

SUPREME COURT OF KENTUCKY

Osborne v. Keeney

399 S.W.3d 1 (Ky. 2012) · Decided December 20, 2012

SUMMARY

The Kentucky Supreme Court reviewed a legal-malpractice action arising from an attorney's failure to timely sue the pilot who crashed an airplane into the plaintiff's home. The court reaffirmed the suit-within-a-suit method, held that the jury must be instructed on the underlying tort claim, and remanded because the instructions omitted the pilot's negligence. It also abandoned Kentucky's physical-impact rule for emotional-distress claims and held that lost punitive damages are not recoverable in legal-malpractice actions.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Chief Justice Minton; Minton, C.J.; Abramson, J.; Cunningham, J.; Noble, J.; Scott, J.; Venters, J.
JURISDICTION	Kentucky
DECIDED	December 20, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a jury found in Osborne's favor in a legal-malpractice action and awarded more than \$5 million, the Kentucky Court of Appeals affirmed in part and vacated or reduced portions of the damages award. The Kentucky Supreme Court granted both parties' petitions for discretionary review.
STANDARD OF REVIEW	On review of the denial of a directed verdict, the court takes all evidence favoring the prevailing party as true, draws all reasonable inferences and deductions in that party's favor, and determines whether the verdict is palpably or flagrantly against the evidence. Erroneous jury instructions are presumed prejudicial, subject to rebuttal by the party asserting harmless error, which must show no reasonable possibility that the error affected the verdict.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brenda C. Osborne, Steven H. Keeney v. Brenda C. Osborne, Steven H. Keeney, Carolina Casualty Insurance Company, Monitor Liability

TOPICS

professional negligence negligent infliction of emotional distress punitive damages civil procedure
damages

PRACTICE AREAS

professional negligence torts civil procedure damages

QUESTIONS PRESENTED

1. What procedure and jury instructions govern a Kentucky legal-malpractice action in which the client's underlying claim was lost, including because of the expiration of the statute of limitations?
2. Whether the physical-impact rule remains the threshold requirement for recovery for negligently inflicted emotional distress in Kentucky.
3. Whether a legal-malpractice plaintiff may recover punitive damages that allegedly would have been awarded against the underlying tortfeasor.
4. Whether the trial court's failure to instruct the jury on the underlying negligence claim was reversible error.

HOLDINGS

1. In a legal-malpractice action where the client's injury depends on the merits of an underlying claim, the trial court must instruct the jury on the law of the underlying action and litigate that action as a suit within the malpractice trial. The client cannot establish causation or recover against the attorney without a jury determination that the client would have prevailed in the underlying action.
2. The physical-impact rule is no longer the threshold standard for Kentucky claims involving negligently inflicted emotional distress. A plaintiff must prove the elements of general negligence, a severe or serious emotional injury, and expert medical or scientific proof supporting the claimed injury or impairment.
3. A legal-malpractice plaintiff may not recover punitive damages that allegedly would have been awarded against the underlying tortfeasor. Such damages cannot be converted into compensatory damages and recovered from the attorney.

KEY QUOTATIONS

“The client cannot be found successful on the underlying claim if the jury is not fully instructed on the underlying claim. And it follows then that the attorney cannot be found liable without fully litigating the underlying claim and properly instructing the jury.” (at 12)

“A “serious” or “severe” emotional injury occurs where a reasonable person, normally constituted, would not be expected to endure the mental stress engendered by the circumstances of the case.” (at 17-18)

“Punitive damages have nothing to do with a plaintiff’s loss or making the plaintiff whole. Rather, punitive damages “serve a broader function ... aimed at deterrence and retribution.”” (at 20)

“We hold that lost punitive damages are not recoverable from the attorney against whom a malpractice claim is brought.” (at 23)

FACTUAL BACKGROUND

In October 2002, an airplane piloted by Clifford Quesenberry crashed into Brenda Osborne's home after Quesenberry attempted to restart an engine that had experienced mechanical problems. Osborne suffered no physical impact or bodily injury, but medical testimony indicated that the crash exacerbated her preexisting anxiety, depression, hypertension, insomnia, and diabetes. Osborne retained attorney Steven Keeney approximately six months later, but he did not file suit against Quesenberry until after the one-year statute of limitations had expired. The federal court ultimately entered summary judgment for Quesenberry, and a jury later found Keeney liable for legal malpractice and awarded Osborne compensatory and punitive damages.

PROCEDURAL HISTORY

Osborne sued attorney Steven Keeney for legal malpractice, breach of contract, and fraud after Keeney failed to timely pursue her claim against airplane pilot Clifford Quesenberry. The circuit-court jury found for Osborne on all claims and awarded compensatory and punitive damages. The Court of Appeals affirmed in part, vacated the emotional-distress damages and the punitive damages against Quesenberry, and reduced the punitive damages against Keeney. The Supreme Court reversed because the jury was not instructed on the underlying negligence claim against Quesenberry and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion. On retrial, the jury must be instructed on the underlying negligence claim against Quesenberry as well as Keeney's legal-malpractice claim. Osborne may not seek lost punitive damages from Keeney, but may seek punitive damages based on Keeney's own conduct if she proves gross negligence and oppression, fraud, or malice. The fraud claim must also be properly instructed, and Osborne may seek to add Carolina Casualty as a party following proper procedure.

CASES CITED

- Daugherty v. Runner, 581 S.W.2d 12 (Ky. App. 1978)
- Marrs v. Kelly, 95 S.W.3d 856, 860 (Ky. 2003)
- Deutsch v. Shein, 597 S.W.2d 141, 145-46 (Ky. 1980)
- Wilhoite v. Cobb, 761 S.W.2d 625, 626 (Ky. App. 1988)
- Steel Technologies, Inc. v. Congleton, 234 S.W.3d 920, 928-30 (Ky. 2007)
- Hilen v. Hays, 673 S.W.2d 713 (Ky. 1984)

- Camper v. Minor, 915 S.W.2d 437, 441, 446 (Tenn. 1996)
- Paugh v. Hanks, 6 Ohio St. 3d 72, 451 N.E.2d 759, 765 (1983)
- Ferguson v. Lieff, Cabraser, Hermann & Bernstein, LLP, 30 Cal. 4th 1037, 69 P.3d 965 (2003)
- Tri-G, Inc. v. Burke, Bosselman & Weaver, 222 Ill. 2d 218, 856 N.E.2d 389 (2006)
- Stewart v. Estate of Cooper, 102 S.W.3d 913 (Ky. 2003)
- Ky. Central Insurance Co. v. Schneider, 15 S.W.3d 373, 374-75 (Ky. 2000)
- Shawnee Telecom Resources, Inc. v. Brown, 354 S.W.3d 542, 551 (Ky. 2011)
- Bierman v. Klapheke, 967 S.W.2d 16, 19 (Ky. 1998)

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