

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Aviation Performance Solutions, LLC v. Hinshaw & Culbertson, LLP

No. 4D2024-0504 (Fla. 4th DCA July 23, 2025) · No. 4D2024-0504 · Decided July 23, 2025

SUMMARY

The Florida Fourth District Court of Appeal reversed summary judgment for Hinshaw & Culbertson, LLP, in a legal malpractice action arising from allegedly negligent representation in an aircraft-sale arbitration and related proceedings. The court held that settling the arbitration and dismissing an appeal of a fee judgment did not necessarily constitute abandonment of the malpractice claim because genuine issues remained regarding whether those proceedings could have cured all of the alleged harm. The case was remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Gross, J.; Conner, J.
JURISDICTION	District Court of Appeal of the State of Florida, Fourth District
DECIDED	July 23, 2025
DOCKET	4D2024-0504
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final summary judgment entered for the defendants in a legal-malpractice action. During the appeal, the appellant dismissed its appeal as to McCulloch and Dickinson Wright PLLC, leaving Hinshaw & Culbertson, LLP as the sole appellee.
STANDARD OF REVIEW	De novo review of summary judgment. Under Florida Rule of Civil Procedure 1.510(a), summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Aviation Performance Solutions, LLC v. Hinshaw & Culbertson, LLP, Timothy I. McCulloch

TOPICS

professional negligence

summary judgment

appellate procedure

civil procedure

contracts

PRACTICE AREAS

legal malpractice

professional negligence

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether settlement of the underlying arbitration and dismissal or abandonment of an appeal from a related fee judgment automatically constituted abandonment of the legal-malpractice claim.
2. Whether the defendants established on summary judgment that further arbitration or appellate proceedings would likely have cured all of the appellant's redressable damages.
3. Whether genuine issues of material fact and law remained concerning causation and redressable harm in the legal-malpractice action.

HOLDINGS

1. A client's settlement of underlying or related litigation and failure to complete appellate review do not automatically bar a legal-malpractice claim when the existence of redressable harm does not depend on the outcome of that litigation.
2. The defendants did not establish that pursuing the new arbitration or the fee appeal would have cured all of Aviation Performance Solutions' redressable damages.
3. Summary judgment was improper because genuine issues of material fact and law remained regarding whether the alleged malpractice caused redressable harm and whether further proceedings could have cured that harm.

KEY QUOTATIONS

"A cause of action for legal malpractice has three elements: (1) the attorney's employment; (2) the attorney's neglect of a reasonable duty; and (3) the attorney's negligence was the proximate cause of loss to the client." (at 5)

"Under Florida law, a client's mere acceptance of a settlement in a prior case does not automatically foreclose the client from bringing a malpractice action against the attorney who handled the case." (at 5-6)

"Florida courts have not adopted a strict rule regarding whether a settlement or failure to appeal constitutes an abandonment of a legal malpractice claim." (at 6)

"The circumstances in which a client's subsequent actions constitute an abandonment of a legal malpractice claim, as a matter of law, are very narrow." (at 6-7)

"While appellant settled an arbitration proceeding and abandoned an appeal of a fee award, these actions did not constitute an abandonment of its legal malpractice action against its attorney." (at 9)

FACTUAL BACKGROUND

Aviation Performance Solutions hired McCulloch and Hinshaw to represent it in an arbitration arising from the purchase of an aircraft. McCulloch was not admitted to the Florida Bar and did not seek pro hac vice admission; he also pursued an award against Douglas Matthews, who was not named as a party in the counterclaim. The resulting arbitration award was vacated in whole or in part, including an approximately \$80,000 attorney's-fee award, and Matthews later obtained a fee judgment of nearly \$500,000. Aviation Performance Solutions settled the underlying arbitration and fee appeal and then sued its former attorneys, alleging that further arbitration or appellate proceedings could not cure all of its damages.

PROCEDURAL HISTORY

Aviation Performance Solutions retained McCulloch and Hinshaw to represent it in an aircraft-sale arbitration. The arbitration award was later vacated in whole or in part because McCulloch was not admitted pro hac vice, Matthews was not a party to the arbitration, and the award included attorney's fees. After a subsequent arbitration and an appeal concerning a substantial fee judgment, Aviation Performance Solutions settled the underlying proceedings and sued its former attorneys for legal malpractice. The circuit court entered summary judgment for the defendants on the ground that settlement and abandonment of the fee appeal barred the malpractice claim. The Fourth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on Aviation Performance Solutions' legal-malpractice claim against Hinshaw & Culbertson, LLP, including determination of whether the alleged malpractice caused redressable harm and what damages, if any, are attributable to Hinshaw. The court did not resolve the amount or full scope of recoverable damages or the firm's other defenses.

CASES CITED

- Aviation Performance Solutions, L.L.C. v. Matthews, 298 So. 3d 619 (Fla. 4th DCA 2020)
- Capio v. W. Beef of Fla., 384 So. 3d 192, 193 (Fla. 4th DCA 2024)
- Halum v. ZF Passive Safety Sys. US, Inc., 360 So. 3d 391, 393 (Fla. 4th DCA 2023)
- City of Delray Beach v. DeLeonibus, 379 So. 3d 1177, 1180 (Fla. 4th DCA 2024)
- Constr. Consulting, Inc. v. Dist. Bd. of Trs. of Broward Coll., 347 So. 3d 14, 21-22 (Fla. 4th DCA 2022)
- Miller v. Finizio & Finizio, P.A., 226 So. 3d 979, 982 (Fla. 4th DCA 2017)
- R.S.B. Ventures, Inc. v. Berlowitz, 211 So. 3d 259, 263 (Fla. 4th DCA 2017)
- Bierman v. Miller, 639 So. 2d 627, 628 (Fla. 3d DCA 1994)
- Diaz v. Piquette, 496 So. 2d 239, 240 (Fla. 3d DCA 1986)
- KJB Vill. Prop., LLC v. Craig M. Dorne, P.A., 77 So. 3d 727, 730 (Fla. 3d DCA 2011)
- Coble v. Aronson, 647 So. 2d 968, 970-71 (Fla. 4th DCA 1994)
- Keramati v. Schackow, 553 So. 2d 741, 745 (Fla. 5th DCA 1989)

- *Lenahan v. Russell L. Forkey, P.A.*, 702 So. 2d 610, 611-12 (Fla. 4th DCA 1997)
- *Segall v. Segall*, 632 So. 2d 76, 78 (Fla. 3d DCA 1993)
- *Pennsylvania Ins. Guar. Ass'n v. Sikes*, 590 So. 2d 1051, 1053 (Fla. 3d DCA 1991)
- *Galloway v. Law Offices of Merkle, Bright & Sullivan, P.A.*, 596 So. 2d 1205 (Fla. 4th DCA 1992)
- *Ryan v. City of Boynton Beach*, 157 So. 3d 417, 419 (Fla. 4th DCA 2015)

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