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When does the malpractice clock start ticking?

By: Dan Heilman February 16, 2018 0

A hotly contested case over a botched prenuptial agreement might make it easier to make malpractice claims against lawyers, according to a recently published decision by the Minnesota Supreme Court.

The court ruled in favor of restaurant owner Joseph Frederick, whose lawsuit against his former lawyer had been tossed out as time-barred under Minnesota's six-year statute of limitations for legal malpractice claims.

Frederick's attorney, respondent Kay Wallerich, had prepared an antenuptial agreement for Frederick and his then-fiancée, Cynthia Gatliff, in 2006. One problem: The agreement did not include the statutorily required witness signatures, making it unenforceable.

A year after Frederick and Gatliff were married, Wallerich drafted a will for Frederick that included the antenuptial agreement by reference. The will left no assets to Gatliff since the antenuptial agreement already specified the portion of his assets that she was to receive upon his death.

When Gatliff filed for divorce after six years of marriage, she claimed that the antenuptial agreement was invalid because it lacked the requisite witness signatures. Later that year, Frederick sued Wallerich for legal malpractice. The flawed execution of the antenuptial agreement fell outside of the six-year limitations period for malpractice claims, but Frederick alleged that subsequent representations by Wallerich — such as when she drafted his will — were separate legal-malpractice claims that each triggered their own statute of limitations periods.

A district court granted Wallerich judgment on the pleadings, determining that none of Frederick's claims related to the antenuptial agreement were filed in time. The Minnesota Court of Appeals affirmed.

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Supreme Court

But on appeal, the Minnesota Supreme Court wasn't so sure. It pointed out that in the meeting between Frederick and Wallerich not quite a year after his marriage to Gatliff, the attorney assured Frederick at this meeting that the previously executed antenuptial agreement was valid and enforceable.

The Minnesota Supreme Court has determined previously that the statute of limitations for a legal malpractice claim begins to run when a cause of action accrues for legal malpractice. A claim accrued on the date of Wallerich's marriage to Gatliff, Sept. 29, 2006, for the errors that Wallerich made when she failed to ensure that the antenuptial agreement was validly executed.

Frederick's claim based on that negligent act was found by the high court to be untimely because it was not filed by Sept. 29, 2012. Because Frederick filed his legal malpractice claim a few weeks shy of a year later, there needed to have been a separate claim that accrued on or after Sept. 10, 2007, for the filing to be timely.

At issue was whether Wallerich's failure to alert Frederick of the unenforceability of his antenuptial agreement was an act of negligence separate from the negligent execution of the antenuptial agreement itself; whether Frederick suffered damages caused by these failures; and whether those damages are independent of the damages attributable to the negligent execution of the antenuptial agreement.

The answer to the first issue was yes. "Our law therefore permits two separate transactions within the same set of facts to be reasonably characterized as separate acts that give rise to independent negligence claims," wrote Justice Natalie E. Hudson in her opinion.

The high court also found that Frederick sufficiently alleged that Wallerich's negligence in 2007 was at least a "substantial factor" in the additional \$1 million in damages that Frederick claimed to have suffered.

The final issue to be decided was whether Frederick's damages were solely attributable to the 2007 act of negligence — Wallerich's drafting of his will — rather than her 2006 execution of the antenuptial agreement.

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Frederick said that had he been properly informed of the antenuptial agreement's deficiencies in 2007, he would have moved to protect his assets — for instance, by asking Gatliff to sign a postnuptial agreement, divorcing her if she didn't, or suing Wallerich earlier.

The court agreed that, in essence, things might have been much different if Frederick had known earlier what he knew later. "Most clearly, Frederick's claim that he would have divorced Gatliff sufficiently alleges a course of action that he may have unilaterally taken to protect his assets."

The court concluded that Frederick sufficiently alleged a timely legal malpractice claim sufficient to survive a motion to dismiss based on Wallerich's 2007 will drafting, reversing the decision of the Court of Appeals and remanding the case to the district court.

"In my opinion, the Supreme Court was correct in striking a fact-specific balance for clients who return to their lawyers for subsequent advice, and the duty for lawyers to meet the standard of care when dispensing legal advice in a separate transaction," said Patrick H. O'Neill, Jr., of Larson King in St. Paul, which represented Frederick. "Here, the Supreme Court found that nothing in 2006 precluded Ms. Wallerich from meeting the standard of care in the 2007 will transaction."

The decision was not unanimous. Chief Justice Lorie Gildea dissented, noting that in the 2006 Court of Appeals decision in *Antone v. Mirviss*, it was decided that the statute of limitations begins to run when the cause of action accrues, which is "when the plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted."

"*Antone* should be extended to cover the facts of this case, one in which a client alleges that his attorney's subsequent failure to identify an earlier error leads to a separate claim of malpractice," wrote Gildea, whose dissent was joined by Justice G. Barry Anderson.



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