

SUPREME COURT OF ALASKA

Haynes v. McComb

147 P.3d 700 (Alaska 2006) · Decided November 17, 2006

SUMMARY

The Alaska Supreme Court held that a former criminal defendant’s vacated conviction could not support collateral estoppel or serve as admissible evidence of the conduct underlying a legal malpractice claim. Because the attorney did not make a prima facie showing of actual guilt with admissible evidence, the superior court improperly granted summary judgment. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Justice Matthews; Bryner; Carpeneti; Eastaugh; Fabe; Matthews
JURISDICTION	Alaska
DECIDED	November 17, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a superior court summary judgment in favor of a former criminal defense attorney and the Alaska Public Defender Agency in a legal malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed based on whether the moving party presented admissible evidence showing no genuine issue of material fact and entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	James Haynes v. Michelle McComb, Alaska Public Defender Agency

TOPICS

- summary judgment
- affirmative defenses
- evidence
- post-conviction relief
- civil procedure

PRACTICE AREAS

- legal malpractice
- civil procedure
- evidence
- post-conviction relief

QUESTIONS PRESENTED

1. Whether a court of appeals opinion affirming a criminal conviction may collaterally estop a former criminal defendant from litigating actual guilt in a malpractice action when the conviction has been vacated.
2. Whether the vacated conviction and the court of appeals opinion could be used as admissible evidence to establish the conduct underlying the criminal charge.
3. Whether McComb made the prima facie showing required for summary judgment on the actual-guilt affirmative defense.

HOLDINGS

1. A former criminal defendant is not collaterally estopped from litigating the elements of the prior criminal charge when the conviction has been vacated; the court of appeals opinion affirming that conviction therefore could not be used as a collateral-estoppel bar.
2. A vacated criminal conviction and the opinion affirming it could not be used as evidence of the conduct underlying the conviction to establish actual guilt in the malpractice action.
3. McComb was not entitled to summary judgment because she failed to present admissible evidence making a prima facie showing of actual guilt.

KEY QUOTATIONS

“A civil litigant is collaterally estopped from relitigating any element of a criminal charge of which he stands convicted.” (147 P.3d at 700)

“A summary judgment movant has the burden of presenting evidence that would be admissible if presented at trial that, if unrefuted, shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law.” (147 P.3d at 701)

FACTUAL BACKGROUND

Haynes brought a legal malpractice action against his former criminal defense attorney, Michelle McComb, and the Alaska Public Defender Agency. McComb asserted actual guilt as an affirmative defense and relied on a court of appeals opinion affirming Haynes's criminal conviction. Haynes's conviction had been vacated by stipulation in post-conviction proceedings before the malpractice case was resolved.

PROCEDURAL HISTORY

Haynes sued his former defense attorney and her employer for legal malpractice. The superior court granted McComb summary judgment based on the affirmative defense of actual guilt, relying on a court of appeals opinion affirming Haynes's criminal conviction. The conviction had subsequently been vacated by stipulation in post-conviction proceedings, and the Alaska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the superior court for further proceedings consistent with the opinion.

CASES CITED

- Shaw v. State, Department of Administration, Public Defender Agency, 816 P.2d 1358, 1359 (Alaska 1991)
- Shaw v. State, Department of Administration, 861 P.2d 566, 570-72 (Alaska 1993)
- Haynes v. State, 15 P.3d 1088 (Alaska App. 2001)
- Burcina v. City of Ketchikan, 902 P.2d 817, 822 (Alaska 1995)
- Scott v. Robertson, 583 P.2d 188, 192 (Alaska 1978)
- Guerrero v. Alaska Housing Finance Corp., 123 P.3d 966, 971 (Alaska 2005)
- Hymes v. Deramus, 119 P.3d 963, 968 n. 22 (Alaska 2005)
- Alaska Travel Specialists v. First National Bank of Anchorage, 919 P.2d 759, 762 (Alaska 1996)

OPINION

MATTHEWS, J.

