

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

June 3, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2128

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ROY T. TRAYNOR,

PLAINTIFF-APPELLANT,

V.

EARL H. MUNSON, JR. AND LAFOLLETTE & SINYKIN,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Marathon County:
JAMES P. JANSEN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Roy Traynor appeals a summary judgment that dismissed his tortious interference with contract lawsuit against Earl Munson and La Follette & Sinykin. Traynor and Munson are both lawyers in private practice. Traynor filed a real estate lawsuit against Lincoln County on behalf of Jerry and Arlene Olson to recover real estate the Olsons had lost to the county for unpaid

real estate taxes. Jerry Olson is Munson's cousin. After the trial court dismissed the Olson's lawsuit against Lincoln County, the Olsons refused to pay Traynor the balance of the fees demanded. Traynor then commenced a fee collection lawsuit against them for breach of contract. When Traynor suspected that Munson helped the Olsons prepare responsive pleadings to the fee collection lawsuit, Traynor sued Munson for tortious interference with the Traynor-Olson legal services contract.

The trial court granted summary judgment dismissing Traynor's claim that Munson tortuously interfered with the contract that existed between Traynor and the Olsons. Summary judgment is properly granted when there are no disputed issues of material fact. *Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473, 476 (1980). Matters of summary judgment are reviewed by appellate courts in the same fashion as trial courts. *Newhouse v. Citizens Sec. Mut. Ins. Co.*, 170 Wis.2d 456, 465, 489 N.W.2d 639, 642 (Ct. App. 1992). We conclude that the trial court properly granted summary judgment dismissing Traynor's claim against Munson for tortious interference with Traynor's contract with the Olsons.

Lawyers have qualified immunity from third party liability. *Strid v. Converse*, 111 Wis.2d 418, 428-30, 331 N.W.2d 350, 356-57 (1983). This immunity applies to advice given to clients.¹ A lawyer who advises his client that he has a defense against a claim asserted by another may properly advise his client to refuse to pay the claim and to contest the claim in a court of law. It is not tortious interference with the contract between his client and another if an attorney gives such advice. See **RESTATEMENT (SECOND) OF TORTS** § 770, at 46-48, and § 772, at 50-52 (1979).

¹ We need not consider whether Munson is entitled to absolute immunity in light of our conclusion that Munson's qualified immunity is sufficient to dispose of Traynor's claim.

Traynor argues that Munson has lost the benefit of the qualified privilege because his motivation for advising the Olsons was based on Munson's self-interest. Traynor alleges that Munson was responsible for the erroneous address provided to the officials in Lincoln County, which resulted in Olsons' failure to receive notices of the delinquent taxes due on his property. Traynor reasons that Munson's malpractice occasioned the tax sale and, accordingly, Munson was seeking to conceal his malpractice in advising the Olsons to resist the payment being sought by Traynor for services rendered in the litigation with Lincoln County. This argument fails for two basic reasons. First, even though there is some evidence that the tax bills were sent to an incorrect address, the Olsons failed to pay taxes on the real estate in Lincoln County for over four years and apparently made no inquiry concerning the property for twelve years. It is difficult to conclude that the failure to get notice of delinquent taxes for such an extended period of time resulted in the Olsons' nonpayment of the real estate taxes because the Olsons must have known that some tax was due on their property annually.

Second, the Olsons paid Traynor \$5,619.59 in costs and fees, but disputed an additional \$6,873.55 in unpaid costs and fees. The suggestion that Munson's advice to not pay Traynor's fee is part of a scheme to conceal Munson's malpractice is without logic or reason. The failure to pay the fees would more certainly lead to litigation and a disclosure of the reasons for the tax sale in Lincoln County than would the mere payment of Traynor's fee. No reasonable trier of fact could conclude that Munson's advice to not pay on Traynor's claimed fee was motivated by a desire to conceal his malpractice.

Finally, we note that the qualified privilege enjoyed by a lawyer in giving advice to his client is lost when the advice given is dishonest, malicious or

ill motivated. See *Strid*, 111 Wis.2d at 428-30, 331 N.W.2d at 356-57; **RESTATEMENT** § 770, at 46-48, and § 772, at 50-52. There is no evidence that Munson's advice regarding the reasonableness of the total amount being claimed by Traynor was dishonest, malicious or ill motivated. An attorney giving advice as to the value of services rendered does not lose his qualified immunity. We conclude that Munson retained qualified immunity based upon his giving reasonable, honest and effective legal advice to his client.

Based on the foregoing, we conclude that the trial court properly granted summary judgment dismissing Traynor's claim against Munson for tortious interference with Traynor's contract with Olson. Because no reasonable trier of fact could conclude the advice given was dishonest or malicious, Munson's advice to resist Traynor's collection efforts was in the parameter of a lawyer's qualified immunity in advising his client.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

