

THE DOCTRINE OF JUDICIAL ESTOPPEL IS AN EFFECTIVE TOOL IN THE DEFENSE OF “SETTLE AND SUE” CLAIMS

Roth v. Cronin, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2017 (Docket No. 329018), lv den on October 17, 2017 (SC Docket No. 155887)

By Karen A. Smyth, Esq. of Lipson, Neilson, Cole, Seltzer & Garin, P.C.

Can a party who attests under oath their understanding of settlement terms placed on the record and the consequences of their decision to settle, later sue their lawyer for “tricking” or “coercing” them to settle? The decision in *Roth* is “No.”

In *Roth v. Cronin*, the Michigan Court of Appeals held plaintiff was judicially estopped from asserting in the malpractice lawsuit that she did not want to settle her divorce case. The trial court granted defendants dismissal, finding the plaintiff failed to submit evidence necessary to prove that she could have achieved a better result. The appellate court, not reaching this issue, affirmed the dismissal finding the judicial estoppel doctrine barred plaintiff from asserting an inconsistent position in a subsequent proceeding.

Plaintiff, Sheryl Roth, retained Sabrina Cronin, of The Cronin Law Firm, to represent her in the divorce action filed by her now ex-husband. On March 28, 2012, the parties appeared for a court ordered settlement conference. At this conference, the husband’s attorney informed the judge that an agreement to settle had been reached by the parties, placing the terms of the settlement on the record. The judge asked plaintiff, under oath, a series of questions including whether she understood (1) the terms of the settlement, (2) that she would be bound by the terms of the settlement if accepted, and (3) that she had the right to go to trial, where she could get a better or worse result. Plaintiff responded affirmatively to all these questions. She also testified that it was her choice and decision to settle based on the terms set forth on the record. The judge stated he would grant a judgment of divorce consistent with those terms, and a judgment subsequently entered on those terms.

In March 2014, plaintiff sued her lawyer (and her law firm), claiming Ms. Cronin negligently engaged in settlement discussions without having determined the value of the marital estate. Defendants filed a motion seeking summary dismissal, arguing that plaintiff had not submitted

evidence to create a genuine issue of material fact that defendants were negligent and that any alleged negligence was a proximate cause of any injury. The trial court agreed, finding that plaintiff failed to offer proofs that she would have obtained a better result had she proceeded to trial. Plaintiff appealed claiming the trial court wrongly found that the evidence was insufficient to create a genuine issue of material fact on the questions of negligence and causation.

The Michigan Court of Appeals Decision

The Court of Appeals found while it may be true that the plaintiff failed to prove she could have achieved a better result, it was affirming dismissal based on the judicial estoppel doctrine. It reasoned that plaintiff's claim that her agreement to settle was the result of her attorney's "trickery" or "coercion" lied at the "heart" of plaintiff's malpractice case; but, the judicial estoppel doctrine did not allow her to assert inconsistent positions. The doctrine, as the Court noted, is a "tool" used by courts to impede those litigants that "play, 'fast and loose' with the legal system."

In holding that the doctrine of judicial estoppel barred plaintiff's claim, the Court rejected plaintiff's assertions that she did not want to settle, did not understand the purpose of the hearing, and was simply following her attorney's instructions on how to answer questions at the hearing, as it was wholly contrary to the position she took during the divorce hearing. In so doing, the Court found that plaintiff unequivocally agreed to the terms of the settlement, representing to the Court that it was her choice and decision to settle based on the terms placed on the record.

Significance of Decision

This case is significant as it shows how developing the record can effectively stave off the "settle and sue" lawsuit against the attorney brought on by "buyer's remorse".

Contact Karen Smyth

Phone: 248-593-5000

Email: ksmyth@lipsonneilson.com