

SUPREME COURT OF VERMONT

State v. Therrien, 2003 VT 44

830 A.2d 28 (2003) · No. No. 02-108 · Decided May 16, 2003

SUMMARY

The Vermont Supreme Court reviewed summary judgment in a legal malpractice and indemnification claim arising from Act 250 and Consumer Fraud Act violations involving a residential subdivision's water and septic systems. The court held that the client's intentional misconduct barred recovery for liabilities not proximately caused by the attorneys, but did not automatically preclude claims concerning negligent drafting of deeds. The court affirmed summary judgment on most liability issues and reversed and remanded the deed-related issues for factual findings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley, J.; Cashman, District Judge; Zimmerman, District Judge; Allen, C.J. (Ret.); Gibson, J. (Ret.)
JURISDICTION	Vermont
DECIDED	May 16, 2003
DOCKET	No. 02-108
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a grant of summary judgment for attorney Gregory Howe on a third-party legal-malpractice claim brought by Carolyn Therrien, executrix of Andrew Therrien's estate.
STANDARD OF REVIEW	The Supreme Court applied the same standard as the trial court: summary judgment is proper when the pleadings, discovery materials, admissions, and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Vermont.
PARTIES	Carolyn Therrien, executrix of the Estate of Andrew Therrien v. Gregory Howe

TOPICS

- professional negligence
- proximate cause
- summary judgment
- environmental law
- consumer protection

PRACTICE AREAS

legal malpractice

civil procedure

environmental and land-use law

consumer protection

real estate

QUESTIONS PRESENTED

1. Whether a client's intentional misconduct automatically constitutes a complete defense to a legal-malpractice claim against the client's attorney.
2. Whether summary judgment was proper on liabilities arising from the client's own permit violations and related enforcement costs.
3. Whether summary judgment was proper on liabilities arising from allegedly negligent preparation of deeds and deed-related compliance costs.
4. Whether the rule barring contribution among joint tortfeasors independently supported summary judgment on the deed-related claims.
5. Whether the trial court improperly granted summary judgment based on a theory not adequately raised in the summary-judgment motion.

HOLDINGS

1. A client's intentional wrongful conduct does not automatically shield an attorney from all liability for professional negligence. Liability depends on whether the attorney's negligence was a proximate cause of the claimed injury and, where relevant, on the relative culpability and conduct of both attorney and client.
2. Summary judgment for Howe was proper as to liabilities arising from Therrien's independent violations of the Act 250 permit, including the water and septic-system compliance obligations and the State's enforcement costs and attorney's fees.
3. Summary judgment was improper on the claims arising from the failure to prepare deeds containing rights and obligations necessary for sewer-system and permit compliance. The claims had to be remanded for factual findings concerning attorney negligence, proximate cause, and the extent of any contribution by Therrien.
4. The no-contribution rule did not support summary judgment on the deed-related claims because Howe could not be treated as a joint tortfeasor with Therrien in the relevant context, and the alleged injuries caused by the deed deficiencies differed from the injuries caused by Therrien's permit violations.

KEY QUOTATIONS

“a client's own intentional wrongful conduct does not automatically shield the attorney from all liability.”
(830 A.2d at 35)

“defendant can recover if she can demonstrate that attorney Howe was negligent and that such negligence was the proximate cause of her injury.” (830 A.2d at 38)

FACTUAL BACKGROUND

Andrew Therrien developed and sold lots in Salem Heights under an Act 250 permit governing water and septic systems, but failed to comply with the permit and failed to disclose its conditions to purchasers. The State obtained a judgment requiring the estate to correct the development and conform existing deeds to the permit. The estate alleged that attorney Gregory Howe and his late partner negligently prepared deeds that omitted rights and restrictions necessary for permit compliance. The trial court granted Howe summary judgment on the theory that Therrien's intentional misconduct completely insulated the attorney from liability.

