2011 IL App (2d) 100520 & 100882-U
Nos. 2-10-0520 & 2-10-0882 cons.
Order filed October 28, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAMES HEALY,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-0865
	)	
WILLIAM G. WOROBEC, LAW OFFICE	)	
OF WILLIAM G. WOROBEC, P.C.,	)	
RICHARD A. KAYNE, and LAW OFFICES	)	
OF RICHARD A. KAYNE &	)	
ASSOCIATES, LLC,	)	Honorable
	)	John T. Elsner,
Defendants-Appellees.	)	Judge, Presiding.

JAMES HEALY,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-L-0374
	)	
JOSEPH I. SOLON, P.C. and	)	
JOSEPH I. SOLON, JR.,	)	Honorable
	)	John T. Elsner,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The circuit court of Cook County did not abuse its discretion in transferring this case to Du Page County pursuant to the doctrine of *forum non conveniens*. We further held that plaintiff's complaints in this consolidated appeal were properly dismissed pursuant to section 2-619 of the Code of Civil Procedure.

¶ 1 Following a guilty plea to the offenses of aggravated driving under the influence of alcohol that was the proximate cause of the death of another person (625 ILCS 5/11-501(a)(1), (d)(1)(F) (West 2004)) and transportation of open alcohol (625 ILCS 5/11-502(a) (West 2004)), plaintiff, James Healy, was sentenced to a term of eight years' imprisonment. Plaintiff was represented by defendants Joseph I. Solon, Jr., and Joseph I. Solon, P.C. (collectively, the Solon defendants) when he pleaded guilty. Plaintiff subsequently retained defendants, William G. Worobec, Law Office of William G. Worobec, P.C., Richard A. Kayne, and Law Offices of Richard A. Kayne & Associates, LLC (collectively, the Worobec defendants), who filed two post-plea motions on plaintiff's behalf. The trial court denied those motions. This court affirmed plaintiff's conviction and sentence (*People v. Healy*, No. 2-08-0294 (Aug. 7, 2009)), and plaintiff filed a petition for postconviction relief pursuant to section 122-1 of the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) that remains pending. Thereafter, plaintiff filed separate lawsuits in Cook County alleging legal malpractice against the Solon defendants and the Worobec defendants. The cases were transferred to Du Page County pursuant to a motion to dismiss based on wrong venue filed by the Solon defendants and a motion to transfer pursuant to the doctrine of *forum non conveniens* filed by the Worobec defendants. In Du Page County, the trial court dismissed both lawsuits pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2008)). Plaintiff now timely appeals the dismissal of both cases, which we consolidated on appeal, contending (1) the Cook County circuit court erred in granting the Worobec defendants' motion to

transfer; and (2) the trial court erred in dismissing his lawsuits against the Worobec defendants and the Solon defendants pursuant to section 2-619 of the Code. We affirm.

¶ 2 I. Background

¶ 3 The relevant facts reflect that on November 10, 2005, plaintiff was arrested by the Naperville police department for driving under the influence of alcohol after plaintiff was in a motor vehicle accident. At the time of the collision, plaintiff had a blood alcohol level of 0.38. The driver of the other vehicle, Kenneth Kaply, died eight days later. Plaintiff was charged with multiple offenses in connection with the accident. Plaintiff retained the Solon defendants to represent him against the criminal charges.

¶ 4 On March 28, 2007, plaintiff entered into a blind guilty plea to the offenses of aggravated driving under the influence in causing the death of another and possession of alcohol in a motor vehicle. The factual basis for the plea, which the trial court accepted, included a statement from the physician who performed Kaply's autopsy opining that plaintiff's driving under the influence and causing the collision was the direct cause of Kaply's death. During the sentencing hearing, defendant Solon read a statement prepared by plaintiff conveying that he suffered from alcoholism, was "aware of the havoc he caused," and apologized to the Kaply family. After the statement was read, plaintiff told the court he was going to stand by that statement, but asked that references to "AA" be changed to a "12-step program." Plaintiff was sentenced to a term of eight years' imprisonment and ordered to serve 85% of his sentence.

