

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00052-CV

LARRY LAWSON, Appellant

V.

RAQUEL WEST, Appellee

On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-185,348

MEMORANDUM OPINION

Larry Lawson, acting *pro se*, filed a civil suit against Raquel West, his court-appointed attorney in a criminal case. West filed a summary judgment motion asserting a lack of causation. The trial court granted the motion. Lawson filed this appeal.

West argued that Lawson was prohibited from bringing the action because he was not exonerated in the criminal case. In *Peeler v. Hughes & Luce*, 909 S.W.2d 494, 498 (Tex. 1995), the Court held that, “as a matter of law, it is the illegal conduct rather than the negligence of a convict’s counsel that is the cause in fact of any injuries flowing from the conviction, unless the conviction has been overturned.” West attached to her motion

documents from the criminal action. The documents establish that Lawson pleaded guilty to the offense of delivery of a controlled substance, enhanced by two prior felonies. The judgment reflects that the trial court sentenced Lawson to fifteen years in prison. Lawson's appeal was dismissed for want of jurisdiction. *See Lawson v. State*, No. 09-06-326 CR, 2006 WL 2623183 (Tex. App.—Beaumont Sept. 13, 2006, no pet.) (not designated for publication). Lawson filed an application for habeas corpus with the Court of Criminal Appeals. He complained that, among other things, his trial counsel failed to investigate his mental history. The Court of Criminal Appeals dismissed his habeas corpus application. Lawson's conviction has not been overturned.

Lawson maintains he negated one or more of the elements that West must prove to succeed on a motion for summary judgment. Lawson argues he alleged ineffective assistance of counsel, and the lack of adequate representation resulted in the violation of his rights. He references mental illness and mental retardation, and he contends he was incompetent to stand trial. Lawson alleges he informed his trial attorney in the criminal action of the mental disorder. He alleges she did nothing in response. Lawson argues West had a legal duty to have him examined or to bring his condition to the trial court's attention. He maintains that her failure to do so constituted ineffective assistance of counsel and deprived him of his liberty and due process rights.

A complaint about an attorney's "care, skill, or diligence" in representing a client sounds in negligence. *Beck v. Law Offices of Edwin J. (Ted) Terry, Jr., P.C.*, 284 S.W.3d

416, 426 (Tex. App.—Austin 2009, no pet.). Texas law does not permit fracturing a legal malpractice claim. *Aiken v. Hancock*, 115 S.W.3d 26, 28 (Tex. App.—San Antonio 2003, pet. denied). The Second Court of Appeals explained the principle as follows:

Generally, courts do not allow a case arising out of an attorney's alleged bad legal advice or improper representation to be split out into separate claims for negligence, breach of contract, or fraud, because the "real issue remains one of whether the professional exercised that degree of care, skill, and diligence that professionals of ordinary skill and knowledge commonly possess and exercise." Regardless of the theory a plaintiff pleads, as long as the crux of the complaint is that the plaintiff's attorney did not provide adequate legal representation, the claim is one for legal malpractice.

Kimleco Petroleum, Inc. v. Morrison & Shelton, 91 S.W.3d 921, 924 (Tex. App.—Fort Worth 2002, pet. denied) (internal citations omitted). The allegations that West did not have Lawson examined for mental incompetency, and did not inform the trial court of Lawson's alleged condition, are claims that West was negligent in her representation of Lawson in the criminal case.

To recover on a legal malpractice claim, a plaintiff must prove that a breach of duty proximately caused the plaintiff's injury. *Peeler*, 909 S.W.2d at 496. The trial court may grant summary judgment if it is shown that the attorney's act or omission was not a proximate cause of damages. *Id.* at 498. A convict's criminal conduct is considered the sole proximate cause of the conviction and its consequences. *Id.* A person who is convicted of a crime may raise a proximate cause issue if he has been exonerated of the crime. *Id.* at 497-98. Lawson has not been exonerated. No material issue of fact exists on

the proximate cause element of the legal malpractice action. The trial court did not err in granting summary judgment.

We overrule Lawson's issues and affirm the judgment.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on March 22, 2011
Opinion Delivered May 19, 2011

Before Gaultney, Kreger, and Horton, JJ.