THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0054, Mark Poland & a. v. Paul J. Twomey & a., the court on March 15, 2005, issued the following order:

Charles Dibble, former attorney for plaintiffs Mark and Georgette Poland, appeals a superior court order dismissing the plaintiffs' legal malpractice action against the defendants, Paul J. Twomey and Twomey and Sisti. Attorney Dibble contends that the trial court failed to consider the motion to modify that he filed on his own behalf and that the entry of dismissal constituted an unsustainable exercise of discretion. The defendants contend that Attorney Dibble does not have standing to appeal this case. We vacate and remand.

"In evaluating whether a party has standing to sue, we focus on whether the plaintiff suffered a legal injury against which the law was designed to protect." Roberts v. General Motors Corp., 138 N.H. 532, 535 (1994). Attorney Dibble asserts on appeal that the lien he filed on August 4, 2003, provides him standing to seek enforcement of a settlement he negotiated on behalf of the plaintiffs. See RSA 311:13 (Supp. 2004). He filed the lien after a July 15, 2003 hearing in which the plaintiffs advised the court that they did not want to agree to the terms of the settlement. Following the hearing, the trial court issued an order on July 25, 2003 stating, "Based on the evidence adduced at the hearing, the court would find that there was a settlement between counsel which was authorized by the parties." After further findings, the trial court concluded its order by stating, "Failure to timely comply with this order shall result in this case becoming non-suit on the 22nd day after the date of the clerk's notice in accord with the court's prior order of February 14, 2003."

If in fact there was an enforceable settlement, Dibble would have standing pursuant to the language of RSA 311:13, and the trial court's order dismissing the case in its entirety would be an unsustainable exercise of discretion. It does not appear, however, that the trial court reached a final resolution as to whether there was an enforceable settlement. We therefore vacate and remand to allow the court to conduct a hearing to give Dibble an opportunity to prove his claim that an enforceable settlement had been reached.

Vacated and remanded.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox,
Clerk