's dismissal of Plaintiff's claims on the basis that the underlying trial court's error acted as an intervening cause, relieving Defendant's alleged negligence.

Complete Summary

Former Client retained Plaintiff to represent him in an INS proceeding. Former Client subsequently sued Plaintiff for legal malpractice and Defendant was retained to defend Plaintiff. Specifically, Former Client sought damages for emotional distress, physical abuse, isolation, humiliation, pain and suffering, loss of education and loss of income. Five years later, Defendant moved for summary judgment on Plaintiff's behalf, arguing that Former Client could not recover noneconomic damages in a legal malpractice action. The trial court denied that motion and set the matter for a jury trial. Defendant then moved *in limine* to exclude evidence of noneconomic damages, which the judge denied as well.

At the trial, Former Client only presented evidence of damages for emotional distress, loss of normal life, psychological damages and the cost of future psychological care — damages that are all noneconomic in nature. Defendant argued that the jury should be instructed that it could not award damages based on noneconomic injury, but the trial court also denied that instruction. The jury ultimately awarded Former Client \$4 million.

After the trial, Former Client discharged Plaintiff and hired two new attorneys for post-trial and asset discovery proceedings. The trial court granted a remittitur, and reduced the judgment to \$1 million, which Former Client rejected. Plaintiff then moved for judgment *n.o.v.* and for a new trial. The trial judge denied that motion. Both Former Client and Plaintiff appealed. On appeal, the court held

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that Former Client was prohibited from recovering damages for emotional distress and remanded the case with instructions to enter judgment *n.o.v.* in favor of Plaintiff and his firm.

Plaintiff subsequently filed a legal malpractice action claiming that Defendant negligently conducted discovery, negligently failed to communicate with him for eight months, failed to produce an expert at trial, failed to depose certain witnesses, failed to advise of a multimillion dollar verdict, failed to move the case forward in a timely manner, and failed to introduce key documents into evidence.

Plaintiff also filed a count for breach of fiduciary duty, alleging that Defendant concurrently represented Plaintiff and the professional liability insurance company, and as a result, failed to relay several of Former Client's settlement offers to Plaintiff. Plaintiff sought damages of \$145,855 for attorneys' fees paid to the post-trial and appellate counsel.

The trial court granted Defendant's motion to dismiss, holding that Defendant could not be held responsible for a judicial mistake that required an appeal to correct. The trial court ultimately dismissed the counts related to Defendant's alleged failure to communicate certain settlement offers because Plaintiff failed to adequately allege that he had the authority to demand his insurance company to settle, and the insurer would have paid the demand. Plaintiff appealed.

On appeal, Plaintiff argued that but for Defendant's negligence in preparing for and trying his case, Plaintiff would not have had to procure posttrial and appellate counsel to correct Defendant's mistake. Plaintiff also argued that the trial court erred in holding that he failed to plead facts showing a conflict of interest.

In affirming the trial court's ruling, the appellate court noted that Plaintiff's case remained viable after Defendant's discharge and the trial court's misapplication of the law served as an intervening cause. The court further noted Plaintiff was eventually vindicated on appeal as a result of Defendant's efforts to preserve the damages issue in the trial court. The trial court should have granted Plaintiff summary judgment or a directed verdict on all of Former Client's claims for damages, and Plaintiff did not allege that Defendant contributed to the trial court's error. Therefore, the trial court's error acted as an intervening cause, relieving Defendant's alleged negligence.

With respect to the breach of fiduciary duty count, Plaintiff noted that Defendant's affidavit attached to the motion to dismiss stated that he was retained by Plaintiff and his liability insurance carrier to defend them in Former Client's lawsuit. He argued that this statement was an evidentiary admission that Defendant had a conflict of interest. The appellate court agreed that Plaintiff pleaded the existence and breach of a fiduciary duty, but he did not plead facts showing Defendant's breach proximately caused any damage. While the failure to properly communicate a settlement offer to a client would typically be considered a breach of fiduciary duty, Plaintiff still failed to allege facts showing proximate cause. Plaintiff did not allege that he was willing or able to use his own assets to settle the case, nor did he allege facts showing that the professional liability insurer would have accepted Former Client's settlement offers. Accordingly, the appellate court affirmed the trial court's dismissal of Plaintiff's claims.

Significance of Opinion

Whether a claim was still "viable" when an attorney was discharged is always an important part of the proximate causation analysis. This case adds to a long line of Illinois case law that supports the proposition that an intervening cause, such as the retention of successor counsel or a trial court's error, relieves the attorney of liability.

For more information, please contact [Terrence P. McAvoy](#) or [Kate Schnake](#).

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