¶ 5 While incarcerated in Lee County, plaintiff retained the Worobec defendants. Defendants Worobec and Kayne each reside in Du Page County and their respective law firms are also located in Du Page County. The Worobec defendants filed a motion to withdraw the guilty plea and a

motion to reconsider sentence, which the trial court denied. Plaintiff retained different counsel, who appealed the trial court's denial of his post-plea motions. We affirmed plaintiff's guilty plea and sentence (*People v. Healy*, No. 2-08-0294 (Aug. 7, 2009)).

¶ 6 On December 15, 2008, plaintiff filed a postconviction petition pursuant to section 122-1 of the Act (725 ILCS 5/122-1 (West 2008)). The basis of plaintiff's postconviction petition was that his guilty plea and sentence should be vacated because he was denied his constitutional right to the effective assistance of counsel.

¶ 7 Also on December 15, 2008, plaintiff filed a lawsuit in the Cook County circuit court against the Solon defendants alleging legal malpractice. Plaintiff's complaint alleged that the Solon defendants misrepresented and withheld medical records regarding Kaply's death; their investigation into Kaply's death was inadequate; they did not inform plaintiff that the State had the burden of proof to establish beyond a reasonable doubt that Kaply's death resulted from the November 10, 2005, motor vehicle accident; and did not inform plaintiff of the possible prison sentences he could receive for the various offenses he was charged with committing. After the trial court granted the Solon defendants' motion to dismiss based on wrong venue, the case was transferred to Du Page County. Plaintiff did not seek leave to appeal from the Cook County transfer order.

¶ 8 On December 30, 2008, plaintiff filed a separate lawsuit in Cook County alleging legal malpractice against the Worobec defendants. Plaintiff alleged that the Worobec defendants withheld and misrepresented medical records regarding Kaply's death; withheld information regarding their investigation into the cause of Kaply's death; and did not inform plaintiff of the possible prison sentences he could receive from the various offenses he was charged with committing. Plaintiff further alleged that the Worobec defendants committed malpractice because they persuaded him not

to raise the argument that the Solon defendants' representation was constitutionally ineffective.

¶ 9 The Worobec defendants filed a motion to transfer pursuant to the doctrine of *forum non coveniens*. Plaintiff responded that the motion to transfer should be denied because his filing of the lawsuit in Cook County deserved substantial deference and, although plaintiff was not a resident of Cook County, his sister lived in Chicago and she retained the Worobec defendants to represent plaintiff in the criminal proceedings. Plaintiff further argued that both public and private interests favored the case being decided in Cook County. The trial court granted the motion to transfer. In its memorandum and opinion order, the Cook County circuit court concluded that transferring the case from Cook County to Du Page County was appropriate because plaintiff was not a resident of Cook County, and therefore, his choice of forum should be afforded less deference. The Cook County circuit court further concluded that transfer was appropriate because all of the witnesses, with the exception of plaintiff, lived in or worked in Du Page County, the documentary evidence was located in Du Page County, and although the Worobec defendants practice law in Cook County, that was not "an adequate reason to keep [the] action in Cook County where Cook County has no significant factual connection to [plaintiff's] claims." The appellate court denied plaintiff's petition for leave to appeal and the supreme court denied plaintiff's petition for leave to appeal.

¶ 10 After both cases were transferred to the trial court, the Solon defendants and the Worobec defendants filed motions to dismiss pursuant to section 2-619 of the Code in their respective actions. Both of the motions argued that plaintiff's lawsuits should be dismissed because he was unable to prove that he was actually innocent of the offenses he pleaded guilty to. In each action, plaintiff countered that the motions should be denied because he filed a petition for postconviction relief alleging the ineffective assistance of counsel, and if that petition was successful, his guilty plea and

sentence would be set aside. Specifically, in his response to the Worobec defendants' motion to dismiss, plaintiff argued "the malpractice in this case is that [plaintiff] would have served less time in prison for the offense of aggravated [driving under the influence] as a repeat offender than he has already served—and is still serving—for the offense of aggravated [driving under the influence] for causing the death of another." In his response to the Solon defendants' motion to dismiss, plaintiff argued that because his guilty plea and sentence will be set aside if his postconviction petition is successful, the trial court "should defer a ruling on the motion to dismiss until the postconviction proceedings are concluded."

¶ 11 The trial court granted the Worobec defendants' motion to dismiss on April 22, 2010, and the Solon defendants' motion to dismiss on August 19, 2010. Plaintiff timely appealed both orders.

