

SUPREME COURT OF ALASKA

Pederson v. Barnes

139 P.3d 552 (Alaska 2006) · No. S-11621 · Decided July 21, 2006

SUMMARY

The Supreme Court of Alaska addresses whether a guardian's attorney owes a duty to the ward and holds that liability may arise when the attorney had reason to know that action was necessary to prevent or rectify the guardian's crime or fraud. The court also holds that Alaska's pure several-liability regime applies in duty-to-protect cases, requiring damages to be apportioned according to fault. It vacates the judgment imposing full compensatory liability on the attorney and remands for entry of judgment based on the attorney's allocated share; the court also concludes that the evidence did not support submitting punitive damages to the jury.

CASE DETAILS

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| COURT                 | Supreme Court of Alaska                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Matthews, Justice; Bryner, Chief Justice; Eastaugh, Justice; Fabe, Justice; Carpeneti, Justice                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Alaska                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | July 21, 2006                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | S-11621                                                                                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appeal from a superior court judgment entered after a jury verdict finding attorney Lawrence Pederson liable for compensatory and punitive damages arising from his representation of a guardian. The appeal challenged the denial of summary judgment, imposition of joint and several liability, submission of punitive damages to the jury, and the date used to calculate prejudgment interest.            |
| STANDARD OF REVIEW    | Denial of summary judgment is reviewed de novo. Statutory interpretation and the date when prejudgment interest begins to accrue are reviewed de novo. Submission of punitive damages to the jury is reviewed for abuse of discretion. A directed-verdict ruling is reviewed by determining whether, viewing the evidence in the light most favorable to the nonmoving party, reasonable persons could differ. |
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| <b>PRECEDENTIAL VALUE</b> | Published Alaska Supreme Court opinion establishing binding rules on a guardian's lawyer's duty to a ward, pure several liability in duty-to-protect cases, punitive-damages sufficiency, and prejudgment-interest accrual. |
| <b>PARTIES</b>            | Lawrence A. Pederson, Paul J. Nangle v. Brienne Barnes, James A. Aiken                                                                                                                                                      |

## TOPICS

guardianships guardianship procedure professional negligence comparative fault punitive damages

## PRACTICE AREAS

guardianships legal malpractice torts damages statutory interpretation

## QUESTIONS PRESENTED

1. Whether a lawyer representing a guardian owes a duty of care to the ward when the lawyer has reason to know that the guardian is committing or facilitating a crime or fraud.
2. Whether the evidence created a genuine issue of material fact regarding whether Pederson had reason to know of Aiken's fraud, supporting denial of summary judgment.
3. Whether Alaska's pure several-liability regime applies in a duty-to-protect case involving negligent conduct and an intentional tortfeasor.
4. Whether the evidence was sufficient to submit punitive damages to the jury under Alaska Statute 09.17.020(b).
5. When prejudgment interest began to accrue under Alaska Statute 09.30.070(b).

## HOLDINGS

1. Under section 51(4) of the Restatement (Third) of the Law Governing Lawyers, a lawyer representing a guardian owes a duty to the ward when the lawyer knows, including by having reason to know, that action is necessary to prevent or rectify the guardian's crime or fraud, the ward cannot reasonably protect the ward's rights, and imposing the duty would not significantly impair the lawyer's obligations to the guardian.
2. Summary judgment was properly denied because a genuine issue of material fact existed regarding whether Pederson had reason to know that Aiken was defrauding Barnes, even though the superior court articulated the standard as whether Pederson knew or should have known.
3. Alaska's pure several-liability regime under AS 09.17.080 and AS 09.17.900 applies to duty-to-protect cases, including cases involving an intentional tortfeasor.
4. The superior court abused its discretion by denying Pederson's motion for a directed verdict on punitive damages because the evidence did not provide clear and convincing proof that Pederson acted with reckless indifference to Barnes's interests or with the requisite outrageousness.

5. Prejudgment interest began to accrue when Pederson received Barnes's demand letter notifying him that she would pursue a claim, rather than when he learned that Aiken's wrongdoing had caused Barnes's loss.

