Hodges v. Carter, 80 SE 2d 144 - NC: Supreme Court 1954

80 S.E.2d 144 (1954)
239 N.C. 517

HODGES
v.
CARTER et al.

No. 21.

Supreme Court of North Carolina.

February 24, 1954.

145 *145 Allen, Allen & Langley, Kinston, for plaintiff-appellant.

Grimes & Grimes, Rodman & Rodman, and L. H. Ross, Washington, for defendant appellees.

BARNHILL, Chief Justice.

This seems to be a case of first impression in this jurisdiction. At least counsel have not directed our attention to any other decision of this Court on the question here presented, and we have found none.

Ordinarily when an attorney engages in the practice of the law and contracts to prosecute an action in behalf of his client, he impliedly represents that (1) he possesses the requisite
146 degree of learning, *146 skill, and ability necessary to the practice of his profession and which others similarly situated ordinarily possess; (2) he will exert his best judgment in the prosecution of the litigation entrusted to him; and (3) he will exercise reasonable and ordinary care and diligence in the use of his skill and in the application of his knowledge to his client's cause. McCullough v. Sullivan, 102 N.J.L. 381, 132 A. 102, 43 A.L.R. 928; In re Woods, 158 Tenn. 383, 13 S.W.2d 800, 62 A.L.R. 904; Great American Indemnity Co. v. Dabney, Tex. Civ.App., 128 S.W.2d 496; Davis v. Associated Indemnity Corp., D.C., 56 F.Supp. 541; Gimbel v. Waldman, 193 Misc. 758, 84 N.Y.S.2d 888; Annotation 52 L.R.A. 883; 5 A.J. 287, § 47; Prosser Torts, p. 236, sec. 36; Shearman & Redfield Negligence, sec. 569.

An attorney who acts in good faith and in an honest belief that his advice and acts are well founded and in the best interest of his client is not answerable for a mere error of judgment or for a mistake in a point of law which has not been settled by the court of last resort in his State and on which reasonable doubt may be entertained by well-informed lawyers. 5 A.J. 335, sec. 126; 7 C.J.S., Attorney and Client, § 142, page 979; McCullough v. Sullivan, supra; Hill v. Mynatt, Tenn.Ch.App., 59 S.W. 163, 52 L.R.A. 883.

Conversely, he is answerable in damages for any loss to his client which proximately results from a want of that degree of knowledge and skill ordinarily possessed by others of his profession similarly situated, or from the omission to use reasonable care and diligence, or from the failure to exercise in good faith his best judgment in attending to the litigation committed to his care. 5 A.J. 333, sec. 124; In re Woods, supra; McCullough v. Sullivan, supra; Annotation 52 L.R.A. 883.

When the facts appearing in this record are considered in the light of these controlling principles of law, it immediately becomes manifest that plaintiff has failed to produce a scintilla of evidence tending to show that defendants breached any duty the law imposed upon them when they accepted employment to prosecute plaintiff's actions against his insurers or that they did not possess the requisite learning and skill required of an attorney or that they acted otherwise than in the utmost good faith.

The Commissioner of Insurance is the statutory process agent of foreign insurance companies doing business in this State, G.S. § 58-153, Hodges v. New Hampshire Insurance Co., 232 N.C. 475, 61 S.E.2d 372, and when defendants mailed the process to the Commissioner of Insurance for his acceptance of service thereof, they were following a custom which had prevailed in this State for two decades or more. Foreign insurance companies had theretofore uniformly ratified such service, appeared in response thereto, filed their answers, and made their defense. The right of the Commissioner to accept service of process in behalf of foreign insurance companies doing business in this State had not been tested in the courts. Attorneys generally, throughout the State, took it for granted that under the terms of G.S. § 58-153 such acceptance of service was adequate. And, in addition, the defendants had obtained the judicial declaration of a judge of our Superior Courts that the

acceptance of service by the Commissioner subjected the defendants to the jurisdiction of the court. Why then stop in the midst of the stream and pursue some other course?

Doubtless this litigation was inspired by a comment which appears in our opinion on the second appeal, Hodges v. Home Insurance Co., 233 N.C. 289, 63 **S.E.2d** 819. However, what was there said was pure dictum, injected—perhaps ill advisedly—in explanation of the reason we could afford plaintiff no relief on that appeal. We did not hold, or intend to intimate, that defendants had been in any wise neglectful of their duties as counsel for plaintiff.

147 *147 The judgment entered in the court below is

Affirmed.

PARKER, J., took no part in the consideration or decision of this case.