

Alerts

Expert Testimony May Not Always Be Required for Professional Negligence Cases in Connecticut

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Cammarota v. Guerrero, 148 Conn.App. 743 (2014)

Plaintiff/appellant and his brother, retained defendant/appellee as their counsel to prepare an agreement related to the development of real property. The agreement contained the terms of the development of the property, the division of assets, and the allocation of payments between the brothers.

After the completion of construction, the attorney (or someone from his office) handed to the brother, a check in the amount of \$215,000 payable to plaintiff. The brother then deposited that check into his own account, without an endorsement from plaintiff.

Plaintiff sued the attorney for legal malpractice, conversion, and breach of fiduciary duty for tortuously delivering his check to his brother. A jury trial commenced and plaintiff offered his case, which included the testimony of plaintiff, defendant, and an employee at the bank. Plaintiff did not offer any expert testimony.

After plaintiff rested, defendant moved for a directed verdict. The trial court granted the motion as to the professional negligence claim because the plaintiff had not presented expert testimony regarding the professional standard of care and had not presented evidence of proximate cause. The trial court granted the motion as to the breach of fiduciary duty claim because there was no evidence of fraud, self-dealing, or self-interest. Plaintiff appealed.

Questions Before the Court and How the Court Decided It

Is expert testimony always required to determine a claim for professional negligence? No.

The Court stated that not all cases alleging professional negligence require expert testimony. The Court interpreted plaintiff's claim for legal malpractice to sound in professional negligence. To establish a claim for professional negligence in Connecticut, a plaintiff must: 1) sue the defendant in his/her capacity as a professional; 2) the alleged negligence is of a specialized professional nature, which arises out of the professional relationship, and 3) the alleged negligence is substantially related to the professional conduct and involved in the exercise of professional judgment. Connecticut courts are not bound by the label affixed to the claims by the plaintiff, but may independently determine the nature of the pleadings.

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The Court agreed that generally expert testimony is required in professional negligence cases to establish the appropriate standard of care and the conduct was the legal cause of the claimed injury. The Court clarified that there are situations where expert testimony is not required because "the issues in dispute are not beyond the knowledge of the ordinary juror." The Court stated that a directed verdict is not proper when a jury could not have reached a verdict in the plaintiff's favor applying a view of the facts most favorable to plaintiff. The Court found that the factual scenario presented by plaintiff – defendant handed a check to a different person after having been warned about that person – is one "comprehensible to an ordinary juror." Therefore, expert testimony was not required in this case.

Was a directed verdict appropriate where a reasonable disagreement existed as to proximate cause? No.

The Court also found that the directed verdict as to the claim for professional negligence was improper based on the trial court's finding that plaintiff had not established evidence of proximate cause. The Court stated that the question of proximate cause is a jury question, unless a reasonable person could reach only one conclusion. Taking the facts in a light most favorable to the plaintiff, the Court concluded that the defendant's handling of the check satisfied the "but for" test for causation and a jury question existed as to foreseeability. Therefore, a reasonable disagreement existed and the directed verdict was improper.

Must a claim for professional negligence also support a claim for breach of fiduciary duty? No.

Not every breach of duty in the attorney-client context equates to a breach of fiduciary duty: "Professional negligence implicates a duty of care, while breach of fiduciary duty implicates a duty of loyalty and honesty". *Beverly Hills Concepts, Inc. v. Schatz & Schatz, Ribicoff & Kotkin*, 247 Conn. 48, 57, 717 A.2d 724 (1998). Viewing the facts most favorably to plaintiff, the Court found that defendant's duties of loyalty and honesty were not implicated. Therefore, the directed verdict was proper as to this cause of action.

What the Court's Decision Means for Practitioners

The Court found that expert testimony is not required in cases alleging professional negligence where the factual scenario presented is one within the common experience of the jury. The key question to address when evaluating the claim and determining the necessity of retaining expert witnesses is whether the issues presented can be decided by a jury based on their ordinary knowledge or whether peculiar or specialized knowledge is required.

For more information, please contact your Hinshaw attorney.

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