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Predecessor Attorney Not Liable for Breach of Fiduciary Duty Following Adverse Trial Outcome

By Mark Hancock

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In an unpublished decision, *Robins v. Kuhn et.*, the California Court of Appeal (Fourth Appellate District, Division Three) affirmed summary judgment for defendant attorneys, dismissing a former client's suit for breach of fiduciary duty. In the underlying action, the plaintiff and his two brothers had sued a theater owner for wrongful death, Unruh Civil Rights Act violations, and violations of the Public Accommodations Act relating to their father's fall at the theatre and subsequent death.

Two of the three brothers settled all wrongful death and survival claims with the theater, but plaintiff brother continued his suit against the theater in his individual capacity, substituting new counsel for mandatory settlement conferences and trial. At trial, the jury rendered a defense verdict and awarded statutory fees and costs against plaintiff for over \$250,000. Plaintiff then sued his former attorneys for breach of fiduciary duty, alleging they failed to investigate his case sufficiently and warn him of the possibility that he could be responsible for the theater's attorney fees and costs if he lost.

Analyzing the existence of a fiduciary duty, the Court of Appeal affirmed the trial court's grant of summary judgment for the former attorneys. The Court of Appeal found that after the substitution, the former attorneys did not have a continuing duty to investigate further or advise their former client about the effects of his brothers' settlement because they were not attorneys for Plaintiff at the time of the settlement. Additionally, the court found that the former attorneys' inclusion of civil right violations in the initial complaint and their alleged failure to advise Plaintiff of the risk of paying defense fees if he lost did not cause plaintiff's injury.

Applying a proximate causation standard rather than "but for" causation as the plaintiff preferred, the court concluded, "[D]efendants' drafting of the complaint is "not 'so closely connected' to the award of attorneys fees as to justify imposing liability." Rather, the brothers' settlement of the wrongful death and survival claims was the proximate cause of the attorney fees imposed on Plaintiff, not the former attorneys' alleged acts or omissions.

The decision can be found at 2011 Cal.App.Unpub. LEXIS 3975.