

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 1-99-0707

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ACCU-FLOW TECH, LP, <i>et al.</i> ,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Cook County.
)	
v.)	No. 97 L 2239
)	
WILLIAM W. YOTIS III, <i>et al.</i> ,)	The Honorable
)	Philip L. Bronstein,
Defendants-Appellees.)	Presiding Judge.

Order

Plaintiffs Accu-Flow Tech, L.P. (Accu-Flow) and Paris Koulogeorgas filed suit against defendants William W. Yotis III and Aronberg, Goldgehn, Davis & Garmisa (law firm) for legal malpractice.¹ Defendants sought to dismiss this suit under a section 2-615 motion for failure to state a cause of action, and alternate section 2-619 motions based on judicial estoppel and *res judicata*.

¹We note that Yotis left this law firm to form his own and that, as the underlying cause giving rise to this malpractice action approached trial, he and his new firm appeared on behalf of plaintiffs. Ultimately, however, the law firm of Jenner & Block represented plaintiffs at trial. Plaintiffs originally named Jenner & Block and one of their attorneys as defendants in this malpractice suit. However, they settled and were dismissed.

735 ILCS 5/2-615, 2-619 (West 1996). The trial court dismissed the suit on all these grounds. Plaintiffs then filed a motion to reconsider, whereupon the trial court reversed its finding as to *res judicata*, but upheld the dismissal based on failure to state a cause of action and judicial estoppel.

Plaintiffs appeal from the dismissal, contending that their amended complaint was sufficient and that judicial estoppel does not apply. Defendants cross-appeal, maintaining that the trial court erred in reversing itself during the reconsideration hearing. We affirm.

BACKGROUND

The underlying case which gave rise to the instant suit involved plaintiffs and Engineering Resources, Inc. (ERI). Koulogeorgas was an employee of ERI, which sold steam system condensation control devices. Koulogeorgas, along with other employees, left ERI and founded Accu-Flow, making it a competitor of ERI.² Claiming improper use of trade secrets, ERI sued Koulogeorgas and Accu-Flow, among others, seeking injunctive relief and monetary damages.

ERI filed for a preliminary injunction. Koulogeorgas and Accu-Flow retained Yotis and his law firm to defend them. The trial court held a hearing. Koulogeorgas and Accu-Flow allege in their amended complaint in this action that Yotis should have tried to delay the hearing and that he was unprepared because he did not select and prepare an effective expert to testify about the subject

²Koulogeorgas became and was, for the duration of these causes of action, Accu-Flow's principal operating officer.

