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## Texas Supreme Court Adopts Judicial Error Rule in Legal Mal Cases

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(July 13) – The Texas Supreme Court adopted the “judicial error rule” in *Stanfield v. Neubaum* on June 24, 2016, which provides that a court’s erroneous decision “can constitute a new and independent cause” of harm to an attorney’s client, thus absolving the trial attorneys of liability for claims of professional negligence in handling the case.

*Neubaum* is the Texas Supreme Court’s first decision addressing the issue of judicial error in legal malpractice cases.



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Joe and Barbara Neubaum, sued their trial attorneys for malpractice following a trial that resulted in a \$4 million usury judgment against them.

The usury case was brought by the Buck Glove Co. alleging that the Neubaum’s, through their agent, Marvin March, charged excessive interest in connection with a loan.

At trial, Neubaum’s lawyers argued that Buck Glove had not submitted any evidence that March was the Neubaum’s agent and objected to an agency submission in the jury charge.

The trial court disagreed and instructed the jury on agency. The jury found that the Neubaum’s, through the acts of their agent March, had acted usuriously and awarded Buck Glove more than \$4 million.

The Neubaums hired different lawyers to handle the appeal. Among other arguments, the Neubaums contended on appeal that the trial court erred by submitting to the jury a question on whether March was their agent, arguing that there was no evidence to support the submission of that issue.

The court of appeals agreed, holding that there was legally insufficient evidence to support the agency finding. Following the reversal, the Neubaums filed a malpractice action against their trial lawyers to recover the fees they incurred in pursuing the appeal of the judgment.

In the malpractice action, the Neubaums argued that the attorneys were negligent in failing to present evidence on several defenses and failing to designate an expert witness to explain to the jury how certain evidence constituted a Ponzi scheme.

The Neubaums did *not* allege that their lawyers were negligent in their handling of the agency issue. Instead, they contended that the trial court’s error would have been immaterial because a favorable judgment would have been rendered but for the lawyer’s negligence.

The trial court granted summary judgment in favor of the lawyers on the basis that the judicial error was the sole cause of the Neubaum’s injury.

The Fourteenth Court of Appeals reversed and remanded in part. *Neubaum v. Stanfield*, 465 S.W.3d 266, 268 (Tex. App.—Houston [14th Dist.] 2015).

The court of appeals held that the lawyers failed to “conclusively prove that (1) if a reasonably prudent attorney had represented the Neubaums in the Usury Lawsuit, the Neubaums would not have obtained a more favorable result than the result they actually obtained; or (2) the [a]lleged [d]amages were caused by the erroneous rulings of the trial court in the Usury Lawsuit rather than by any of the alleged negligence.”

The appellate court did not consider, however, whether judicial error can constitute a superseding cause that breaks the causal chain and, as a matter of law, negates proximate cause.

In an 8-0 decision, the Texas Supreme Court reversed and rendered.

Justice Eva Guzman, writing for the Court, began by observing that the issue presented was one of first impression and that the analysis would be guided by “established negligence and proximate-cause principles.”

The Court carefully explored the difference between a concurring cause and a superseding cause. The former “concur[s] with the continuing and cooperating original negligence in working the injury, leaving the causal connection between the defendant’s negligence and the plaintiff’s harm intact,” while the latter “destroys any causal connection between the defendant’s negligence and the plaintiff’s harm, precluding the plaintiff from establishing the defendant’s negligence as a proximate cause.”

The Court emphasized that foreseeability is the key factor in distinguishing between a concurring and a superseding cause.

Based on these general principles, the Supreme Court announced a new legal axiom in Texas: “When a judicial error intervenes between an attorney’s negligence and the plaintiff’s injury, the error can constitute a new and independent cause that relieves the attorney of liability. To break the causal connection between an attorney’s negligence and the plaintiff’s harm, the judicial error must not be reasonably foreseeable.”

The Court explained that where an attorney’s negligence does not “contribute to the judicial error itself and the judicial error is not otherwise reasonably foreseeable in the particular circumstances of the case, the error is a new and independent cause of the plaintiff’s injury if it alters the natural sequence of events and produces results that would not otherwise have occurred.”

Applying the judicial error rule to the case, the Court held that the Neubaums had produced no evidence that the trial court’s error in instructing the jury on agency was reasonably foreseeable so as to preclude it from being a superseding cause.



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The Court reasoned that the attorneys were “neither negligent nor incorrect” in arguing that there was no evidence to support the submission of agency to the jury. In other words, the judicial error was not reasonably foreseeable because the lawyers “did not contribute to the error.”

Moreover, the negligence complained of by the Neubaums was “unrelated to and operated independently of” the judicial error. The Court concluded that “[a]s a matter of law, the trial court’s error of law on the agency issue was a new and independent cause of the adverse usury judgment and the ensuing appellate litigation costs.”

The case is significant because it provides attorneys with certainty that they will not be held liable for injuries they did not cause.

After *Neubaum*, although a lawyer may have been negligent with respect to some matters in the representation, if he or she presented the correct arguments on a fundamental issue, a court’s erroneous decision on that issue that is later overturned will not result in the lawyer being liable for the client’s costs to appeal that issue.

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