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## Smith v. Preston Gates Ellis, LLP was not a case of breach of fiduciary trust or conflict of interest

1 message

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Ryan left out an important point in his brief.

In one of its Issues for Review, Windermere argues that DeCoursey is comparable to Smith, in which the court found against proximate cause. But the fact patterns in the Smith and DeCoursey cases are different.

The Smith case concerned malpractice; the evidence showed negligence, possibly unintentional disregard. In contrast, the DeCoursey case concerned deliberate disregard of DeCourseys' interests; the evidence supported a finding of conflict of interest and breach of fiduciary duty, and a history of Stickney similarly harboring undisclosed conflicts of interests, with similar harmful effects on another client, the Calmes.

Malpractice and negligence cannot be compared with breach of fiduciary duty and undisclosed conflict of interest. Malpractice is incompetence or inattentiveness. Undisclosed conflict of interest is a purpose contrary to the welfare of the client.

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