#### KEY QUOTATIONS

*“We agree with Pederson that section 51 of the Restatement (Third) of the Law Governing Lawyers articulates the correct standard for determining the circumstances in which a guardian's lawyer owes a duty to the guardian's ward.” (557)*

*““Reason to know” is a less onerous standard than “should know,” because “reason to know” only involves drawing inferences from known facts, whereas “should know” entails a duty to inquire and determine new facts.” (558)*

*“Given the facts that the plain language of AS 09.17.900 makes no exception for the duty to protect, that the Governor's Advisory Task Force on Civil Justice Reform indicated that it intended the amended statute to reach duty-to-protect cases, and that the legislature incorporated by reference the task force's duty-to-protect example, we conclude that pure several liability applies in duty-to-protect cases.” (560)*

*“While in retrospect it appears foolish for Pederson to have believed Aiken and to have allowed Aiken to submit any documents to the court on his own, we cannot conclude that Pederson's actions contained the element of outrageousness or recklessness necessary to justify an award of punitive damages.” (563)*

#### FACTUAL BACKGROUND

Brienne Barnes was a minor whose uncle, James Aiken, was appointed her guardian after Barnes's parents died. Aiken misappropriated Barnes's assets and supplied attorney Lawrence Pederson with fabricated investment statements purporting to show that Barnes's money was held by Heid Investment Company. After receiving allegations from Barnes's therapist that Aiken was misusing the funds, Pederson investigated only partially, prepared a report defending Aiken, and did not verify the purported investment company. The fraud was later discovered, and Barnes's estate assets had fallen from approximately \$111,000 to less than \$200.

#### PROCEDURAL HISTORY

The superior court denied Pederson and Nangle's motion for summary judgment, concluding that a fact question existed regarding whether Pederson knew or should have known of the guardian's fraud. After trial, the jury found Pederson forty percent at fault and awarded compensatory and punitive damages. The superior court entered judgment against Pederson and Nangle jointly for the full compensatory loss and entered the punitive damages award. The Alaska Supreme Court affirmed the denial of summary judgment, vacated the compensatory-damages judgment, reversed the denial of a directed verdict on punitive damages, reversed the prejudgment-interest accrual date, and remanded.

#### DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The superior court must vacate the joint compensatory-damages judgment, enter judgment against Pederson for forty percent of the loss Barnes incurred after Pederson breached his duty, eliminate the punitive-damages award against Pederson, and recalculate prejudgment interest accruing from August 16, 2001.

## CASES CITED

- Fickett v. Superior Court of Pima County, 27 Ariz. App. 793, 558 P.2d 988 (Ariz. App. 1976)
- Lyons v. Midnight Sun Transportation Services, Inc., 928 P.2d 1202, 1204 (Alaska 1996)
- Ondrusek v. Murphy, 120 P.3d 1053, 1055-56 (Alaska 2005)
- Kodiak Island Borough v. Roe, 63 P.3d 1009, 1014-15 (Alaska 2003)
- Odum v. University of Alaska, Anchorage, 845 P.2d 432, 434 (Alaska 1993)
- Guin v. Ha, 591 P.2d 1281, 1284 n.6 (Alaska 1979)
- Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc., 101 P.3d 1047, 1050 (Alaska 2004)
- Doe v. State of Alaska, Department of Corrections, No. 3AN-01-10389 CI (Alaska Super. Mar. 16, 2004)
- Luth v. Rogers & Babler Construction Co., 507 P.2d 761, 766-67 (Alaska 1973)
- Wal-Mart, Inc. v. Stewart, 990 P.2d 626, 632, 637 (Alaska 1999)
- City of Whittier v. Whittier Fuel & Marine Corp., 577 P.2d 216, 220 (Alaska 1978)
- State v. Hazelwood, 946 P.2d 875, 889 (Alaska 1997)
- Lloyd's & Institute of London Underwriting Companies v. Fulton, 2 P.3d 1199, 1210 (Alaska 2000)