

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Gary Lane v. Kathleen Holbrook Cold, Esquire, et al.

882 So. 2d 436 (Fla. Dist. Ct. App. 2004) · No. No. 1D03-4540 · Decided August 30, 2004

SUMMARY

The Florida First District Court of Appeal affirmed summary judgment for an attorney in a legal malpractice action alleging failure to prepare a corporate buy-sell agreement. The court held that the plaintiff presented no evidence that the attorney had been retained or otherwise obligated to prepare the agreement, and that no genuine issue of material fact existed.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Van Nortwick, J.; Barfield, J.; Padovano, J.
JURISDICTION	Florida
DECIDED	August 30, 2004
DOCKET	No. 1D03-4540
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final summary judgment entered for the defendant attorney in a legal malpractice action.
STANDARD OF REVIEW	Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Once the movant presents sufficient evidence showing the absence of a genuine issue, the opposing party must demonstrate a genuine issue through countervailing facts or justifiable inferences.
PRECEDENTIAL VALUE	Published opinion; precedential value under Florida appellate practice.
PARTIES	Gary Lane v. Kathleen Holbrook Cold, Esquire, et al.

TOPICS

- professional negligence
- summary judgment
- standard of review
- appellate procedure
- civil procedure

PRACTICE AREAS

- legal malpractice
- professional negligence
- summary judgment
- appellate procedure

QUESTIONS PRESENTED

1. Whether a genuine issue of material fact existed as to whether Cold was retained or otherwise professionally obligated to prepare a buy-sell agreement for Bobcat.
2. Whether Cold's inquiry about whether the clients wanted a buy-sell agreement, without more, created a duty to prepare one.
3. Whether summary judgment was proper on Lane's legal malpractice claim.

HOLDINGS

1. A legal malpractice plaintiff must establish that the attorney was employed, or otherwise had a professional obligation, with respect to the specific act or omission forming the basis of the malpractice claim; merely proving a general attorney-client relationship is insufficient.
2. An attorney's inquiry about whether clients wish to have a buy-sell agreement prepared does not, without more, create a duty to prepare the agreement.
3. Summary judgment was proper because Lane failed to present evidence creating a genuine issue of material fact concerning Cold's employment or professional obligation to prepare a buy-sell agreement.

KEY QUOTATIONS

“Cold's professional inquiry concerning the desire for a buy-sell agreement, without more, did not create a duty on her part to prepare the agreement.” (438)

“It is not the role of an attorney acting as counsel to independently determine what is best for his client and then act accordingly.” (438)

FACTUAL BACKGROUND

Cold prepared the incorporation documents for Bobcat of North Florida, Inc., whose sole shareholders were Lane and his deceased brother. Cold had previously prepared a buy-sell agreement for another corporation owned by the brothers, and when incorporating Bobcat she asked whether they wanted her to prepare such an agreement. No one requested that Cold prepare a buy-sell agreement for Bobcat, and Lane produced no evidence that Cold had been asked or had agreed, expressly or implicitly, to undertake that responsibility.

PROCEDURAL HISTORY

Gary Lane sued Kathleen Holbrook Cold for allegedly failing to prepare a buy-sell agreement in connection with the incorporation of Bobcat of North Florida, Inc. The trial court entered final summary judgment for Cold. Lane appealed, and the First District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Maillard v. Dowdell, 528 So. 2d 512, 514 (Fla. 3d DCA 1988)
- Conley v. Shutts & Bowen, 616 So. 2d 523 (Fla. 3d DCA 1993)
- Viner v. Sweet, 30 Cal. 4th 1232, 135 Cal. Rptr. 2d 629, 70 P.3d 1046 (2003)
- Boyd v. Brett-Major, 449 So. 2d 952, 954 (Fla. 3d DCA 1984)
- Orr v. Knowles, 215 Neb. 49, 337 N.W.2d 699, 702 (1983)
- Fleming v. Peoples First Financial Savings and Loan Association, 667 So. 2d 273, 274 (Fla. 1st DCA 1995)

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