SUPREME COURT OF MISSOURI

Brian Nail v. Husch Blackwell Sanders, LLP

436 S.W.3d 556 (Mo. banc 2014) · No. SC93543 · Decided June 24, 2014

SUMMARY

The Supreme Court of Missouri affirmed summary judgment for Husch Blackwell Sanders, LLP in Brian Nail's legal malpractice action. The court held that Nail failed to establish proximate causation for his claim based on allegedly negligent advice because his claimed stock-option losses resulted from market declines, and failed to establish causation in fact for his negligent-drafting claim because he offered no evidence that the employer would have agreed to or breached the proposed provisions. The opinion applies Missouri's "case within a case" causation standard in legal malpractice actions.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Mary R. Russell, Chief Justice; Fischer, J.; Stith, J.; Draper, J.; Wilson, J.; Teitelman, J.
JURISDICTION	Missouri
DECIDED	June 24, 2014
DOCKET	SC93543
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment granting summary judgment to a law firm in a legal malpractice action.
STANDARD OF REVIEW	Summary judgment is reviewed essentially de novo because its propriety is an issue of law, and the judgment may be affirmed on any basis supported by the record. Summary judgment is proper when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Missouri Supreme Court en banc opinion; precedential.
PARTIES	Brian Nail v. Husch Blackwell Sanders, LLP

TOPICS

professional negligence · proximate cause · standard of review · appellate procedure · commercial litigation

PRACTICE AREAS

legal malpractice · professional negligence · appellate procedure · contracts · remedies

QUESTIONS PRESENTED

1. Whether Nail proved that Husch Blackwell's alleged failure to advise him to exercise his stock options immediately after the merger proximately caused the decline in the value of his options.
2. Whether Nail proved that, but for Husch Blackwell's alleged negligent drafting of the settlement agreement, Mueller would have agreed to additional escrow and liquidated-damages provisions and later breached them.
3. Whether summary judgment was proper on both legal malpractice claims.

HOLDINGS

1. Nail failed to establish proximate causation because the decline in the value of his stock options resulted from market conditions, not from Husch Blackwell's alleged failure to advise him to exercise the options earlier. The risk of that market decline was not a reasonable or probable consequence of the alleged negligence.
2. Nail failed to prove causation in fact because he offered no evidence that Mueller would have agreed to the proposed settlement provisions or would later have breached them and incurred millions of dollars in liquidated damages.
3. The trial court properly entered summary judgment for Husch Blackwell on both malpractice claims.

KEY QUOTATIONS

> *"Proximate cause requires more than mere causation in fact because "the 'but for' test serves only to exclude items that are not causal in fact; it will include items that are causal in fact but that would be unreasonable to base liability upon because they are too far removed from the ultimate injury or damage.""* (at 563)

> *"A decline in the stock price is outside the scope of harms that would naturally, probably, and foreseeably result from Husch Blackwell's alleged negligence, and the causal relationship between that negligence and TIG's stock price is not even conjectural—it is nonexistent."* (at 564)

> *"This is all pure speculation. Nail has not offered any evidence that Mueller would have agreed to any of these provisions or that he then would have breached them."* (at 565)

FACTUAL BACKGROUND

Nail held options to purchase stock in MTW Corporation, which were converted into options for stock in The Innovation Group after a merger. The stock was subject to a one-year lock-up period, during which its market value first rose and then substantially declined. Husch Blackwell advised Nail regarding his remedies and negotiated a settlement that extended his option period, placed shares in escrow, and included a liquidated-damages clause. Nail later sued the firm, claiming that delayed advice and deficient drafting caused him to lose millions of dollars, but the record showed that the stock decline was caused by market conditions and that Mueller timely supplied the documents needed to complete the transfer.

PROCEDURAL HISTORY

Nail sued Husch Blackwell for negligent legal advice and negligent drafting of a settlement agreement concerning his stock options. The Circuit Court of Jackson County granted summary judgment on the negligent-advice claim and partial summary judgment on the negligent-drafting claim; after Nail stipulated that he suffered no harm from a delay in completing the stock transfer, the trial court entered judgment for Husch Blackwell. The Supreme Court of Missouri affirmed.

DISPOSITION

affirmed

CASES CITED

- ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371 (Mo. banc 1993)
- Donahue v. Shugart, Thomson & Kilroy, P.C., 900 S.W.2d 624 (Mo. banc 1995)
- Zafft v. Eli Lilly & Co., 676 S.W.2d 241 (Mo. banc 1984)
- Callahan v. Cardinal Glennon Hosp., 863 S.W.2d 852 (Mo. banc 1993)
- Alcorn v. Union Pac. R.R. Co., 50 S.W.3d 226 (Mo. banc 2001)
- Badahman v. Catering St. Louis, 395 S.W.3d 29 (Mo. banc 2013)
- Stanley v. City of Independence, 995 S.W.2d 485 (Mo. banc 1999)
- Krause v. U.S. Truck Co., Inc., 787 S.W.2d 708 (Mo. banc 1990)
- Movitz v. First National Bank of Chicago, 148 F.3d 760 (7th Cir. 1998)
- First Federal Savings & Loan Ass'n v. Charter Appraisal, 724 A.2d 497 (1999)
- Oregon Steel Mills v. Coopers & Lybrand, LLP, 83 P.3d 322 (Or. 2004)
- Bryant v. Bryan Cave, 400 S.W.3d 325 (Mo. App. 2013)
- Steward v. Goetz, 945 S.W.2d 520 (Mo. App. 1997)
- Lange v. Marshall, 622 S.W.2d 237 (Mo. App. 1981)
- Thiel v. Miller, 164 S.W.3d 76 (Mo. App. 2005)