PROCEDURAL HISTORY

The State obtained a 1991 judgment finding Andrew Therrien liable for violations of Act 250 and the Consumer Fraud Act and requiring corrective work and deed-related relief. During that litigation, the estate asserted a third-party claim alleging that Howe and his late partner negligently prepared deeds and property-transfer tax returns. The superior court granted Howe summary judgment in December 2001, ruling that Therrien's intentional misconduct barred the claim; the Supreme Court of Vermont affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must make factual findings regarding whether Howe and Lalime negligently prepared the deeds, whether any such negligence proximately caused deed-related compliance costs, and whether and to what extent Therrien's conduct contributed to the deed errors. The grant of summary judgment is reversed as to Paragraphs 7 and 9 of the 1991 order and affirmed as to all other liability issues.

CASES CITED

- State v. Therrien, 161 Vt. 26, 633 A.2d 272 (1993)
- White v. Quechee Lakes Landowners' Ass'n, 170 Vt. 25, 28, 742 A.2d 734, 736 (1999)
- Heyman v. Gable, Gotwals, Mock, Schwabe, Kihle, Gaberino, 1999 OK CIV APP 132, 994 P.2d 92
- Buttitta v. Newell, 176 Ill. App. 3d 880, 126 Ill. Dec. 330, 531 N.E.2d 957 (1988)
- Howard v. Spafford, 132 Vt. 434, 321 A.2d 74 (1974)
- Hiltz v. John Deere Indus. Equip. Co., 146 Vt. 12, 497 A.2d 748 (1985)
- Estate of Fleming v. Nicholson, 168 Vt. 495, 724 A.2d 1026 (1998)
- Greene v. Morgan, Theeler, Cogley & Petersen, 1998 SD 16, 575 N.W.2d 457
- McKinley v. Weidner, 73 Or. App. 396, 698 P.2d 983 (1985)
- Gen. Car & Truck Leasing Sys., Inc. v. Lane & Waterman, 557 N.W.2d 274 (Iowa 1996)
- Matson v. Anctil, 979 F. Supp. 1031 (D. Vt. 1997)
- Hopkins v. Powers, 113 Ill. 2d 206, 100 Ill. Dec. 579, 497 N.E.2d 757 (1986)
- Farren v. N.J. Tpk. Auth., 31 N.J. Super. 356, 106 A.2d 752 (App. Div. 1954)
- People v. Brockman, 143 Ill. 2d 351, 158 Ill. Dec. 513, 574 N.E.2d 626 (1991)

- W. Keeton et al., Prosser and Keeton on the Law of Torts § 46, at 322-23 (5th ed. 1984)
- Matkin v. Smith, 643 So. 2d 949 (Ala. 1994)
- Zaleskie v. Joyce, 133 Vt. 150, 333 A.2d 110 (1975)
- Muir v. Hadler Real Estate Mgmt. Co., 4 Ohio App. 3d 89, 446 N.E.2d 820 (1982)
- Fisher v. Milwaukee Elec. Ry. & Light Co., 173 Wis. 57, 180 N.W. 269 (1920)
- Gertz v. Campbell, 55 Ill. 2d 84, 302 N.E.2d 40 (1973)
- Pederson v. Eppard, 181 Minn. 47, 231 N.W. 393 (1930)
- Fireman's Fund Ins. Co. v. McDonald, Hecht & Solberg, 30 Cal. App. 4th 1373, 36 Cal. Rptr. 2d 424 (1994)
- Bourne v. Lajoie, 149 Vt. 45, 540 A.2d 359 (1987)
- Crawford v. Johnson, 227 Ga. App. 548, 489 S.E.2d 552 (1997)
- Carr v. Peerless Ins. Co., 168 Vt. 465, 724 A.2d 454 (1998)
- Berlin Dev. Assocs. v. Dep't of Soc. Welfare, 142 Vt. 107, 453 A.2d 397 (1982)
- Versico, Inc. v. Engineered Fabrics Corp., 238 Ga. App. 837, 520 S.E.2d 505 (1999)
- Kelly v. Town of Barnard, 155 Vt. 296, 583 A.2d 614 (1991)
- White v. Quechee Lakes Landowners' Ass'n, 170 Vt. 25, 31, 742 A.2d 734, 738 (1999)
- Nagler v. Admiral Corp., 248 F.2d 319, 328 (2d Cir. 1957)