

SUPREME COURT OF MISSISSIPPI

Ronald Henry Pierce v. Ernest Allan Cook, Sr.

992 So. 2d 612 (Miss. 2008) · No. 2006-CP-01842-SCT · Decided August 14, 2008

SUMMARY

The Supreme Court of Mississippi affirmed a \$1.5 million judgment against an attorney on claims for alienation of affection, breach of contract, and intentional infliction of emotional distress arising from his affair with his client’s wife. The court held that expert testimony was not required under the circumstances and that the continuing-tort doctrine made the emotional-distress claim timely. The court also upheld the trial court’s rulings concerning evidentiary issues and denied relief on the motion for judgment notwithstanding the verdict or a new trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice; Smith, C.J.; Waller, P.J.; Carlson, J.; Dickinson, J.; Randolph, J.; Lamar, J.; Graves, J.; Diaz, P.J.; Easley, J.
JURISDICTION	Mississippi
DECIDED	August 14, 2008
DOCKET	2006-CP-01842-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pierce appealed from a Rankin County Circuit Court judgment awarding Cook \$1,500,000 on claims of alienation of affection, breach of contract, and intentional infliction of emotional distress, and from the denial of his post-trial motion for judgment notwithstanding the verdict or a new trial.
STANDARD OF REVIEW	Directed-verdict and judgment-notwithstanding-the-verdict rulings are reviewed de novo, viewing the evidence in the light most favorable to the nonmovant. Denial of a motion for new trial and evidentiary rulings are reviewed for abuse of discretion, with evidentiary error warranting reversal only when it adversely affects a substantial right. Jury-instruction challenges are reviewed by considering all instructions together as a whole.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential
PARTIES	Ronald Henry Pierce v. Ernest Allan Cook, Sr.

TOPICS

professional negligence

intentional infliction of emotional distress

contracts

appellate procedure

standard of review

PRACTICE AREAS

professional negligence

contracts

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in denying Pierce's motion for a partial directed verdict on Cook's breach-of-contract claim because the claim was allegedly legal malpractice requiring expert testimony.
2. Whether Cook's intentional-infliction-of-emotional-distress claim was barred by Mississippi's one-year statute of limitations.
3. Whether the trial court erred in denying Pierce's motion for judgment notwithstanding the verdict.
4. Whether evidentiary rulings and counsel's alleged prejudicial statements required a new trial on the alienation-of-affection claim.
5. Whether the trial court improperly gave jury instruction No. 10 concerning the duties an attorney owes a client.

HOLDINGS

1. Even assuming Cook's breach-of-contract claim was actually a legal-malpractice claim, expert testimony was not required because ordinary jurors could determine whether an adulterous affair between an attorney and his client's wife breached a duty owed by the attorney to the client.
2. The claim was timely because Pierce engaged in repeated wrongful conduct constituting a continuing tort, so the one-year limitations period began when the conduct ceased, at the divorce decree on June 3, 2002.
3. The denial of Pierce's motion for judgment notwithstanding the verdict was proper because the motion repeated the directed-verdict arguments, which lacked merit.
4. The trial court did not abuse its discretion in limiting evidence concerning Cook's post-affair conduct, trust values, the birthday recording, or title to the marital home, and no cumulative error required a new trial.
5. Jury instruction No. 10 was a correct statement of the legal duties owed by an attorney to a client, and the instructions read as a whole fairly and adequately informed the jury of the applicable law.

KEY QUOTATIONS

"Ordinary jurors possess the requisite knowledge and lay expertise to determine if an adulterous affair between an attorney and his client's wife is a breach of a duty owed by an attorney to his client." (617)

"A 'continuing tort' is one inflicted over a period of time; it involves a wrongful conduct that is repeated until desisted, and each day creates a separate cause of action." (619)

“Violation of a Rule of Professional Conduct does not give rise to a cause of action nor does it create a presumption that a legal duty has been breached.” (625-626)

FACTUAL BACKGROUND

Pierce represented Cook and Cook's family in a medical-malpractice matter under an attorney-client relationship. While still representing Cook, Pierce began an adulterous affair with Cook's wife, Kathleen, and continued conduct related to the affair until the parties' divorce. Cook later sued Pierce for alienation of affection, breach of contract, and intentional infliction of emotional distress, and a jury awarded Cook \$1,500,000.

PROCEDURAL HISTORY

After a jury trial, the Rankin County Circuit Court entered judgment for Cook in the total amount of \$1,500,000. The court denied Pierce's motions for partial directed verdict, judgment notwithstanding the verdict, and a new trial. Pierce timely appealed, and the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- White v. Stewman, 932 So. 2d 27, 32-33 (Miss. 2006)
- Steele v. Inn of Vicksburg, Inc., 697 So. 2d 373, 376 (Miss. 1997)
- Sperry-New Holland v. Prestage, 617 So. 2d 248, 252 (Miss. 1993)
- Hickox v. Holleman, 502 So. 2d 626, 633-36 (Miss. 1987)
- Dean v. Conn, 419 So. 2d 148, 150 (Miss. 1982)
- Nause v. Goldman, 321 So. 2d 304 (Miss. 1975)
- Thompson v. Erving's Hatcheries, Inc., 186 So. 2d 756, 759 (Miss. 1966)
- Singleton v. Stegall, 580 So. 2d 1242, 1244-45 (Miss. 1991)
- Byrd v. Bowie, 933 So. 2d 899, 904-05 (Miss. 2006)
- Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495, 505-06 (Miss. 2007)
- Slaydon v. Hansford, 830 So. 2d 686, 689 (Miss. Ct. App. 2002)
- Smith v. Sneed, 638 So. 2d 1252, 1255 (Miss. 1994)
- Stevens v. Lake, 615 So. 2d 1177, 1183 (Miss. 1993)
- Smith v. Franklin Custodian Funds, Inc., 726 So. 2d 144, 148-49 (Miss. 1998)
- White v. Yellow Freight System, Inc., 905 So. 2d 506, 510-11 (Miss. 2004)
- Green v. Grant, 641 So. 2d 1203, 1207 (Miss. 1994)
- Whitten v. Cox, 799 So. 2d 1, 13 (Miss. 2000)
- Floyd v. City of Crystal Springs, 749 So. 2d 110, 113 (Miss. 1999)
- In re Estate of Mask, 703 So. 2d 852, 859 (Miss. 1997)

- Terrain Enters., Inc. v. Mockbee, 654 So. 2d 1122, 1131 (Miss. 1995)
- Bland v. Hill, 735 So. 2d 414, 418-19 (Miss. 1999)
- Richardson v. Norfolk S. Ry. Co., 923 So. 2d 1002, 1010 (Miss. 2006)
- Burr v. Miss. Baptist Med. Ctr., 909 So. 2d 721, 726 (Miss. 2005)
- Wilbourn v. Stennett, Wilkinson & Ward, 687 So. 2d 1205, 1216 (Miss. 1996)
- Flight Line, Inc. v. Tanksley, 608 So. 2d 1149, 1157 (Miss. 1992)
- Strickland v. Rossini, 589 So. 2d 1268, 1275 (Miss. 1991)

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