

COURT OF APPEALS OF INDIANA, THIRD DISTRICT

Wong v. Tabor

422 N.E.2d 1279 (Ind. Ct. App. 1981) · No. No. 3-1079A276 · Decided July 8, 1981

SUMMARY

The Indiana Court of Appeals reviewed a malicious prosecution action brought by a physician against an attorney who had filed a medical malpractice suit naming the physician as a defendant. The court held that the prior malpractice action was not shown to have ended by settlement and therefore could satisfy the favorable-termination requirement. Nevertheless, it affirmed judgment for the attorney because the physician failed to prove that the attorney lacked probable cause to initiate the malpractice claim.

CASE DETAILS

COURT	Court of Appeals of Indiana, Third District
WRITING FOR THE COURT	Garrard, Judge; Garrard; Hoffman; Staton
JURISDICTION	Indiana
DECIDED	July 8, 1981
DOCKET	No. 3-1079A276
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wong brought a malicious-prosecution action against attorney Glenn Tabor based on Tabor's filing and continuation of a medical-malpractice action against Wong. A jury returned a verdict for Wong and awarded \$25,000, but the trial court granted Tabor's motion for judgment on the evidence and set aside the verdict. Wong appealed.
STANDARD OF REVIEW	On review of judgment on the evidence after a jury verdict, the court views only the evidence favorable to the nonmoving party and reasonable inferences therefrom, and judgment may be entered only when no substantial evidence or reasonable inference supports an essential element of the claim. Whether undisputed facts constitute probable cause is a question of law.
PRECEDENTIAL VALUE	Published Indiana Court of Appeals opinion; precedential value is not otherwise qualified in the source.
PARTIES	Samuel N.T. Wong v. Glenn J. Tabor

TOPICS

torts civil procedure standard of review medical malpractice professional negligence

PRACTICE AREAS

Torts Civil procedure Legal malpractice and attorney liability Medical malpractice

QUESTIONS PRESENTED

1. Whether the prior medical-malpractice action terminated in Wong's favor for purposes of a malicious-prosecution claim when Tabor's office did not oppose Wong's motion for summary judgment.
2. Whether probable cause to institute the underlying action against Wong is determined by the court or jury and what standard governs an attorney's probable cause to bring a civil claim.
3. Whether Wong presented sufficient evidence that Tabor lacked probable cause to initiate or continue the medical-malpractice action.
4. Whether the judgment setting aside the jury's verdict could be affirmed on grounds preserved in Tabor's motion to correct errors.

HOLDINGS

1. A prior civil proceeding may terminate in favor of the defendant when the plaintiff voluntarily withdraws or abandons the claim, and entry of summary judgment in the defendant's favor generally constitutes a favorable termination. A summary judgment entered after the plaintiff's attorney merely elects not to oppose the motion is not barred as a favorable termination absent evidence that the judgment was merely the formal vehicle for a settlement or compromise.
2. An attorney has probable cause to institute litigation when the attorney subjectively believes the client's claim merits litigation and that belief satisfies an objective standard: no competent and reasonable attorney familiar with the forum's law would consider the claim unworthy of litigation against the particular defendant based on the facts known when suit was commenced.
3. Wong failed to prove that Tabor lacked probable cause to initiate the action against him.
4. Assuming that liability may arise from wrongful continuation of a civil proceeding that was properly initiated, the circumstances supporting such liability are narrow; Wong did not establish liability on that theory.

KEY QUOTATIONS

"The objective standard which should govern the reasonableness of an attorney's action in instituting litigation for a client is whether the claim merits litigation against the defendant in question on the basis of the facts known to the attorney when suit is commenced." (422 N.E.2d at 1288)

"The question is answered by determining that no competent and reasonable attorney familiar with the law of the forum would consider that the claim was worthy of litigation on the basis of the facts known by the attorney who instituted suit." (422 N.E.2d at 1289)

“Mere negligence in asserting a claim is not sufficient to subject an attorney to liability for the bringing of suit.” (422 N.E.2d at 1289)

FACTUAL BACKGROUND

The Privetts retained Tabor approximately one month before the medical-malpractice statute of limitations expired after Mrs. Privett became quadriplegic following cervical-fusion surgery. Before filing suit, Tabor spoke with his clients and hospital personnel, visited the hospital, reviewed medical records, and conducted legal research; he was told that Wong had diagnosed Mrs. Privett and referred her to the surgeon, and that Wong had been present at the surgery. Tabor filed suit against Wong and other potential defendants within the limitations period. The records ultimately showed that Wong did not participate in the surgery and had prescribed only a laxative, but Tabor testified that he also believed Wong might have been negligent in referring Mrs. Privett to the surgeon.

PROCEDURAL HISTORY

Tabor had filed a medical-malpractice action on behalf of the Privetts against several physicians, including Wong. Wong was later dismissed from that action by summary judgment after Tabor's office agreed not to oppose the motion. Wong then sued Tabor and the Privetts for malicious prosecution; the Privetts were dismissed, and the case against Tabor proceeded to trial. After the jury found for Wong, the trial court entered judgment for Tabor under Indiana Trial Rule 50(A)(4), concluding that the prior action had terminated by agreement and therefore not in Wong's favor. The Court of Appeals rejected that rationale but affirmed on the alternative ground that Wong failed to prove lack of probable cause.

DISPOSITION

affirmed

CASES CITED

- P-M Gas & Wash Co., Inc. v. Smith, 268 Ind. 297, 375 N.E.2d 592 (1978)
- Satz v. Koplow, 397 N.E.2d 1082 (Ind. App. 1979)
- Yerkes v. Washington Manufacturing Co., 163 Ind. App. 692, 326 N.E.2d 629 (1975)
- Huff v. Travelers Indemnity Co., 266 Ind. 414, 363 N.E.2d 985, 990-991 (1977)
- Lyddon v. Shaw, 56 Ill. App. 3d 815, 14 Ill. Dec. 489, 372 N.E.2d 685 (1978)
- Indianapolis Traction & Terminal Co. v. Henby, 178 Ind. 239, 97 N.E. 313, 317 (1912)
- Miller v. Willis, 189 Ind. 664, 128 N.E. 831 (1920)
- Duckwall v. Davis, 194 Ind. 670, 142 N.E. 113 (1924)
- Sasse v. Rogers, 40 Ind. App. 197, 81 N.E. 590 (1907)
- Tool Research & Engineering Corp. v. Henigson, 46 Cal. App. 3d 675, 120 Cal. Rptr. 291, 297 (1975)
- Weaver v. Superior Court, County of Orange, 95 Cal. App. 3d 166, 156 Cal. Rptr. 745, 752 (1979)
- Berlin v. Nathan, 64 Ill. App. 3d 940, 21 Ill. Dec. 682, 381 N.E.2d 1367, 1376 (1978)
- Spencer v. Burglass, 337 So. 2d 596, 599 (La. App. 1976)

- Nelson v. Miller, 227 Kan. 271, 607 P.2d 438 (1980)
- Friedman v. Dozor, 83 Mich. App. 429, 268 N.W.2d 673 (1978)
- Fee, Parker & Lloyd P.A. v. Sullivan, 379 So. 2d 412 (Fla. App. 1980)
- Coffey v. Myers, 84 Ind. 105 (1882)
- Pantone v. Demos, 59 Ill. App. 3d 328, 16 Ill. Dec. 607, 375 N.E.2d 480 (1978)

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