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# Illinois Court of Appeals Reinstates Legal Malpractice Claim

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A three-judge panel of the Illinois Court of Appeals reinstated a malpractice suit against Sneckenberg Thompson & Brody LLP (“STB”) after finding that the trial court abused its discretion when it refused to allow plaintiff’s ex-wife’s trust to pursue the suit on plaintiff’s behalf after he died. *Seifert v. Sneckenberg Thompson & Brody, LLP*, No. 1-20-0966 (February 9, 2022). The plaintiff, Robert Seifert, acting “for himself and as property manager” for his ex-wife’s trust (the “Duffy Trust”), filed suit against STB alleging malpractice in connection with a dispute over a Barrington, Illinois property that Seifert owned with his ex-wife. *Id.* at ¶ 6.

When Seifert died in December 2019, plaintiff’s own trust (the “RJS Trust”) moved to substitute as party plaintiff. The Circuit Court denied the motion to substitute on February 21, 2020. *Id.* at ¶¶ 11-13. In doing so, the Circuit Court found that because Seifert brought the malpractice action pursuant to a power of attorney granted to him by his ex-wife, his agency did not pass to the RJS Trust upon his death. *Id.* at ¶ 12. The Circuit Court explicitly found that the power to make decisions regarding the Barrington Property and the malpractice action reverted to his ex-wife “as trustee of the Duffy Trust.” *Id.* On March 5, 2020, the RJS Trust filed a motion to reconsider. *Id.* at ¶ 14. That motion was denied and the case was dismissed for want of prosecution one week later, on March 12, 2020. *Id.* at ¶ 15. Just one week after that, on March 19, 2020, the Duffy Trust filed to vacate the dismissal for want of prosecution and substitute as party plaintiff. *Id.* at ¶ 16. Once more, the Circuit Court denied the motion, citing the Duffy Trust’s lack of diligence in pursuing the claim. *Id.* at ¶ 18. The panel reversed the Circuit Court on appeal. It rejected an argument from STB that the applicable section of the Code of Civil Procedure limited time to substitute to 90 days after Seifert’s death. The panel also noted that it “fail[ed] to see a lack of diligence by the Duffy Trust.” *Id.* at ¶ 39. It noted the close succession of the relevant dates. After the initial motion to substitute was denied in February 2020, the RJS Trust filed a timely motion to reconsider that ruling just two weeks later. *Id.* The Duffy Trust filed its motion to substitute

just two weeks after that. *Id.* The Court found that rather than suggesting a lack of due diligence, the Duffy Trust was merely waiting on the Circuit Court to rule on the pending motions. That the Duffy Trust was initially incorrect about the identity of the proper substitute party plaintiff does not suggest a lack of diligence on behalf of the Duffy Trust. *Id.* The panel further noted the absence of any intentional or willful disregard of any directions of the courts that resulted in prejudice or hardship to either party as a factor that favored reviving the claim. *Id.* at ¶ 40.

*Seifert v. Sneckenberg Thompson & Brody, LLP, No. 1-20-0966*

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