

November 3, 2020

No Matter How Far Removed, Attorney Cannot Be Sued for Malpractice If Underlying Suit Was Unwinnable

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Veerasikku Bommasamy (“Bommasamy”) consulted attorney Kevin Conway (“Conway”) about filing a legal malpractice lawsuit against another attorney. Conway allegedly told Bommasamy that a lawsuit could not be filed until the underlying matter, which was still on appeal, had been resolved. Conway eventually filed a complaint on Bommasamy’s behalf, but the complaint was dismissed with prejudice because the limitations period had passed. Bommasamy then sued Conway for legal malpractice. Conway moved for summary judgment, arguing that Bommasamy could not establish proximate causation since he could not have won his first suit against the hospital where he used to work (the “Hospital”), an administrator (the “Administrator”), and a colleague. If Bommasamy could not have won the underlying case against the hospital and others, he could not have won a malpractice suit against his first attorney, and he likewise could not win a malpractice suit against his second attorney, Conway. Summary judgment was granted and Bommasamy appealed.

The Appellate Court affirmed. In so doing, it reviewed all five counts in Bommasamy’s original lawsuit. Count I alleged that the Hospital and Administrator fraudulently induced Bommasamy to terminate his contract early. The Appellate Court believed that Bommasamy could not have reasonably relied on the Hospital’s promise. *Id.* at ¶ 35. Count II alleged that the Hospital and Administrator tortiously interfered with Bommasamy’s oral agreement with a service provider by pressuring the service provider to terminate its affiliation with him. Here the Appellate Court concluded that any purported contract was terminable at will and so a claim for tortious interference with it was inapplicable. *Id.* at ¶ 41. Count III alleged tortious interference with a prospective advantage. The Appellate Court found no problem here either, explaining that “to the extent a party acts to enhance its own business interests, it has a privilege to act in a way that may harm the business expectancy of others.” *Id.* at ¶ 44. Counts IV and V accused one of Bommasamy’s colleagues of aiding and abetting the Hospital and Administrator in committing

counts II and III. However, because it was impossible for Bommmasamy to prove counts II and III, he could not prove that his colleague aided and abetted their perpetration. As a result of Bommmasamy's inability to win the first lawsuit, both subsequent malpractice actions were doomed.

Veerasingu Bommmasamy, M.D., & V. Bommmasamy, M.D., S.C., v. Kevin J. Conway, 2020 IL App (1st) 190339-U

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