Summary of SC93543, *Brian Nail v. Husch Blackwell Sanders LLP*
Appeal from the Jackson County circuit court, Judge Sandra C. Midkiff
Argued and submitted February 19, 2014; opinion issued June 24, 2014

Attorneys: Nail was represented by Timothy W. Monsees of Monsees & Mayer PC in Kansas City, (816) 361-5550, and Richard W. Martin Jr. of Martin & Wallentine LLC in Olathe, Kansas, (913) 764-9700. Husch Blackwell was represented by R. Lawrence Ward, James M. Humphrey, William E. Quirk and Anthony W. Bonuchi of Polsinelli PC in Kansas City, (816) 753-1000. The Missouri Organization of Defense Lawyers, which filed a brief as a friend of the Court, was represented by Bryan Nickell of Cozean & Collins LLC in Sikeston, (573) 471-1000.

Overview: A man who sued a law firm for damages, alleging negligence regarding its counsel to him regarding the exercise of his options to purchase stock in his former employer, appeals the trial court's judgment in favor of the law firm. In a 6-0 decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the judgment. The risk of a decline in the stock price was not a reasonable or probable cause of the firm's alleged negligence in advising the man of his remedies after the company's owner agreed to lock up his stock in the wake of the merger. The man also failed to prove that, but for the firm's allegedly negligent drafting of his settlement agreement with the company's owner, he would have obtained a more favorable outcome.

Facts: MTW Corporation employee Brian Nail acquired options to purchase stock in the company from its owner, Richard Mueller. When Nail's employment was terminated in March 2001, he negotiated a separation agreement that allowed him to exercise his stock options until September 2002. It also provided that, if MTW merged with another corporation, Nail's stock options would be converted into options to purchase stock in the successor company. In July 2001, The Innovation Group (TIG) acquired MTW in a stock-for-stock merger, which converted Nail's options to buy MTW stock into options to buy shares of TIG stock. As a condition of the merger, Mueller agreed to lock up the shares for one year, during which time he could not sell or transfer stock – including that to which Nail held options – without TIG board approval. Shortly before the merger became final, Nail retained the Husch Blackwell law firm for advice about protecting his stock option rights. Options including litigation were discussed, but in the spring of 2002, Nail and Mueller ultimately entered into a settlement agreement in which Mueller extended the option period by five years; placed into an escrow account the shares Nail had options to purchase; gave Nail a $50,000 credit toward the exercise of his options; and agreed to exercise and deliver, at the end of the lock-up period, a transfer notice and any other documents necessary to transfer the stock. In exchange, Nail released Mueller from liability for breach of the separation agreement. To ensure Mueller's compliance, the agreement included a liquidated damages clause providing that Mueller's failure to make timely delivery of the transfer notice would result in damages equal to the highest value of TIG stock during the remainder of the lock-up period without regard to the cost of exercising the options. The price of TIG stock initially increased during the lock-up period, reaching its zenith in August 2001, and then fell below its pre-lock-up value for the remainder of the lock-up period and the extended period for Nail to exercise his options. When the lock-up period ended, Mueller timely delivered the transfer notice, and Nail used his credit to purchase TIG shares. Nail later sued Husch Blackwell for legal malpractice, alleging its negligence caused him damages of more than $17 million. The trial court ultimately entered judgment for Husch Blackwell. Nail appeals.

AFFIRMED.

Court en banc holds: The trial court did not err in granting Husch Blackwell judgment. Like all negligence actions, legal malpractice requires proof of causation, including causation in fact (that, but for counsel's negligence, the result would have been different) and proximate causation (that the client's injury was a reasonable and probable consequence of counsel's action.)

(1) As a matter of law, the risk of a decline in Nail's stock price was not a reasonable or probable cause of Husch Blackwell's alleged negligence in advising Nail of his remedies after Mueller agreed to lock up his stock in the wake of the merger. It was the lock-up imposed by Mueller, not the law firm's advice, that prevented Nail from exercising his options earlier. And the value of Nail's stock options was diminished not by the law firm's alleged negligence but by vicissitudes in the market. A decline in stock price is outside the scope of harms that naturally, probably and forseeably would result from Hush Blackwell's alleged negligence. As such, there simply is no causal relationship between counsel's alleged negligence and TIG's stock price, a conclusion supported by decisions of other courts that have considered whether the client in a professional malpractice suit can recover for losses caused by the market.

(2) Nail failed to prove that, but for Husch Blackwell's allegedly negligent drafting of his settlement agreement with Mueller, he would have obtained a more favorable outcome. The drafting he suggests should have occurred, however, would have required the inclusion of a number of additional provisions, but Nail has not offered any evidence that Mueller would have agreed to any of these provisions or that he then would have breached them. In reality, Mueller scrupulously complied with his obligations under the settlement agreement, and there is nothing in the record to suggest he would not have done so had the settlement agreement been drafted as Nail argues it should have been, especially when his failure to do so would have subjected him to millions of dollars in liquidated damages. As to his alternative theory that counsel's alleged negligence in drafting the settlement agreement diminished the value of his stock options, Nail offered no evidence that, but for the risk of delay presented by the alleged negligence, he would have exercised more of his stock options or realized a greater profit.