

Georgia Malpractice Judgment Reversed Because Trial Court Improperly Allowed Jury to View Complaint With Dismissed Claims

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Potts v. Clowdis, No. A20A1966, 2021 Ga. App. LEXIS 339 (Ct. App. June 28, 2021)

Brief Summary

A Georgia appellate court held that plaintiff's nearly \$6 million damage award was improper because the trial court permitted the jury to view a copy of the complaint which included allegations and claims that had been dismissed, and informed the jury that all contents of the complaint could not be contested. The appellate court reasoned that although a previous default judgment on plaintiff's legal malpractice and breach of fiduciary duty claims was proper, the jury likely considered the dismissed claims when assessing damages.

Complete Summary

In 2007, the Virginia Medical Board (Board) suspended plaintiff's medical license after discovering that he had been convicted of a felony in Colorado. In 2011, the Board stayed plaintiff's suspension subject to compliance with monitoring conditions. It later suspended plaintiff indefinitely for failure to comply with the monitoring conditions but stayed the suspension pending compliance with a monitoring order.

Plaintiff retained defendants to litigate his medical license suspension. He then began working for defendants as a paralegal and applied to be a member of the New York and Georgia Bars. At some point, the relationship became contentious, and plaintiff sued defendants for several claims, including legal malpractice and breach of fiduciary duty. The trial court dismissed certain allegations and claims but entered a default judgment against defendants regarding liability and causation as a discovery abuse sanction on the malpractice and breach of fiduciary duty claims. However, the case proceeded to a jury to determine damages, and the jury awarded \$2.73

million in general damages, \$2.35 million for loss of income, \$485,000 in attorney fees, and \$235,000 in punitive damages.

Defendants appealed and first argued that the trial court erred by granting default judgment. The appellate court held that default judgment was proper because the evidence showed that defendants had intentionally made false statements that their discovery responses were timely. The court also found that defendants willfully misrepresented and withheld evidence.

Defendants next argued that the trial court erred in providing the jury with a copy of the complaint that did not redact the claims and allegations that had been dismissed and accompanying the complaint with the instruction that the contents could not be contested. The trial court also had not specified which claims the jury was limited to when considering damages. The court reversed the damages decision, reasoning that the verdict included damages for dismissed claims, or at the very least, impacted the jury's damage verdict.

Significance of Decision

This decision illustrates that a jury should not be presented with claims of dismissed claims when determining a damage award for related charges on a default judgment, particularly when the trial court gives an instruction that allegations in the complaint cannot be contested. Counsel should consider the importance of limiting instructions when the court allows the jury to view certain evidence to determine a damage award.

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