

Marijuana Company's Legal Malpractice Claim Goes Up in Smoke

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[*Cannabis Renaissance Group LLC v. Fennemore Craig, PC*, No. 1 CA-CV 20-0089 \(Ariz. Ct. App. Sep. 14, 2021\) \(memorandum decision\)](#)

Brief Summary

An Arizona appellate court held that summary judgment was appropriate in a legal malpractice action brought by a medical marijuana company for failure to timely pursue a petition for judicial review where plaintiffs could not prove the petition would have been successful but for defendants' alleged negligence.

Complete Summary

An aspiring medical marijuana company applied to the City of Las Vegas for special use permits to operate cultivation, production, and dispensary facilities. The Las Vegas City Council determined the company failed to submit the requisite background information. One City Council member also found that the company's principals—namely, a print shop foreman, an insurance agent, and a motel manager—lacked the requisite experience and professionalism. The City Council ultimately denied all three applications on October 28, 2014.

On November 24, 2014, the company and one of its principals (plaintiffs) retained defendants to file a petition for judicial review of the City Council's decision. The next day, defendants filed a petition with the Clark County District Court. The City, however, moved to dismiss the petition because it was filed one day late. The district court agreed, granted the City's motion, and dismissed plaintiffs' petition with prejudice.

In 2016, plaintiffs initiated a legal malpractice action against defendants in the Superior Court of Arizona for Maricopa County for negligently failing to timely file plaintiffs' petition for review. Defendants stipulated to the elements of duty and breach, and the parties filed competing motions for summary judgment on causation. The superior court found that even if defendants had timely filed plaintiffs' petition, the Nevada district court judge would have upheld the City Council's decision to deny the applications as a matter of law because the decision

was supported by substantial evidence. The superior court concluded plaintiffs could not prove the element of “but- for” causation and, therefore, dismissed plaintiffs’ claims with prejudice.

Plaintiffs appealed arguing that causation was an issue of fact that should have been determined by a jury. Under Arizona law, the causal relationship of “trial-level malpractice” is a question of fact, while the causal relationship of “appellate-level malpractice” is a question of law.

The Arizona Court of Appeals found that the underlying facts presented an issue of law, not fact. In order to prove causation, plaintiffs needed to establish the petition to the district court for judicial review of the City Council decision would have been successful. The appellate court looked to the standard of review applicable to plaintiffs’ petition. Under Nevada law, a district court reviews a municipality’s decision “only to ascertain *as a matter of law* if there was any substantial evidence before the board which would sustain the [municipality’s] decision.” The appellate court found that the district court would have been serving in an appellate function and, therefore, defendants’ failure to timely file plaintiffs’ petition constituted appellate-level malpractice, for which causation is a question of law.

Plaintiffs also argued, in the alternative, that the superior court erred in finding that the City Council’s decision was supported by “substantial evidence” as required under Nevada law. The appellate court found that “substantial evidence” supported the City Council’s denial of the three special use permit applications. The court noted that under Nevada law, mere conflicting evidence does not give a reviewing court cause to interfere with the municipality’s decision so long as the decision was supported by “substantial evidence.” The appellate court concluded plaintiffs could not prove that defendants were the but-for cause of plaintiffs’ injury because the district court would have affirmed the City Council’s decision, even if the petition was timely filed.

Significance of Decision

This decision illustrates that the element of causation is a question of law where the legal malpractice claim turns on an actual or theoretical legal decision by the original judge to dispose of the original claim. See, *Molever v. Roush*, 152 Ariz. 367, 374 (Ct. App. 1986).

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