

1986

Marlin L. Stewart and Candice Stewart v. Aldine J. Coffman, Jr, Penelope Dalton Coffman, Coffman, Coffman and Woods : Amicus Brief

Utah Court of Appeals

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DOCKET NO. 860318 IN THE SUPREME COURT OF THE STATE OF UTAH

MARLIN L. STEWART and CANDICE
STEWART, husband and wife,

Plaintiffs-Appellants,

vs.

ALDINE J. COFFMAN, JR.,
PENELOPE DALTON COFFMAN,
COFFMAN, COFFMAN and WOODS, a
professional corporation also
known as COFFMAN and COFFMAN,
ANTHONY M. THURBER, and
KENNETH A. OKAZAKI, jointly
and severally,

Defendants.

(PENELOPE DALTON COFFMAN,
Defendant-Respondent)

860318-CA
Case No. 860167

BRIEF OF AMICUS CURIAE

ON APPEAL FROM THE SEVENTH JUDICIAL DISTRICT COURT OF
GRAND COUNTY, STATE OF UTAH
HONORABLE BOYD BUNNELL
District Judge

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COURT OF APPEALS

IN THE SUPREME COURT OF THE STATE OF UTAH

MARLIN L. STEWART and CANDICE	:	
STEWART, husband and wife,	:	
	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	Case No. 860167
	:	
ALDINE J. COFFMAN, JR.,	:	
<u>PENELOPE DALTON COFFMAN,</u>	:	
COFFMAN, COFFMAN and WOODS, a	:	
professional corporation also	:	
known as COFFMAN and COFFMAN,	:	
ANTHONY M. THURBER, and	:	
KENNETH A. OKAZAKI, jointly	:	
and severally,	:	
	:	
Defendants.	:	
	:	
(PENELOPE DALTON COFFMAN,	:	
Defendant-Respondent)	:	

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and severally,	:	
	:	
Defendants.	:	
	:	
(PENELOPE DALTON COFFMAN,	:	
Defendant-Respondent)	:	

BRIEF OF AMICUS CURIAE

STATEMENT OF THE ISSUE PRESENTED ON APPEAL

The issue presented on appeal is whether the lower court was correct in holding that a shareholder of a professional corporation is not vicariously liable for the alleged malpractice of another shareholder of the professional corporation.

STATEMENT OF FACTS

This brief adapts and incorporates herein the Defendant-Respondent's statement of facts.

SUMMARY OF ARGUMENT

The Utah Professional Corporation Act incorporates the Utah Business Corporation Act which insulates shareholders from the torts or misconduct of other shareholders. Therefore, the lower court was correct in holding that Penelope D. Coffman was not vicariously liable for the alleged malpractice of another shareholder of the professional corporation.

ARGUMENT

THE UTAH PROFESSIONAL CORPORATION ACT
PROVIDES THAT A SHAREHOLDER OF A PROFES-
SIONAL CORPORATION SHALL NOT BE LIABLE FOR
THE TORTS OF OTHER SHAREHOLDERS IN THE
CORPORATION.

State statutes which allow for professional corporations have generally been grouped into three categories. The first and largest category of statutes provides that the liability of a shareholder of a professional corporation is limited to torts of that shareholder. The second category holds the shareholder to the same liability as existed prior to incorporation. The third category provides that the shareholder retains no liability except that provided by the new professional corporation statute. K. Strong and K. Holdsworth, Professional Corporations, 8-10 (1972).

The Utah Professional Corporation Act falls within the first category which limits the liability of the shareholder. Id. The Act states as follows:

This act does not alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services.

Utah Code. Ann. §16-11-10 (1987). The Act refers to the professional person as "a person". This shows the legislators intended to confine such professional exposure to a personal relationship. K. Strong and K. Holdsworth, supra. This conclusion is supported by Section 16-11-3 which states that the purpose of the Act is to preserve "the established professional aspects of the personal relationship between the professional person and those he serves."

The Utah Professional Corporation Act gives professional corporations the rights and privileges of other corporations.

The Utah Business Corporation Act shall be applicable to professional corporations, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations, except where inconsistent with this act. This act shall take precedence in the event of any conflict with provisions of the Utah Business Corporation Act or other laws.

Utah Code Ann. §16-11-5 (1987). The Utah Business Corporation Act insulates one shareholder from the torts or misconduct of other shareholders. Utah Code Ann. §16-10-23 (1987). There appears to be no inconsistency with respect to the professional exposure of a shareholder as between the Utah Professional Corporation Act and the Utah Business Corporation Act. Thus

the general corporate statute which limits the liability of a shareholder should apply to a professional corporation.

K. Strong and K. Holdsworth, supra.

Other states have adopted this interpretation of their professional corporation act and limited the liability of a shareholder. The Nevada Supreme Court held that "[a] member of professional legal corporation in Nevada is not individually liable for the tortious acts of other members of the professional legal corporation unless he/she personally participated in those tortious acts." Grayson v. Jones, 710 P.2d 76, 76-77 (Nev. 1985). A Colorado court gave a professional service corporation "all powers and privileges of other corporations, under Colorado law. . . ." Network Affiliates v. Robert E. Schack, P.A., 682 P.2d 1244, 1246 (Colo. App. 1984). The Supreme Court of Rhode Island concluded that "the lawyer-shareholders who do not participate in the rendering of the services out of which an actionable wrong arises will be free from personal liability" In the Matter of Rhode Island Bar Ass'n, 106 R.I. 752, 263 A.2d 692, 697 (1970).

The Indiana Professional Corporation Act, which is similar to the Utah Professional Corporation Act, protected a physician from the malpractice of another shareholder of a professional corporation when the physician's sole connection with the tort was his ownership of shares in the corporation. Birt v. St.

Mary Mercy Hosp. of Gary, Inc., 370 N.E.2d 379 (Ind. App. 1977). In Birt, the court found that the non-treating shareholders were not present when the plaintiff was treated, exercised no control over and had no right to control the treating physician, and did not have a physician-patient relationship with the plaintiff. Id. at 380.

Limited liability for a shareholder insulates the innocent shareholder from liability and protects the reasonable expectations of the public. Comment, Shareholder Liability and Professional Legal Corporations: A Survey of the States, 47 U. Pitt. L. Rev. 817 (1986). Unlimited liability is not necessary to protect a client's expectation that an entire firm will be engaged on his behalf as opposed to just the single attorney with whom he deals. The attorney-client relationship is a personal relationship in which the attorney has the expertise of the entire firm available to him. Id.; cf., Birt, supra.

Limiting a shareholder's liability will still allow adequate protection for a client's claim against a legal professional corporation. A client's claim may be satisfied out of the following sources: (1) The personal assets of the liable attorney, (2) the malpractice insurance of the liable attorney; (3) the malpractice insurance of the professional corporation and (4) the assets of the corporate entity. Comment, Shareholder Liability and Professional Legal Corporations, supra.

Limited liability among shareholders of professional legal corporations should not adversely affect the reputation and integrity of the bar or limit the attorney's personal accountability. Conscientious shareholders are likely to scrutinize the acts of their fellow shareholder-attorneys to maintain the professional reputation of the corporation. Individual attorneys will remain liable to their clients for professional malpractice. Id.

CONCLUSION

Shareholders of a professional corporation are not liable, under the Utah Professional Corporation Act, for the acts or omissions of other shareholders of the corporation without joint participation or personal involvement in the rendering of service. Therefore, we respectfully submit that the judgment of the court below should be affirmed.

DATED this 1st day of July, 1987.

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CERTIFICATE OF SERVICE

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