

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JOHN EVANS,)	
)	No. 292, 2000
Plaintiff Below,)	
Appellant,)	Court Below: Superior Court
)	of the State of Delaware in
v.)	and for New Castle County
)	
NANCY JANE PERILLO,)	C.A. No. 00C-02-24 RRC
)	
Defendant Below,)	
Appellee.)	

Submitted: December 14, 2000

Decided: February 14, 2001

Before **VEASEY**, Chief Justice, **WALSH**, and **STEELE**, Justices.

This 14th day of February 2001, upon consideration of the briefs of the parties, it appears to the Court that:

1. William John Evans appeals from the judgment of the Superior Court dismissing his malpractice complaint against Nancy Perillo. Evans argues that the Superior Court should have granted him the opportunity to correct deficiencies in his complaint, that he produced a sufficient claim to withstand a motion to dismiss, that he did not waive a legal malpractice claim by signing a plea agreement and that the dismissal violated his constitutional right of equal protection.

2. This Court conducts a *de novo* review of Motions to Dismiss. All well-pled allegations will be viewed in the light most favorable to the non-moving

party.¹ The complaint sufficiently states a cause of action when a plaintiff can recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.²

3. On April 1, 1998, Evans pleaded guilty to three counts of first degree arson, first degree reckless endangering and insurance fraud involving a fire that destroyed his apartment in 1994. In exchange for the plea, the State dismissed pending arson and insurance fraud charges involving a 1991 fire that destroyed Evans' pickup truck that he had earlier reported stolen.

4. Nancy Perillo, an Assistant Public Defender, represented Evans when he entered the plea agreement. After entering his plea pursuant to his plea agreement, Evans filed a civil complaint alleging malpractice against Perillo. His complaint prays for \$6,000,000 in compensatory damages. Evans alleged that Perillo negligently violated several American Bar Association Standards, failed to act diligently, failed to keep Evans informed, failed to conduct a prompt investigation, failed to comply with appropriate discovery procedures and conspired with the prosecution to find him guilty.

5. The Superior Court found that Perillo's actions were protected by qualified immunity and that Evans did not plead facts which showed that his

¹ *Kershaw Excavating v. City Systems Inc.*, Del. Supr., 581 A.2d 1111 (1990).

² *Browne v. Robb*, Del. Supr., 396 A.2d 967 (1990).

attorney's actions constituted gross negligence or were motivated by bad faith.

6. The Superior Court found no grounds upon which it could grant Evans relief based on the allegations in his complaint. The Superior Court found that Evans did not substantiate with facts that Perillo violated ABA Standards. The Superior Court found no facts alleged which raised an issue that Perillo failed to act diligently and that Evans did not specify the materials and discovery that Perillo allegedly failed to provide him. Finally, the Superior Court found that Evans did not allege any specific facts supporting his conspiracy claim.

7. The Superior Court found that Evans understood the plea agreement he signed and that Evans entered the plea agreement knowingly, voluntarily and intelligently. The Superior Court found that Evans waived his claim for any Constitutional violations because “a properly entered plea of guilty constitutes a waiver of all errors or defects occurring before the plea[.]”³

8. To the extent that the civil complaint below claims fairly that granting public defenders qualified immunity of any kind deprives the “economically challenged” the right to equal protection of the law, that agreement was never made to the Superior Court and may not be taken up in the first instance on appeal.⁴ The interests of justice exception to this well established practice does

³ *Fullman v. State*, Del. Supr., No. 285, 1988, Christie, C.J. (Feb. 2, 1989) (ORDER) (citing *State v. Stoesser*, Del. Super., 183 A.2d 824, 825 (1962)).

⁴ Del. Supr. Ct. R. 8.

not, in the absence of any cited authority, suggest any change in Delaware case law.⁵

NOW, THEREFORE, IT IS ORDERED, for the reasons stated above, the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁵ See *Vick v. Haller*, Del. Supr., No. 149, 1986, Christie, J. (March 2, 1987) (Order).