OPINION MATTHEWS, Justice. In this legal malpractice case, James Haynes sued his former criminal defense attorney, Michelle McComb, and her employer, the Alaska Public Defender Agency (collectively referred to here as "McComb"). McComb was awarded summary judgment based on the affirmative defense of actual guilt.¹ McComb based her showing on the opinion of the court of appeals affirming Haynes's conviction.² But the conviction had been vacated by stipulation on Haynes's petition for post-conviction relief.

If the conviction had remained in effect, McComb could have relied on the court of appeals opinion. A civil litigant is collaterally estopped from relitigating any element of a criminal charge of which he stands convicted.³ The recitation of facts in the court of appeals opinion would be useable under this principle to show the necessary elements of the crime of which Haynes was convicted.

But Haynes's conviction did not remain in effect. Therefore, the court of appeals opinion could not be used as a collateral estoppel bar. Nor did the opinion have an evidentiary use because in order to use a conviction as evidence of conduct underlying the conviction, it must also remain in effect.⁴ McComb argues that Haynes failed to raise any issues of material fact indicating his innocence.

While this is arguably incorrect because Haynes's verified complaint asserts his innocence, albeit in a conclusory fashion, it is also irrelevant given the current posture of this case. A summary judgment movant has the burden of presenting evidence that would be admissible if presented at trial that, if unrefuted, shows that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law.⁵ Here, as already noted, McComb did not rely on

evidence that would be admissible if presented at trial, and therefore she did not make a prima facie showing of actual guilt.

Without such a showing, Haynes, as the opponent to a summary judgment motion, had no obligation to present evidence showing that genuine issues existed.⁶ Likewise, since collateral estoppel was unavailable to her, McComb did not demonstrate that she was entitled to judgment as a matter of law.

For these reasons, we REVERSE the judgment of the superior court and RE*702MAND this case for further proceedings consistent with this opinion.. A former criminal defendant who sues his defense attorney for malpractice must, if he has been convicted, obtain post-conviction relief in order to maintain the malpractice action. *Shaw v. State, Dep't of Admin., Pub.*

Defender Agency, 816 P.2d 1358, 1359 (Alaska 1991). When post-conviction relief has been obtained, actual guilt is nonetheless an affirmative defense to the malpractice action. *Shaw v. State, Dep't of Admin.*, 861 P.2d 566, 570-72 (Alaska 1993). Actual guilt refers to "a determination in a civil trial, by a preponderance of the evidence, that the defendant engaged in the conduct he was accused of in the prior criminal proceeding."

Id. at 570 n. 3.. *Haynes v. State*, 15 P.3d 1088 (Alaska App.2001).. *Burcina v. City of Ketchikan*, 902 P.2d 817, 822 (Alaska 1995).. See *Scott v. Robertson*, 583 P.2d 188, 192 (Alaska 1978) (reasoning that a prior conviction may not be used as evidence "where there is a substantial question as to its validity").. E.g., *Guerrero v. Alaska Hous. Fin. Corp.*, 123 P.3d 966, 971 (Alaska 2005).

Guerrero states: To prevail on a motion for summary judgment, the moving party must offer admissible evidence demonstrating that there are no disputed issues of material fact and "the moving party is entitled to judgment as a matter of law." Once the moving party has made a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmoving party to "demonstrate that a genuine issue of fact exists to be litigated by showing that it can produce admissible evidence reasonably tending to dispute the movant's evidence."

Id. (citations omitted).. E.g., *Hymes v. Deramus*, 119 P.3d 963, 968 n. 22 (Alaska 2005) ("The non-moving party need not demonstrate the existence of a genuine issue until the moving party makes a prima facie showing of its entitlement to judgment on established facts." (internal quotations omitted) (quoting *Alaska Travel Specialists v. First Nat'l Bank of Anchorage*, 919 P.2d 759, 762 (Alaska 1996))).