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The Daily Record (Baltimore, MD.)

October 13, 1995, Friday

**SECTION:** Pg. 11

**LENGTH:** 509 words

**HEADLINE:** Court Gives Client New Chance To Prove Lawyer's Malpractice After Employment Discrimination Suit Died Due to Late Filing, Legal Malpractice Suit Dismissed; Now Jury Will Reconsider Case's Merits

**BYLINE:** By Catherine Brennan; Daily Record Legal Affairs Writer

**BODY:**

A Baltimore woman suing her former attorney -- who she claims allowed an employment discrimination suit to die of neglect -- yesterday won another chance to win damages in her legal malpractice action.

The Court of Special Appeals ruled that a Baltimore City Circuit Court's dismissal of the lawsuit was premature, as there still exists unresolved questions as to whether the woman herself could have rectified her attorney's alleged negligence.

"We are obviously disappointed by the decision, as we believe that under any analysis we should have prevailed," said Charles G. Byrd, attorney for William H. Proctor, the Baltimore attorney named in the malpractice suit.

Byrd indicated that his client would appeal the court's decision to the Court of Appeals.

The plaintiff in the malpractice action, and the underlying discrimination action, Betty Massimini, was terminated by her employer, Columbia Freestate Health Systems, in 1993.

Feeling that she had been the victim of racial discrimination, Massimini hired Proctor to sue Columbia.

Proctor filed suit in federal court, and was thereafter faced with Columbia's motion for summary judgment. He then allegedly forgot to oppose Columbia's motion, and the case was dismissed in March 1994.

In reinstating Massimini's suit against Proctor, the Court of Special Appeals noted that there was dispute as to what ensued after the employment discrimination claim was dismissed.

Massimini alleges that Proctor told her the case was lost because of her deposition testimony. It was not until three months later, she alleged, that she learned the case was actually dismissed because of Proctor's inaction.

In his defense, Proctor claimed he told Massimini of his oversight, and informed her that he intended to file a Rule 60(b) motion in federal court, which would vacate the dismissal if granted.

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Instead of allowing him to correct his mistake, Proctor alleges that Massimini fired him and hired attorney Ricky Nelson Jones to sue him for legal malpractice.

"It is undisputed that Massimini's new counsel never attempted to reopen the federal case against Columbia but, instead, instituted this malpractice action against Proctor," the court wrote in a per curiam opinion.

The lower court held that Massimini's failure to pursue her original employment discrimination claim prevented her from suing Proctor, as she "broke the chain of causation" between Proctor's error and the harm that befell her from the suit's dismissal because she failed to appeal to the federal court to reopen the case.

According to the Court of Appeals, "If Massimini immediately fired Proctor and did not allow him an opportunity to file a Rule 60(b) motion to rectify the situation, that circumstance might be deemed to be an unforeseeable event that would break the chain of causation."

The court concluded, however, that because the facts of the case were vigorously disputed, a jury must decide who ultimately is responsible for the dismissal of Massimini's discrimination suit.

**LOAD-DATE:** October 13, 1995