

Damages Caused by the Court's, Not the Lawyer's, Mistake

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[Green v. Papa, 2014 IL App \(5th\) 130029, 2014 WL 468929 \(Ill.App. 5 Dist.\)](#)

Brief Summary

The court held that errors made by the court in the underlying case prevented the legal malpractice plaintiff from proving proximate cause. The court in the underlying case excluded the plaintiff's medical damages as the result of erroneous conclusions of law and fact, not because of the lawyer's alleged negligence.

Summary

The plaintiff brought a legal malpractice action, claiming that her lawyer breached his duty by failing to serve a proper notice of deposition on the treating physician, and failing to present evidence that the treatment she received after October 5, 1998 was related to the dump truck accident, and not the fall from an office chair.

Following a detailed review of the evidence and procedure of the underlying trial, the trial court in the legal malpractice action concluded that the plaintiff failed to prove that the attorney was negligent, and even assuming *arguendo* that the lawyer was negligent, the negligence was not the proximate cause of plaintiff's claimed damages. Specifically, the court determined that the plaintiff failed to prove that but for the exclusion of the treating physician's testimony, the plaintiff would have recovered for treatment received after October 5, 1998.

Based on its review of the evidence, the trial court determined that the Court of Claims made the wrong decision based on its misapplication of the law to the facts as shown by the evidence. Because the lawyer had done all he could to correct the Court of Claims' erroneous conclusions, he was not liable. The appellate court affirmed.

Significance of Opinion

This decision is significant because it demonstrates that the errors of the court in an underlying case can be a superceding, intervening cause which breaks the chain of causation between an attorney's alleged negligence and plaintiff's claimed damages.

For more information, please contact [Terrence P. McAvoy](#), Noah D. Fiedler.

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