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If My Client Sues Me, Can I Blame the Judge?

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MUCH IS EXPECTED OF attorneys these days, but they cannot be expected to “guarantee a perfectly functioning judiciary or an error-free trial.” So held the Texas Supreme Court in 2016’s *Stanfield v. Neubaum*, which addressed the novel legal question whether errors committed by a trial court can constitute a superseding cause of the client’s harm, absolving his or her attorney of legal malpractice liability for the harm caused by an adverse judgment.

In *Stanfield*, attorneys Brenton Stanfield, Thomas Stone, Stone & Associates, LLP, and Jimmy Van Knighton II (collectively, “Trial Counsel”) represented defendants Joe and Barbara Neubaum in a usury trial, which ended with a hefty \$4 million jury verdict against the couple and pink slips for Trial Counsel. Proceeding with new counsel on appeal, the Neubaums successfully obtained reversal of the verdict, on the grounds that the trial court had issued erroneous jury instructions concerning a



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key question of agency liability. In an attempt to recoup the six-figure bill they incurred pursuing their appeal, the Neubaums sued Trial Counsel for malpractice—arguing that the trial court’s error would have been rendered immaterial, and that a favorable jury verdict would still have been handed down notwithstanding that error, had Trial Counsel adequately presented evidence pertaining to several other issues in the suit.

Challenging the causation element of the Neubaums’ malpractice claims, Trial Counsel sought and obtained summary judgment on the ground that the trial court’s error was the sole cause of the Neubaums’ injury. On appeal, a divided three-judge appellate panel reversed 2-1, holding that Trial Counsel’s failure to adduce expert testimony on the issue of causation was fatal to their motion. (The dissenting justice disagreed,

concluding that expert testimony was unnecessary because the undisputed facts conclusively established that the trial court's erroneous jury instructions constituted a new and independent cause of harm.) Last March 30, the case came before the Texas Supreme Court—which held that the erroneous jury instructions were, in fact, a new and superseding cause of the Neubaums' damages that precluded the Neubaums from recovering from Trial Counsel under their negligence theories. In so holding, the Stanfield court explained that an attorney's negligence can only be said to "cause" a client's injury to the extent that it is both the cause in fact (i.e., but for their negligence, the injury would not have occurred) and the proximate and foreseeable cause (as measured from the perspective of a person of ordinary intelligence).

The Stanfield decision accordingly stands for the proposition that judicial error can constitute a superseding cause of harm to a party in litigation—thereby absolving an attorney of any potential liability stemming from other purported malpractice—so long as the error was not a reasonably foreseeable result of, and was unrelated to and operated independently of, any alleged negligence by the attorney.

Texas is not alone in reaching this conclusion. Several other jurisdictions have adopted

similar rules in recent years, including:

- Illinois. In 2014's *Huang v. Brenson*, the Illinois Court of Appeal was tasked with evaluating a situation that closely paralleled Stanfield. In *Huang*, the trial court in an underlying action had erroneously awarded noneconomic damages to a plaintiff, and the defendant—who blamed his attorney—sought to recover the fees that he subsequently incurred in the course of pursuing a successful appeal of that award. As in Stanfield, the Illinois Court of Appeal held that the trial court's misapplication of law in allowing the wrongful recovery of noneconomic damages broke any chain of causation that might otherwise have permitted recovery of the additional fees on a negligence theory.

- California. In 2014's *Kasem v. Dion-Kindem*, the California Court of Appeal similarly held that an attorney did not commit legal malpractice in a breach of contract suit brought by a lessee against a lessor, where he failed to provide for expert testimony establishing that raw sewage (which had flowed into the lessee's property from the lessor's property) constituted "Hazardous Material" under the terms of the lease. As in Stanfield, the California Court of Appeal found that the harm stemmed instead from an unrelated judicial error: the trial court had improperly

denied the attorney's request for judicial notice of statutes that, if noticed, would have established, as a matter of law, that the sewage qualified as "Hazardous Material" under the lease.

- Utah. Finally, in the 2007 case *Crestwood Cove Apartments Business Trust v. Turner*, the Supreme Court of Utah held that an attorney's alleged failure to vigorously contest the application of the unlawful detainer statute in an action to invalidate a sheriff's sale of his client's apartment complex was insufficient to sustain malpractice liability, because the statute was plainly inapplicable to the facts of the case and thus its application in the first instance constituted fundamental judicial error.

As the Stanfield decision emphasized, clients who retain legal counsel are certainly deserving of competent legal representation, and attorneys who make major strategic mistakes can and often are held to account for failing to provide such representation. But competence does not guarantee the right result, even in the demanding field of law—and where the court's independent error is found to be the proximate cause of an adverse judgment, the client's attorneys will not be held liable for the ensuing harm.

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