The Legal Intelligencer

'An Unjust Lawyers' Holiday': Pa. Justice Says Court Blew Chance to Rethink Rule in Malpractice Suit Over 'Bad' Settlements

Justice David Wecht said that the court's focus on clarifying the limitations of a 1991 decision's scope is "doomed to fail because there is nothing in [it] worth saving."

By Aleeza Furman | July 20, 2022

Pennsylvania Supreme Court Justice David N. Wecht. Courtesy photo

The Pennsylvania Supreme Court ruled that a plaintiff may continue with a malpractice lawsuit against her former attorneys over a settlement she later found unacceptable.

But the decision was a retrained one, in that the case invited an opportunity for the justices to undo a 30-year precedent barring clients from suing their lawyers over bad settlements. They held back from addressing the merits of the rule at all.

The majority's Tuesday decision to refrain from reconsidering the doctrine established in the 1991 opinion *Muhammad v. Strassburger* prompted disagreement from Justices David Wecht and Sallie Mundy. Wecht issued a particularly emphatic rebuke in his 20-page concurring opinion (https://www.pacourts.us/assets/opinions/Supreme/out/J-84-2021co%20-%20105212442191914454.pdf?cb=1), which called the move a squandered opportunity to fix a "deeply unjust lawyers' holiday."

"When a litigant comes before the court urging us to reconsider an obviously unjust decision that was poorly reasoned, inconsistently applied and criticized both by the legal academy and by courts across the country, I do not believe we should skirt the issue so nonchalantly," Wecht wrote.

In a one-paragraph concurring opinion (https://www.pacourts.us/assets/opinions/Supreme/out/J-84-2021co1%20-%20105212442191914635.pdf?cb=1), Mundy agreed with Wecht that the court should have used the case at hand, captioned *Khalil v. Williams*, as a vehicle to overturn *Muhammad*.

Justice Debra Todd's majority opinion (https://www.pacourts.us/assets/opinions/Supreme/out/J-84-2021mo%20-%20105212442191913961.pdf?cb=1), which Chief Justice Max Baer and Justices Christine Donohue and Kevin Dougherty joined, said that addressing the doctrine was unnecessary "notwithstanding the concurring justices' eagerness to dispose of *Muhammad*" because it was not directly implicated in *Khalil*.

The plaintiff raised challenges to both the doctrine and the Superior Court's ruling on appeal, and since it the high court addressed the latter question, it declined to consider broader issues with *Muhammad*. Virginia McMichael of the Appellate Law Group, the plaintiffs attorney, said that while the second issue gave the court an out, not raising it would have been a disservice to her client.

"I certainly would have liked them to consider the *Muhammed* doctrine because I think it is a bad decision," said McMichael. She said the rule has made Pennsylvania "almost a laughingstock" among other jurisdictions.

The court determined that plaintiff Ahlam Khalil may bring legal malpractice claims against now-defunct Williams Cuker Berezofsky and her two former attorneys over a settlement that prevented her from proceeding with a property damage suit. Wecht and Mundy agreed with the majority's conclusion, but they broke with its reasoning that the limits of *Muhammad*'s scope—not any issues inherent to the doctrine—allowed the plaintiff to move forward with her suit.

The majority ruled that because Khalil was alleging her counsel was negligent in their legal advice and not challenging the value of the settlement, her claims were not precluded by *Muhammad*. The decision reversed in part the Superior Court's ruling—which largely hinged on the applicability of an exception in instances of fraud—and remanded the case to the trial court.

"The Superior Court wholly misconstrued appellant's complaint by focusing on only appellant's fraud-based claims, while ignoring her legal malpractice claims," Todd wrote.

In his concurring opinion, Wecht said that the court's focus on clarifying the limitations of *Muhammad*'s scope is "doomed to fail because there is nothing in *Muhammad* worth saving."

"*Muhammad* was so illogical that it has become something rare in the law: a true national outlier. You can search from coast to coast, but you will not find another state where they kick legal malpractice plaintiffs out of court and call it 'public policy,'" wrote Wecht. "Indeed, it appears that the only jurists in the nation who have any fondness for *Muhammad* are my learned colleagues in the majority today."

During the December oral arguments (https://www.law.com/thelegalintelligencer/2021/12/08/why-are-lawyers-special-asks-justice-examining-rule-barring-suits-over-bad-settlements/) for the case, Wecht scrutinized the doctrine for appearing to provide attorneys protections not afforded to practitioners in other fields. He repeated that concern in his opinion and rejected the *Muhammad* court's logic that allowing suits over unsatisfactory settlements would stifle resolutions and lead to rampant malpractice litigation.

Wecht derided the reasoning behind the decision as "almost shamefully thin," "almost too silly for words," and unable to "even pass the straight-face test."

In her more temperate concurrence, Mundy wrote that "there does not seem to be any reason injured clients should be barred from recovery if they can prove negligence, damages and proximate causation, as in any other tort case."

"You now have two of seven justices that say 'we need to get rid of *Muhammad,*" McMichael said. She said that while the high court's Tuesday ruling was case-specific, some other case challenging in the doctrine in the future may make better headway.

James Kahn of Margolis Edelstein represented the defendants and declined to comment.