¶ 12 II. Discussion

¶ 13 A. Motion to Transfer

¶ 14 The first issue on appeal is whether the Cook County circuit court erred in granting the Worobec defendants' motion to transfer that case to Du Page County pursuant to the doctrine of *forum non conveniens*. In support of this contention, plaintiff argues that his decision to file this case in Cook County deserved substantial deference and that public interest considerations "strongly support" this case being decided in Cook County. We disagree.

¶ 15 Initially, we will address our jurisdiction over this issue. Article IV, section 6 of the Illinois constitution, with limited exceptions, confers jurisdiction to the Appellate Court from final judgments from a circuit court in the judicial district in which the circuit court is located (Ill. Const. 1970, art. IV, § 6). Here, the order granting the Worobec defendants' motion to transfer came from a circuit court located outside of this appellate district. Plaintiff counters that we do have

jurisdiction because article IV, section 6 of the Illinois constitution also provides that "the Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review." According to plaintiff, we "obviously" have jurisdiction based on that provision in article IV, section 6.

¶ 16 Our research revealed no cases specifically discussing whether we have jurisdiction to consider whether a circuit court located outside of this judicial district erred in transferring a case to a circuit court located within this district. However, in *Haight v. Aldridge Electric Co.*, 215 Ill. App. 3d 353 (1991), this court reviewed an order from the Cook County circuit court transferring that case from Cook County to Lake County pursuant to the doctrine of *forum non conveniens*. *Id.* at 357-59. Although the court in *Haight* did not address the issue of whether article IV, section 6 of the Illinois constitution conferred jurisdiction to rule on such an order, the court was under an independent obligation to consider its jurisdiction. *Quad v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 765 (2009) (citing *Fligelman v. City of Chicago*, 264 Ill. App. 3d 1035, 1037 (1994)). "The fact that the court did not dismiss for lack of jurisdiction suggests that jurisdiction did exist." *Quad*, 392 Ill. App. 3d at 765. Therefore, we conclude that we have jurisdiction over this issue.

¶ 17 Turning to the merits, the doctrine of *forum non conveniens* is an equitable doctrine rooted in considerations of fundamental fairness and the sensible and effective administration of justice. *First National Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). As a result, the doctrine enables a court to decline jurisdiction in the exceptional case where trial in another forum with proper jurisdiction and venue would better serve the ends of justice. *Id.* In determining whether to decline jurisdiction, the trial court must balance private interest factors affecting the convenience of the parties and public interest factors affecting the administration of the court. *Wagner v. Eagle Food Centers, Inc.*,

398 Ill. App. 3d 354, 359 (2010). "In Illinois, the private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive—for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate)." *First National Bank*, 198 Ill. 2d at 516. Conversely, the public interest factors include (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested forums. *Hacki v. Advocate Health & Hospitals Corp.*, 382 Ill. App. 3d 442, 448 (2008). In addition, while a plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, the plaintiff's interest in choosing the forum receives "somewhat less deference" when neither the plaintiff's residence nor the location of the injury is located in the chosen form. *Wagner*, 398 Ill. App. 3d at 359. Our supreme court recently noted that, when a plaintiff is foreign to the chosen forum and the action that gave rise to the litigation did not occur in the chosen forum, it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, and therefore, plaintiff's choice of forum was a strategy contrary to the purposes underlying the venue rules. *Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 176-77 (2003)(quoting *Certain Underwriters at Lloyd's, London v. Illinois Central R.R. Co.*, 329 Ill. App. 3d 189, 196 (2002)). In deciding on a motion to transfer pursuant to the doctrine of *forum non conveniens*, the trial court must evaluate the totality of the circumstances in deciding whether the defendant has proven that the balance of factors strongly favors a transfer, and the defendant must

show that the plaintiff's chosen forum is inconvenient to the defendant and another forum is more convenient for all parties. *Wagner*, 398 Ill. App. 3d at 359. A trial court's determination of a *forum non conveniens* motion will not be disturbed absent an abuse of discretion, which occurs when "no reasonable person would take the view adopted by the trial court." *Dawdy*, 207 Ill. 2d at 176-77; see also *Haight*, 215 Ill. App. 3d at 358-59 (noting that it is not the function of a reviewing court to substitute its judgment for that of the trial court or weigh the factors of *forum non conveniens* different from the trial court).

