

SUPREME COURT OF ALASKA

Stewart v. Elliott

239 P.3d 1236 (Alaska 2010) · No. S-13286 · Decided October 1, 2010

SUMMARY

The Alaska Supreme Court affirmed judgment for an attorney in a legal malpractice action arising from a criminal DUI plea. The court held that an earlier post-conviction relief decision finding ineffective assistance did not have preclusive effect against the attorney because he was neither a party nor in privity with a party to that proceeding. The court also held that the evidence supported the superior court's finding that the plaintiff failed to prove a breach of the attorney's standard of care.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Fabe, Justice; Carpeneti, Chief Justice; Winfree, Justice; Christen, Justice; Stowers, Justice
JURISDICTION	Alaska
DECIDED	October 1, 2010
DOCKET	S-13286
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a superior court judgment entered after a bench trial in a legal malpractice action.
STANDARD OF REVIEW	Questions of law, including whether the post-conviction decision had preclusive effect, are reviewed de novo. Factual findings concerning breach of the standard of care are reviewed for clear error.
PRECEDENTIAL VALUE	precedential
PARTIES	James R. Stewart v. Steve L. Elliott

TOPICS

- professional negligence
- post-conviction relief
- standard of review
- appellate procedure
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the post-conviction relief decision was entitled to collateral-estoppel or issue-preclusion effect against Elliott in Stewart's legal malpractice action.
2. Whether the superior court clearly erred in finding that Stewart failed to prove Elliott breached the standard of care applicable to a reasonable criminal-defense attorney.
3. Whether the court needed to resolve whether Alaska Standard Time and Alaska Daylight Saving Time affected the effective time of the amended DUI statute.

HOLDINGS

1. The post-conviction relief decision did not bind Elliott because he was neither a party to that proceeding nor in privity with the State of Alaska. His limited participation by affidavit did not give him sufficient control over the earlier litigation to justify preclusion.
2. The superior court did not clearly err in finding that Stewart failed to prove Elliott breached the duty of care owed by a reasonable criminal-defense attorney. The post-conviction ruling was not itself proof of malpractice, and the evidence that other experienced attorneys also failed to identify the time issue supported the finding of no breach.

KEY QUOTATIONS

“Privity “is a shorthand way of expressing assurance that the non-party has had adequate notice and opportunity to be heard, and that its rights and interests have been protected.”” (239 P.3d at 1241)

“He could not decide which general strategies to pursue in the litigation, what evidence to present, how to cross-examine adverse witnesses, or whether to settle the claim.” (239 P.3d at 1242)

“Because the record supports Judge MacDonald’s ruling, we are not left with the conviction that a mistake has been made.” (239 P.3d at 1243)

FACTUAL BACKGROUND

Stewart was arrested for felony DUI at 12:40 a.m. on September 1, 2001, when Alaska's DUI law changed from a .10 to a .08 blood-alcohol threshold. Represented by Elliott, he pleaded no contest to a reduced misdemeanor DUI charge. Years later, another superior court granted post-conviction relief after finding ineffective assistance based on counsel's failure to identify a possible discrepancy between Alaska Standard Time and Alaska Daylight Saving Time. Stewart relied principally on that post-conviction ruling in his malpractice action, but presented no expert testimony or other evidence showing that a reasonable criminal-defense attorney should have recognized and raised the time issue.

PROCEDURAL HISTORY

Stewart previously obtained post-conviction relief when the superior court vacated his DUI conviction based on ineffective assistance of counsel. He then sued his former criminal-defense attorney, Elliott, for professional

negligence. After a bench trial, the superior court ruled that the post-conviction decision was not binding on Elliott and that Stewart had failed to prove breach of the attorney standard of care. The Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Fowler v. State, 70 P.3d 1106, 1109 (Alaska App. 2003)
- Zok v. Collins, 18 P.3d 39, 42 (Alaska 2001)
- State, Dep't of Health & Soc. Servs., Office of Children's Servs. v. Doherty, 167 P.3d 64, 68-69, 72-73 (Alaska 2007)
- Jacob v. State, Dep't of Health & Soc. Servs., Office of Children's Servs., 177 P.3d 1181, 1184 (Alaska 2008)
- John's Heating Serv. v. Lamb, 46 P.3d 1024, 1030 (Alaska 2002)
- Parnell v. Peak Oilfield Serv. Co., 174 P.3d 757, 766 n. 20 (Alaska 2007)
- Bryson v. Banner Health Sys., 89 P.3d 800, 803 n. 4 (Alaska 2004)
- Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co., 604 P.2d 1113, 1118-19 (Alaska 1980)
- Armstrong v. United States, 756 F.2d 1407, 1409 (9th Cir. 1985)
- Bursztajn v. United States, 367 F.3d 485, 490 (5th Cir. 2004)
- Brotherton v. Brotherton, 142 P.3d 1187, 1189 (Alaska 2006)
- Nerox Power Sys., Inc. v. M-B Contracting Co., 54 P.3d 791, 794 (Alaska 2002)
- City of Hydaburg v. Hydaburg Coop. Ass'n, 858 P.2d 1131, 1135 (Alaska 1993)
- Parker v. N. Mixing Co., 756 P.2d 881, 891 n. 23 (Alaska 1988)
- Shaw v. State, Dep't of Admin., Pub. Defender Agency, 816 P.2d 1358, 1361 n. 5 (Alaska 1991)
- Linck v. Barokas & Martin, 667 P.2d 171, 173 n. 4 (Alaska 1983)
- Powers v. United Servs. Auto. Ass'n, 6 P.3d 294, 297-98 (Alaska 2000)
- Alaska Foods, Inc. v. Nichiro Gyogyo Kaisha, Ltd., 768 P.2d 117, 121-22 (Alaska 1989)
- Donnelly v. Eklutna, Inc., 973 P.2d 87, 92-93 (Alaska 1999)
- Elliott v. Brown, 569 P.2d 1323, 1328 (Alaska 1977)