

Minnesota Court of Appeals Upholds JMOL Ruling for Law Firm on “Would Have/But For” Causation Grounds

In an unpublished decision issued on September 16, 2008, the Minnesota Court of Appeals upheld a trial court’s ruling that the defendant law firm was entitled to judgment as a matter of law because the plaintiffs had failed to establish that they “would have” obtained a better outcome “but for” the law firm’s alleged negligence. The case, [D. Eugene Rogers v. James W. Hess](#), et al., 2008 WL 4224392 (Minn. Ct. App. Sept. 16, 2008), involved an underlying dispute over whether the city of Coon Rapids, Minnesota had committed a taking of the plaintiffs’ property by approving a plat that limited access to a 2.4 acre parcel.

In the underlying litigation, a jury found that the City had cut off access to the plaintiff’s property with a 28-foot publicly dedicated road. Because the road was ultimately not wide enough for the property to be developed, the plaintiff wanted the law firm to appeal the case. The law firm instead brought an inverse condemnation action alleging that the City’s approval of the plat was an unconstitutional taking in violation of the plaintiff’s civil rights. After the inverse condemnation action was removed to federal court, the plaintiff settled the case for \$55,000.

In the trial of the subsequent malpractice action, the plaintiff presented expert testimony that the law firm should have amended the complaint in the inverse condemnation/civil rights action to allege intent in connection with the civil rights claim, should have conducted “full discovery” and should have “appropriately value[d]” the plaintiff’s damages claim. The expert opined that had these things been done, the plaintiff/client “would have” prevailed at trial.

In affirming the JMOL for the law firm, the Minnesota Court of Appeals found that the expert opinion was not sufficient to support the “would have/but for” standard of proof required under Minnesota law. The Court cited the Minnesota Supreme Court’s decision in [Rouse v. Dunkley & Bennett, P.A.](#), 520 N.W.2d 406, 408 (Minn.1994) for the elements of the malpractice claim and noted that the expert had not testified as to why the plaintiff would have prevailed at trial and had provided no specific detailed basis for his conclusion or the necessary elements of the underlying claims.

The Court of Appeals also reiterated the public policy underlying the reluctance of Minnesota courts to allow a dissatisfied client to pursue

a malpractice claim after settling the underlying case. The Court of Appeals did not cite a case on this principle, but this basic public policy was articulated by the Minnesota Supreme Court at least as far back as 1975 in [Glenna v. Sullivan](#), 245 N.W.2d 869, 873 (Minn. 1975) (“To allow a client who becomes dissatisfied with a settlement to recover against an attorney solely on the ground that a jury might have awarded them more than the settlement is unprecedented.”) The Court of Appeals also invoked the professional judgment rule stating: “A malpractice claim based solely on professional judgment or strategy is insufficient to show a negligent act.” (citing [Noske v. Friedberg](#), 713 N.W.2d 866, 874 (Minn.App.2006), review denied (Minn. July 19, 2006).

The [Rogers](#) decision broke no new ground, but the panel’s decision represented a consistent application of the causation standards and public policies outlined in the Minnesota Supreme Court decisions addressing legal malpractice claims. For a potential defendant law firm in Minnesota, “no news is good news” when the Minnesota appellate courts affirm a dismissal of a malpractice claim on the “would have/but for” causation grounds.

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