

IN THE IOWA DISTRICT COURT FOR HENRY COUNTY

---

MARY L. HOBBS and  
ROBERT O. HOBBS,

Plaintiffs,

vs.

GARY L. WIEGEL,

Defendant.

---

Law No. LALA011738

**RULING ON DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

The Defendant's Motion for Summary Judgment came before this Court on May 15, 2015. Mr. Curtis Dial appeared on behalf of the Plaintiffs. Mr. Robert Waterman appeared on behalf of the Defendant. Based upon the oral arguments and the pleadings on file, the Court finds and concludes as follows:

**FINDINGS**

The Plaintiffs' Petition alleging legal malpractice was filed on March 11, 2014. The Defendant filed an Answer on June 10, 2014. The Plaintiffs had until December 8, 2014, to certify expert witnesses.

On December 4, 2014, the Plaintiffs filed an unresisted Motion to Extend Time to Designate Expert Witnesses. The Plaintiffs were granted until January 10, 2015, to name their expert witnesses pursuant to Section 668.11, Iowa Code. They never filed any designation.

The Defendant served discovery upon the Plaintiffs on July 8, 2014. Even after the Court's Order of January 8, 2015, compelling the Plaintiffs to produce the requested answers to Interrogatories and production of documents, no discovery has ever been provided to the Defendant.

This case stems from the Plaintiffs' purchase of a campground located in Lee County, Iowa. The Plaintiffs hired the Defendant as their attorney for this transaction. His billing statement of June 9, 2010, (Defendant's Exhibit J) shows he prepared the

purchase contract, reviewed the updated abstract, and created a final loan opinion for the lending bank. The Plaintiffs did not request that the bank or the Defendant retain any monies in a trust account when closing documents were signed.

A dispute arose after the closing regarding the sewage disposal system on the campground property. The system needed to be modified in order to meet county and state requirements.

The Defendant corresponded with an attorney representing the prior owner. The Defendant advised the attorney his client should place \$75,000.00 in trust for costs necessary to update the sewer system. The previous owner would agree to no more than \$46,000.00. The Defendant advised the Plaintiffs to accept this. The Plaintiffs rejected the counteroffer and the prior owner withdrew it from consideration.

Ultimately, the Plaintiff used an attorney other than the Defendant to sue the prior owner. They were successful in obtaining a judgment. However, they have not been able to collect the entire judgment.

### **DISCUSSION OF FINDINGS AND CONCLUSIONS**

The Plaintiffs' Petition alleges the Defendant was negligent in one or more of the following ways:

- a) In failing to use all of the care, skill and knowledge in the representation of the Plaintiffs,
- b) In failing to represent the Plaintiffs zealously within the bounds of the law,
- c) In giving advice to the Plaintiffs without advising the Plaintiffs of the relevant considerations necessary to make an informed decision,
- d) In failing to collect and hold money owed to the Plaintiffs,
- e) In failing to properly prepare and review documents necessary in representing the Plaintiffs, and
- f) In failing to act in the best interest of the Plaintiffs.

In a case of legal malpractice, the Plaintiffs must introduce evidence that shows:

1. The existence of an attorney/client relationship giving rise to a duty;
2. The attorney, either by an act or failure to act, violated or breached that duty;
3. The attorney's breach of duty proximately caused injury to the client; and
4. The client sustained actual injury, loss, or damage.

**Schmitz v. Crotty, 528 N.W.2d 112, 115 (Iowa 1995).**

Attorney negligence is defined in Iowa Civil Jury Instruction 1500.3. That instruction states, "An attorney must use the degree of skill, care and learning ordinarily possessed and exercised by other attorneys in similar circumstances. A violation of this duty is negligence." See also **Schmitz, page 115.**

The Plaintiffs argue that the Defendant's acts, or failures to act, were so obvious that no expert testimony is needed. See **Baker v. Beal, 225 N.W.2d 106, 112 (Iowa 1975).** The Court disagrees.

The question whether the Defendant was negligent in his representation can only be answered with the testimony of an expert witness. The Defendant's actions do not obviously appear to be negligence. The Plaintiffs' expert would need to explain to the jury the required applicable standard of care, causation and damages. The Plaintiffs are unable to meet their burden of proof in this case without expert testimony.

The Plaintiffs have chosen not to designate an expert witness. Therefore, they will have no way of proving the Defendant's negligence at trial. The Defendant's Motion, then, must be granted.

### **RULING**

IT IS THEREFORE ORDERED that the Defendant's Motion for Summary Judgment is granted.

Clerk to notify



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** LALA011738      **Case Title** MARY HOBBS & ROBERT HOBBS VS GARY L WEIGEL

So Ordered

A handwritten signature in blue ink, appearing to read "John M. Wright", written over a horizontal line.

John M. Wright, District Court Judge,  
Eighth Judicial District of Iowa