¶ 18 Here, the circuit court of Cook County did not abuse its discretion in granting the Worobec defendants' motion to transfer the case to Du Page County pursuant to the doctrine of *forum non conveniens*. The record reflects that court carefully considered the private and public interest factors in determining whether to grant the motion. Specifically, with respect to the private interest factors, the court noted that plaintiff was not a resident of Cook County, the alleged legal malpractice occurred in Du Page County and was related to an underlying Du Page County criminal case. The court further noted that all of the witnesses, with the exception of plaintiff, live or work in Du Page County and all of the documentary evidence—which included documents from the Worobec defendants' offices, medical records from the hospital Kaply was treated at and from the Du Page County coroner, and police reports—were also located in Du Page County. The court also concluded that the public interest factors favored transferring the case to Du Page County because the residents of that county had a significant interest in deciding a controversy that concerned the legal practices of the Worobec defendants that occurred in Du Page County. Conversely, the trial court concluded that, although the Worobec defendants also practice law in Cook County, that was not a sufficient reason to litigate this case in that forum because "[i]t would be unfair to impose the

expense of a trial and the burden of jury duty on the residents of Cook County where no factual connections to Cook County have been shown." Finally, the circuit court rejected plaintiff's argument that his choice of bringing suit in Cook County should be afforded significant deference as a result of the Worobec defendants being retained by plaintiff's sister, a resident of Cook County, because she was not a party to the litigation.

¶ 19 As noted above, we are not permitted to substitute our judgment for that of a trial court or to weigh the factors relevant to a *forum non conveniens* motion differently. See *Haight*, 215 Ill. App. 3d at 358-59. Therefore, because the circuit court of Cook County carefully considered the appropriate factors relevant to a *forum non conveniens* motion, the court did not abuse its discretion in granting the Worobec defendants' motion to transfer this case to Du Page County.

¶ 20 B. Section 2-619 Motions to Dismiss

¶ 21 We next consider plaintiff's contention that the trial court erred in granting the Worobec defendants' and the Solon defendants' respective motions to dismiss. Specifically, plaintiff argues that the motions to dismiss in each case were premature until his postconviction petition proceedings are resolved because if plaintiff prevails in that proceeding, his guilty plea, conviction, and sentence would be set aside. Plaintiff further argues that there was no evidence that he was actually guilty of driving under the influence, but even if he was guilty, he was not "using the legal malpractice cases to profit from his criminal activity," but instead was "using the legal malpractice cases to seek justice for the fact he has spent more time in prison than he should have for a crime he did not commit." Because our resolution of this issue turns on the same legal question with respect to all defendants, we will address this issue relating to both cases together.

¶ 22 A motion to dismiss pursuant to section 2-619 of the Code admits the legal sufficiency of

a claim but raises defects, defenses, or other affirmative matters appearing on the face of the complaint or established by external submissions that defeat the action. 735 ILCS 5/2-619 (West 2008); *Zahl v. Kruppa*, 365 Ill. App. 3d 653, 657-58 (2006). A motion pursuant to section 2-619 admits all well-pleaded facts and reasonable inferences therefrom, and the motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003). When ruling on a motion pursuant to section 2-619, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). This court reviews *de novo* a section 2-619 order of dismissal. *Id.*

¶ 23 To successfully bring a legal malpractice claim, a plaintiff must establish: (1) the existence of an attorney-client relationship; (2) a duty arising from that relationship; (3) a breach of that duty by the defendant attorney; (4) proximate cause; and (5) damages. *Paulsen v. Cochran*, 356 Ill. App. 3d 354, 358 (2005). In addition, a criminal defendant must establish his actual innocence before being able to recover from his criminal defense attorney's alleged malpractice. *Id.* at 359. The rationale for the actual innocence requirement is to eliminate the possibility that someone who has been found guilty of a crime would profit from his criminal activity. *Kramer v. Dirksen*, 296 Ill. App. 3d 819, 822 (1998) (citing *Levine v. King*, 123 F.3d 580, 582 (7th Cir. 1997) (noting that tort law provides damages only for harms to a plaintiff's legally protected interests, and although a guilty criminal may obtain acquittal, he does not have a right to that result and the law provides no relief when that right is denied)). The actual innocence requirement has been extended to situations where the alleged malpractice results in an unfair penalty, not an improper conviction. *Paulsen*, 356 Ill. App. 3d at 364. Actual innocence is "not within the rubric" of whether a defendant was found guilty

