



## Alerts

### Plaintiff's Failure to Have Expert Define the Standard of Care was Fatal to Claim

August 20, 2014

*Lawyers for the Profession® Alert*

*Jing Hong Song v. Collins*, \_\_\_ A.3d \_\_\_, 2014 WL 3919754 (Conn. 2014)

#### Brief Summary

The appellate court affirmed a jury verdict in favor of the defendant in a legal malpractice action on the basis that the plaintiff failed to establish the applicable standard of care, either directly or indirectly, through the testimony of the experts in the case.

#### Complete Summary

In the underlying case, plaintiff was represented by the defendant attorney in a contested matter with her former husband in which the parties executed an agreement regarding the custody and visitation of their minor children. Following defendant's representation in that matter, the plaintiff filed a malpractice action against defendant, alleging that the defendant was negligent in advising her that the agreement was temporary and easily modifiable. Plaintiff claimed that as a result of the defendant's alleged negligence, she was required to expend large sums of money in an effort to correct his errors and because she was unaware of his alleged errors, she suffered the loss of the care, custody and companionship of her children, and emotional distress.

The jury returned a verdict in favor of the defendant. With respect to the legal malpractice claim, the jury determined that the plaintiff failed to prove, by a fair preponderance of the evidence, the applicable standard of care. Plaintiff then moved to set aside the verdict on the ground that the jury's determination was against the evidence, as "both the plaintiff's expert and the defendant's expert witness testified unequivocally" as to the applicable standard of care. The trial court denied plaintiff's motion, holding that she failed to sustain her burden to establish the standard of care. Plaintiff then appealed.

The appellate court affirmed. In Connecticut, for a legal malpractice plaintiff to prevail, she must present expert testimony to establish the standard of proper professional skill or care. *Grimm v. Fox*, 303 Conn. 322, 329-330. The requirement of expert testimony in malpractice cases serves to assist lay people, such as members of the jury, to understand the applicable standard of care and to evaluate the defendant's actions in light of that standard. In affirming the trial court's decision, the appellate court looked to the testimony of both expert witnesses and determined that while both experts testified as to

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whether the defendant breached the standard of care, plaintiff failed to elicit testimony from her expert that described, in general or specific terms, the standard of care applicable to the defendant. The description of the standard of care must be set forth for the jury in order to prevail on a legal malpractice claim.

### **Significance of Opinion**

This decision is significant because the appellate court held that it is not enough for a legal malpractice plaintiff to elicit testimony from her standard of care expert that the attorney defendant breached the standard of care. In order to prevail, the plaintiff's expert must describe what the applicable standard of care is as it applies to the circumstances and that the defendant breached the standard of care. Plaintiff's failure to do so was fatal to her alleged claim.

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

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