

SUPREME COURT OF ALASKA

Cynthia J. Notti v. David G. Hoffman

No. 7603 (Alaska July 15, 2022) · No. S-17560 · Decided July 15, 2022

SUMMARY

The Alaska Supreme Court considers claims arising from sexual relations between divorcing spouses after they signed a property-settlement agreement containing a broad litigation waiver but before court approval of the agreement. The court affirms dismissal of the plaintiff’s claimed tort of “rape by fraud,” holding that Alaska does not recognize that tort on the alleged facts. It reverses summary judgment concerning the remaining tort claims, holding that the settlement agreement was enforceable between the parties when signed, and remands for consideration of whether the waiver bars claims based on later intentionally tortious conduct.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carney, Justice; Bolger, Chief Justice; Winfree, Justice; Maassen, Justice; Borghesan, Justice
JURISDICTION	Alaska
DECIDED	July 15, 2022
DOCKET	S-17560
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the superior court's dismissal of Notti's claim for rape by fraud and grant of summary judgment on her remaining tort claims based on a litigation waiver in the parties' marital settlement agreement.
STANDARD OF REVIEW	The court reviewed grants of summary judgment and motions to dismiss de novo. Summary judgment is proper only when, after reasonable inferences are drawn for the nonmoving party, no reasonable person could discern a genuine factual dispute on a material issue.
PRECEDENTIAL VALUE	published
PARTIES	Cynthia J. Notti v. David G. Hoffman

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QUESTIONS PRESENTED

1. Whether Alaska recognizes a tort claim for rape by fraud based on a misrepresentation about an intimate partner's intention to remain married.
2. Whether the parties' executed marital settlement agreement became enforceable between them when signed, even though it was later subject to superior-court approval and incorporation into the divorce decree.
3. Whether summary judgment was proper on Notti's remaining tort claims based on the settlement agreement's litigation waiver.

HOLDINGS

1. Alaska does not recognize a tort of rape by fraud on the alleged facts. A misrepresentation that induces consensual sexual contact but does not misrepresent the actor's identity or the nature of the act is fraud in the inducement and is not actionable as battery.
2. The settlement agreement became enforceable between Notti and Hoffman when they executed it on December 31, 2015, even though the agreement was later subject to court approval and merger into the divorce decree.
3. Summary judgment was premature and must be reversed because the settlement agreement's effective date was December 31, 2015, requiring further consideration of whether the waiver bars claims based on the March 2016 conduct and whether its future-claims language is enforceable against intentionally tortious conduct.

KEY QUOTATIONS

“Alaska law does not recognize a tort of “rape by fraud.”” (-8-)

“Hoffman’s [allegedly] false assertion in the context of the parties’ inconstant relationship is not actionable.” (-11-)

“Notti and Hoffman’s settlement agreement was enforceable between them when the parties signed it, even though it had not been accepted by the superior court and merged into the divorce decree.” (-14-)

“We AFFIRM the superior court’s order to dismiss the claim of “rape by fraud.” But we REVERSE the superior court’s grant of summary judgment and REMAND to the superior court for determination of whether Notti’s remaining claims are barred by the litigation waiver.” (-16-)

FACTUAL BACKGROUND

Notti and Hoffman married in 2012 and pursued divorce proceedings after a tumultuous relationship. On December 31, 2015, they executed a marital property settlement agreement containing a broad litigation waiver releasing all claims, including past, present, and future tort claims. In March 2016, before the superior court approved the agreement, the parties had sexual relations after Hoffman allegedly told Notti that he intended to remain married; Notti later claimed that Hoffman had misrepresented his intentions. Notti sued for rape by fraud, misrepresentation, and intentional infliction of emotional distress.

PROCEDURAL HISTORY

Notti and Hoffman entered into a marital property settlement agreement in December 2015, and the superior court later approved and incorporated the modified agreement into the divorce decree. Notti subsequently sued Hoffman for sexual assault, misrepresentation, and intentional infliction of emotional distress arising from a March 2016 sexual encounter. The superior court dismissed the rape-by-fraud claim and granted summary judgment on the remaining claims based on the settlement's litigation waiver. The Alaska Supreme Court affirmed the dismissal, reversed the summary judgment, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirm the dismissal of the rape-by-fraud claim, but reconsider the remaining claims in light of the December 31, 2015 effective date of the settlement agreement and determine whether the litigation waiver bars those claims, including whether its future-claims provision applies to intentionally tortious conduct.

CASES CITED

- State v. Kelso-Christy, 911 N.W.2d 663 (Iowa 2018)
- Taylor v. Johnston, 985 P.2d 460 (Alaska 1999)
- Merrill v. Faltin, 430 P.2d 913, 917 (Alaska 1967)
- State v. Bolsinger, 709 N.W.2d 560, 564 (Iowa 2006)
- Crane v. Crane, 986 P.2d 881, 885 (Alaska 1999)
- Colton v. Colton, 244 P.3d 1121, 1129 (Alaska 2010)
- Stone v. Stone, 647 P.2d 582, 584 (Alaska 1982)
- Horchover v. Field, 964 P.2d 1278, 1281 (Alaska 1998)
- Notkin v. Notkin, 921 P.2d 1109, 1110-11 (Alaska 1996)
- Worland v. Worland, 193 P.3d 735, 736, 739-41 (Alaska 2008)
- Mullins v. Oates, 179 P.3d 930, 937 (Alaska 2008)
- Philbin v. Matanuska-Susitna Borough, 991 P.2d 1263, 1266-67 (Alaska 1999)
- Kay v. Danbar, Inc., 132 P.3d 262, 269 (Alaska 2006)
- Dimeff v. Estate of Cowan, 300 P.3d 1, 11 (Alaska 2013)

- Peterson v. Wirum, 625 P.2d 866, 870 (Alaska 1981)
- Alleva v. Municipality of Anchorage, 467 P.3d 1083, 1091 (Alaska 2020)
- Anderson v. Alaska Housing Finance Corp., 462 P.3d 19, 25 (Alaska 2020)
- Blair v. Federal Insurance Co., 433 P.3d 1048, 1051 (Alaska 2018)
- DeRemer v. Turnbull, 453 P.3d 193, 196 (Alaska 2019)
- Cook Inlet Fisherman's Fund v. State, Department of Fish & Game, 357 P.3d 789, 797 n.15 (Alaska 2015)
- Christensen v. Alaska Sales & Service, Inc., 335 P.3d 514, 520 (Alaska 2014)

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