beyond a reasonable doubt, but rather, the hallmark of actual innocence is "total vindication" or "exoneration." *People v. Collier*, 387 Ill. App. 3d 630, 636 (2008) (defining "actual innocence" in the context of a postconviction petition). Dismissal of a complaint alleging legal malpractice stemming from a criminal conviction is proper pursuant to section 2-619 of the Code if the plaintiff cannot satisfy the actual innocence requirement. *Paulsen*, 356 Ill. App. 3d at 359.

¶ 24 In the current matter, dismissal of plaintiff's complaints pursuant to section 2-619 of the Code was warranted because plaintiff cannot satisfy the actual innocence requirement. The Appellate Court, First District, recently addressed whether a trial court erred in dismissing a legal malpractice action stemming from a criminal defense attorney's ineffective representation of the plaintiff. *Herrera-Corral v. Hyman*, 408 Ill. App. 3d 672 (2011). In *Herrera-Corral*, the plaintiff pleaded guilty in federal court to conspiring to possess cocaine with the intent to distribute, but his guilty plea reserved his right to appeal the denial of a motion to suppress. *Id.* The plaintiff did not appeal, but instead filed a *habeas corpus* petition alleging that he was denied the effective assistance of counsel because his attorney failed to file an appeal and was unavailable to him during the time plaintiff was permitted to file an appeal. *Id.* at 673. The federal district court denied the petition, but the court of appeals remanded the case, ordering the petition to be granted. *Id.* The court of appeals noted that it ruled in another case involving one of the plaintiff's criminal co-defendants that the suppression motion should have been granted, and as a result, the co-defendant was released from custody. *Id.* The court of appeals further noted that the failure by plaintiff's attorney to remain available to the plaintiff during the time he could file a notice of appeal constituted the ineffective assistance of counsel, and therefore, the plaintiff was entitled to an appeal. *Id.* The case was remanded to the district court, which subsequently dismissed the indictment against the plaintiff,

vacated his sentence, and ordered him released from custody. *Id.* The plaintiff then brought a legal malpractice action in state court against his criminal defense attorney, which the trial court dismissed. *Id.* at 673-74.

¶ 25 On appeal, the reviewing court affirmed the trial court's determination to dismiss the lawsuit because the plaintiff was unable to prove his actual innocence. *Id.* In reaching its determination, the court in *Herrera-Corral* concluded that the federal district court's dismissal of the indictment did not constitute a finding of the plaintiff's guilt or innocence. *Id.* at 674-75. Rather, according to the court, the federal court of appeals merely determined that, because the plaintiff was denied the effective assistance of counsel, he was entitled to an appeal of the suppression issue, and the federal district court later dismissed the indictment and vacated his sentence. *Id.* at 675. Therefore, the court in *Herrera-Corral* reasoned, "An acquittal because illegally seized evidence was used against a defendant is unrelated to innocence." *Id.*

¶ 26 We believe the rationale of *Herrera-Corral* is persuasive. The record reflects that plaintiff's postconviction petition argues that his guilty plea and sentence should be vacated on the basis that he was denied the effective assistance of counsel. Even if plaintiff's postconviction petition is successful, the petition would only establish that he was denied the effective assistance of counsel because the Solon defendants failed to investigate whether the November 10, 2005, accident was the proximate cause of Kaply's death and the Worobec defendants were ineffective for failing to raise that issue in a post-plea motion. Such a determination, therefore, would be unrelated to his guilt or innocence of the charges stemming from the November 10, 2005, accident. See *id.*

