

SUPREME COURT OF UTAH

Gregory & Swapp, PLLC v. Kranendonk

2018 UT 36 (2018) · No. No. 20160377 · Decided July 26, 2018

SUMMARY

The Utah Supreme Court held that the plaintiff could not recover \$2.75 million in non-economic damages unrelated to the underlying personal-injury claim in her legal malpractice action. The court concluded that the damages were unavailable under the breach-of-contract theory because the contract did not explicitly contemplate emotional-distress damages, and that the breach-of-fiduciary-duty claim was unsupported. The court therefore vacated the non-economic damages award and the related attorney-fee award, upheld the denial of litigation expenses, and deemed the evidentiary issue regarding the excluded statements moot.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durrant; Associate Chief Justice Lee; Justice Pearce; Justice Petersen; Judge David N. Mortensen
JURISDICTION	Utah
DECIDED	July 26, 2018
DOCKET	No. 20160377
DISPOSITION	other
PROCEDURAL POSTURE	Direct appeal and cross-appeal from a jury verdict and post-trial orders in a legal-malpractice action. The defendants appealed the denial of their judgment notwithstanding the verdict motion concerning non-economic damages and the award of attorney fees. Kranendonk cross-appealed the denial of litigation expenses and the exclusion of evidence under Utah Rule of Evidence 403.
STANDARD OF REVIEW	JNOV rulings and the recoverability of attorney fees and litigation expenses are reviewed for correctness; the amount of a litigation-expense award is reviewed for abuse of discretion; and evidentiary rulings under Utah Rule of Evidence 403 are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential Utah Supreme Court opinion

PARTIES

Gregory & Swapp, PLLC, Erik Highberg v. Jodi Kranendonk

TOPICS

professional negligence

breach of contract

damages

appellate procedure

evidence

PRACTICE AREAS

professional negligence

contracts

remedies

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether non-economic damages unrelated to the underlying personal-injury claim were recoverable under a breach-of-contract theory when the contract did not expressly contemplate emotional-distress damages.
2. Whether the evidence supported the jury's award of non-economic damages under Kranendonk's breach-of-fiduciary-duty theory.
3. Whether the district court properly awarded attorney fees based on the breach-of-fiduciary-duty claim.
4. Whether Kranendonk was entitled to additional litigation expenses under the fiduciary-duty exception recognized in *Campbell v. State Farm Mutual Automobile Insurance Co.*
5. Whether the exclusion of Highberg's written statements under Utah Rule of Evidence 403 required reversal.

HOLDINGS

1. Non-economic damages for emotional distress beyond the damages recoverable in the underlying case are available for breach of contract only when the nature and specific language of the contract show that such damages were explicitly contemplated by the parties when they entered the contract. Kranendonk's contract did not satisfy that requirement.
2. The evidence did not support non-economic damages for breach of fiduciary duty because Kranendonk failed to show that Highberg's concealment and dishonesty, rather than his underlying malpractice in losing the claim, caused her emotional distress.
3. The attorney-fee award had to be vacated because Kranendonk's breach-of-fiduciary-duty claim failed and no other asserted basis supported the award.
4. The district court properly denied additional litigation expenses because Kranendonk's breach-of-fiduciary-duty claim could not be established.
5. The challenge to exclusion of Highberg's statements was moot because the only claim that could potentially support punitive damages failed, leaving no cognizable claim on which punitive damages could be awarded.

KEY QUOTATIONS

“a non-breaching party may recover general and/or consequential damages related to emotional distress or mental anguish arising from a breach of contract when such damages were both a foreseeable result of the breach of contract and explicitly within the contemplation of the parties at the time the contract was entered into.” (¶ 29)

“an abundance of evidence as to breach of duty cannot make up for a deficiency of evidence as to causation.” (¶ 38)

“The jury award also cannot be supported under her breach of fiduciary duty claim, because the jury had no evidence that the Swapp Defendants’ concealment and dishonesty caused Ms. Kranendonk harm.” (¶ 55)

FACTUAL BACKGROUND

Kranendonk retained Gregory & Swapp and attorney Erik Highberg to pursue personal-injury claims arising from a collision involving two semi-trucks. Highberg failed twice to timely serve the truck drivers, causing the statute of limitations to expire, and then concealed the failure from Kranendonk for approximately ten months while attempting to revive the claim. After learning that her underlying claim was lost, Kranendonk experienced severe emotional distress and sued the firm and Highberg. The jury awarded damages for the underlying lost claim and additional non-economic damages attributed to the malpractice.

