

SUPREME COURT OF ARKANSAS

Evans v. Hamby

378 S.W.3d 723 (Ark. 2011) · Decided February 17, 2011

SUMMARY

The Arkansas Supreme Court affirmed summary judgment against Jerry Evans in his legal-malpractice action against Michael Hamby and the Walters Law Firm. The court held that Evans was estopped from asserting usury because he and his brother selected the interest rate and failed to rebut the evidence supporting estoppel. It also held that Hamby’s failure to advise Evans to reinstate Northwest’s corporate charter could not support malpractice liability because the retroactive application of the relevant statute was unsettled and presumed prospective.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown, Justice; Baker, Justice; IisDANIELSON, Justice
JURISDICTION	Arkansas
DECIDED	February 17, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court order granting appellees' motion for summary judgment in a legal-malpractice action.
STANDARD OF REVIEW	The appellate court reviews whether summary judgment was appropriate by determining whether the evidence leaves a material question of fact unanswered, viewing the evidence in the light most favorable to the nonmoving party and resolving all doubts and inferences against the moving party. Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Jerry Evans v. Michael Hamby, Walters Law Firm, P.A.

TOPICS

- professional negligence
- standard of care
- negligence
- statutory interpretation
- contracts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the attorneys' failure to assert usury in the underlying promissory-note action supported Evans's legal-malpractice claim.
2. Whether the attorneys' failure to advise Evans to reinstate Northwest's corporate charter supported a legal-malpractice claim based on the retroactive effect of Arkansas Code Annotated section 26-54-112.

HOLDINGS

1. Summary judgment for the attorneys was proper because Evans was estopped from asserting usury where the undisputed evidence showed that he and his brother selected the interest rate, the lender relied on their selection, and Evans failed to produce proof creating a genuine issue concerning estoppel.
2. Summary judgment for the attorneys was proper because Evans could not establish that Hamby's failure to advise him to seek reinstatement of Northwest's charter fell below the professional standard of care or proximately caused his damages when the retroactive application of Act 522 was unsettled.

KEY QUOTATIONS

"An attorney is not, as a matter of law, liable for a mistaken opinion on a point of law that has not been settled by the highest court of jurisdiction and on which reasonable attorneys may differ."

"Reasonable diligence and skill do not require an interpretation of a statute contrary to the general rules of retroactivity announced by this court."

FACTUAL BACKGROUND

Jerry Evans and his brother were the officers, directors, and sole shareholders of Northwest Amusement Company, whose corporate charter had been revoked for failure to pay franchise taxes. Northwest later executed a \$74,000 promissory note at 10% annual interest, although the maximum lawful rate under Arkansas law was 9.5%; Evans and his brother selected the interest rate. After Evans became personally liable on the note, he sued his attorneys for failing to assert usury and failing to advise him to reinstate Northwest's charter under Arkansas Code Annotated section 26-54-112.

PROCEDURAL HISTORY

Jerry Evans was held personally liable in an underlying promissory-note action after his attorneys did not assert usury or advise him to seek reinstatement of Northwest Amusement Company's corporate charter. He then sued the attorneys and their law firm for legal malpractice. After cross-motions for summary judgment, the circuit court granted summary judgment to the appellees, and Evans appealed.

DISPOSITION

affirmed

CASES CITED

- Evans v. Evans, No. CA06-517, 2007 WL 678556 (Ark. Ct. App. Mar. 7, 2007)
- DaimlerChrysler Servs. N. Am., LLC v. Weiss, 360 Ark. 188, 200 S.W.3d 405 (2004)
- Nash v. Hendricks, 369 Ark. 60, 250 S.W.3d 541 (2007)
- Davidson v. Commercial Credit Equip., 255 Ark. 127, 499 S.W.2d 68 (1973)
- Smith v. Eisen, 97 Ark. App. 130, 245 S.W.3d 160 (2006)
- Hickman v. Courtney, 361 Ark. 5, 203 S.W.3d 632 (2005)
- Smith v. MRCC Partnership, 302 Ark. 547, 792 S.W.2d 301 (1990)
- Haley v. Greenhaw, 235 Ark. 481, 360 S.W.2d 753 (1962)
- McElroy v. Grisham, 306 Ark. 4, 810 S.W.2d 933 (1991)
- Carter v. Four Seasons Funding Corp., 351 Ark. 637, 97 S.W.3d 387 (2003)
- Evans v. Harry Robinson Pontiac-Buick, Inc., 336 Ark. 155, 983 S.W.2d 946 (1999)
- Bedford v. Fox, 383 Ark. 509, 970 S.W.2d 251 (1998)
- Mitchell v. Lincoln, 366 Ark. 592, 237 S.W.3d 455 (2006)
- Bean v. Office of Child Support Enforcement, 340 Ark. 286, 9 S.W.3d 520 (2000)
- Omni Holding and Development Corp. v. C.A.G. Invs., Inc., 370 Ark. 220, 258 S.W.3d 874 (2007)
- Pakay v. Davis, 367 Ark. 421, 241 S.W.3d 257 (2006)

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