¶ 27 Moreover, plaintiff's cause of action for legal malpractice has not accrued. In *Griffin v. Goldenhersh*, 323 Ill. App. 3d 398, 406 (2001), the reviewing court held that a malpractice suit

against a criminal defense attorney does not accrue until the plaintiff's conviction is overturned. *Id.* at 406. The plaintiff in *Griffin* sued his criminal defense attorneys after his conviction was overturned, and the Seventh Circuit issued a writ ordering that the plaintiff be released from custody. *Id.* at 403. The defendants moved to dismiss the malpractice lawsuit as untimely, claiming that the statute of limitations barred the cause of action. *Id.* The trial court denied the defendants' motion, holding that the cause of action was timely because the plaintiff filed his lawsuits within two years of the Seventh Circuit's mandate for his release. *Id.* In affirming the trial court's determination, the reviewing court concluded that, because the elements of a legal malpractice action and the elements of an ineffective-assistance-of-counsel claim were the same for purposes of collateral estoppel, the plaintiff was collaterally estopped from arguing his innocence and therefore had no cause of action until his conviction was overturned. *Id.* at 405 (citing *Kramer*, 296 Ill. App. 3d at 823-24). Although *Griffin* is distinguishable because it concerned when the statute of limitations began to run for a malpractice claim arising from a criminal conviction, its reasoning is sound and we conclude that plaintiff in this case is collaterally estopped from arguing his actual innocence until his conviction is overturned. As a result, his malpractice claims have not yet accrued. *Griffin*, 323 Ill. App. 3d at 405; see also *Herrera-Corral*, 408 Ill. App. 3d at 675 (noting that the plaintiff's legal malpractice claim never accrued because the defendant did not and could not plead and prove his actual innocence).

¶ 28 Plaintiff relies on *Kensington Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 17 (2009), to support his assertion that the orders granting defendants' motions to dismiss were premature because his postconviction petition was still pending. In *Kensington Wine*, the plaintiff filed a complaint in the chancery division of the circuit court seeking

injunctive relief. *Id.* at 4. Subsequently, the plaintiff filed a lawsuit in the law division of the circuit court against the same defendants under a different theory of relief. *Id.* at 6. After the trial court granted the defendants' motion to dismiss the proceedings in the chancery division, the defendants filed a motion to dismiss the complaint filed in the law division pursuant to the doctrine of *res judicata*. *Id.* The trial court granted the motion to dismiss that complaint, and in doing so, rejected the plaintiff's argument that the proceedings in the law division should be stayed pending the appeal of the proceedings in the chancery division. *Id.* On appeal, the reviewing court noted that, because conflicting judgments can result in allowing a judgment in a first case to serve as a basis to invoke the doctrine of *res judicata* in a second case in the event the judgment in the first could be reversed on appeal, "Illinois courts have recognized that it is appropriate to delay a decision in the second case pending the appeal of the first case." *Id.* at 17. The reviewing court concluded that, although the trial court erred in failing to stay the proceedings in the law division pending the appeal of the dismissal of the action in the chancery division, that issue was moot because the court was affirming the dismissal of the case filed in the chancery division. *Id.*

¶ 29 Plaintiff's reliance on *Kensington Wine* is misplaced. In that case, the issue involved whether the trial court erred in dismissing a civil action filed in the law division while an appeal regarding the dismissal of another civil action filed in the chancery division between the same parties was pending. Conversely, the issue here is whether plaintiff can maintain a legal malpractice action against defendants before his criminal conviction has been overturned. Given this significant distinction and the previous Illinois cases addressing this specific issue, *Kensington Wine* is not relevant to matter presently before us.

¶ 30 Finally, we reject plaintiff's argument that he should be permitted to maintain his legal

malpractice claim regardless of whether his conviction is overturned because he "is not using his legal malpractice cases to profit from criminal activity [but] instead is using the legal malpractice cases to seek justice for the fact he has spent more time in prison than he should have for a crime he did not commit." In *Paulsen*, the court declined to create an exception to the actual innocence requirement that would permit a malpractice action in situations when a criminal defendant has pleaded guilty but believes his attorney failed to negotiate the best possible sentence. *Paulsen*, 356 Ill. App. 3d at 364. We see no reason to deviate from the court's holding in *Paulsen*. We therefore decline to do so.

¶ 31 In sum, plaintiff's complaints against defendants were properly dismissed pursuant to section 2-619 of the Code because he cannot satisfy the actual innocence requirement. In addition, plaintiff's legal malpractice claims have not accrued because his conviction has not been overturned.

¶ 32 III. Conclusion

¶ 33 For the foregoing reasons, we affirm the judgments of the circuit court of Du Page County.

¶ 34 No. 2-10-0520, Affirmed.

¶ 35 No. 2-10-0882, Affirmed.