PROCEDURAL HISTORY

Kranendonk sued her former attorney and law firm for legal malpractice, breach of contract, breach of fiduciary duty, and negligent hiring, training, and supervision after the attorney allowed her underlying personal-injury claims to become time-barred and concealed that fact for ten months. A jury awarded her \$750,000 for damages related to the underlying injury and \$2.75 million in non-economic damages for emotional distress allegedly caused by the malpractice. The district court denied the defendants' JNOV motion as to the \$2.75 million award, awarded Kranendonk \$1,166,666.67 in attorney fees, and denied additional litigation expenses. The Utah Supreme Court reversed the denial of JNOV, vacated the \$2.75 million award and attorney-fee award, affirmed the denial of litigation expenses, and held the evidentiary cross-appeal moot.

DISPOSITION

other

REMAND INSTRUCTIONS

The court reversed the denial of the defendants' JNOV motion and vacated the \$2.75 million non-economic-damages award and the \$1,166,666.67 attorney-fee award. It affirmed the denial of additional litigation expenses and declined to reach the evidentiary cross-appeal because it was moot.

CASES CITED

- ASC Utah, Inc. v. Wolf Mountain Resorts, L.C., 2013 UT 24, ¶ 18, 309 P.3d 201
- Fericks v. Lucy Ann Soffe Trust, 2004 UT 85, ¶ 22, 100 P.3d 1200
- Campbell v. State Farm Mutual Automobile Insurance Co., 2001 UT 89, ¶¶ 122, 127, 65 P.3d 1134

- Goebel v. Salt Lake City Southern Railroad Co., 2004 UT 80, ¶ 35 n.1, 104 P.3d 1185
- Glencore, Ltd. v. Ince, 972 P.2d 376, 380 (Utah 1998)
- Harline v. Barker, 912 P.2d 433, 439 (Utah 1996)
- Christensen & Jensen, P.C. v. Barrett & Daines, 2008 UT 64, ¶¶ 21-26, 194 P.3d 931
- Cabaness v. Thomas, 2010 UT 23, ¶¶ 72-76, 232 P.3d 486
- Beck v. Farmers Insurance Exchange, 701 P.2d 795, 802 (Utah 1985)
- Kranendonk v. Gregory & Swapp, PLLC, 2014 UT App 36, ¶ 28, 320 P.3d 689
- USA Power, LLC v. PacifiCorp, 2016 UT 20, ¶¶ 113, 115, 372 P.3d 629
- Hess v. Canberra Development Co., 2011 UT 22, ¶ 28, 254 P.3d 161
- Brewer v. Denver & Rio Grande Western Railroad, 2001 UT 77, ¶ 36, 31 P.3d 557
- Grossen v. DeWitt, 1999 UT App 167, ¶ 7, 982 P.2d 581
- Atkin Wright & Miles v. Mountain States Telephone & Telegraph Co., 709 P.2d 330, 336 (Utah 1985)
- State v. Ogden, 2018 UT 8, ¶ 52, 416 P.3d 1132
- Smith v. Fairfax Realty, Inc., 2003 UT 41, ¶ 27, 82 P.3d 1064
- Norman v. Arnold, 2002 UT 81, ¶¶ 8 n.2, 35, 57 P.3d 997
- Transportation Alliance Bank v. International Confections Co., 2017 UT 55, ¶ 15
- Strohm v. ClearOne Communications, Inc., 2013 UT 21, ¶ 34, 308 P.3d 424
- Fairbourn Commercial Inc. v. American Housing Partners, Inc., 2004 UT 54, ¶ 10, 94 P.3d 292
- Utahns for Better Dental Health-Davis, Inc. v. Davis County Clerk, 2007 UT 97, ¶ 5, 175 P.3d 1036