

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2065

September Term, 2015

MICHAEL GORDON

v.

ROBERT K. EPSTEIN

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2009, Michael Gordon, appellant, as the co-personal representative of the Estate of Libby Gordon (the Estate), retained Robert Epstein, Esquire, appellee, to represent the Estate in a nursing home negligence case after another attorney withdrew from the case. In 2015, Gordon filed a complaint for legal malpractice against Epstein, in the Circuit Court for Montgomery County, claiming that Epstein had negligently represented the Estate by: (1) failing to make use of an investigative report prepared by the Department of Health and Mental Hygiene; (2) failing to amend the negligence complaint after he took over the case; (3) failing to contact Medicare to determine the amount of their statutory lien for medical care; (4) attempting to force Gordon to settle the Estate’s claim without disclosing the amount of liability that the Estate would have to Medicare; and (5) violating Rule 1.2 and Rule 8.4 of the Rules of Professional Conduct.

On October 28, 2015, the circuit court dismissed Gordon’s complaint for lack of standing; failure to state a claim upon which relief could be granted; failure to file an amended complaint that set forth a valid cause of action, as had been previously ordered by the court; and failure to designate an expert witness to establish the appropriate standard of care. On appeal, Gordon raises five issues, which are reducible to one: whether the circuit court erred in dismissing his complaint. For the reasons that follow, we affirm.

Even if we were to assume that, contrary to what the circuit court found, Gordon filed the complaint in his capacity as personal representative of the Estate and had standing to do so, the trial court did not err in dismissing the complaint. This Court reviews the grant of a motion to dismiss *de novo*. See *Unger v. Berger*, 214 Md. App. 426, 432 (2013). A trial court may grant a motion to dismiss if, “when assuming the truth of all well-pled

facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, the allegations do not state a cause of action for which relief may be granted.” *Latty v. St. Joseph's Soc’y of the Sacred Heart, Inc.*, 198 Md. App. 254, 262–63 (2011) (internal quotation marks and citation omitted). The facts set forth in the complaint must be “pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.” *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010).

To properly plead a claim for legal malpractice, a plaintiff must allege facts demonstrating “(1) the attorney’s employment, (2) [the attorney’s] neglect of a reasonable duty, and (3) loss to the client proximately caused by that neglect of duty.” *Blondell v. Littlepage*, 185 Md. App. 123, 138 (2009) (internal quotation marks and citation omitted). Then “[t]o establish that proximate cause existed, the plaintiff must allege some reasonable connection between the defendant’s alleged negligence and the injury suffered by the plaintiff.” *Taylor v. Feissner*, 103 Md. 356, 366 (1995).

Gordon’s complaint failed to sufficiently allege how Epstein’s negligence proximately caused damages to the Estate. The only harm asserted by Gordon was that the Estate lost the opportunity to settle its nursing home negligence claim for \$650,000. The complaint, however, did not indicate why the claim was worth that amount or how Epstein’s negligence prevented the Estate from reaching such a settlement. In fact, the complaint did not even indicate the ultimate disposition of the Estate’s case. Although Gordon now contends, on appeal, that the Estate’s case was dismissed as the result of Epstein failing to file a timely Certificate of Qualified Expert, he did not raise that claim in

his complaint, or file an amended complaint, even after the circuit court ordered him to do so or risk having the complaint dismissed.¹

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT**

¹ In support of this contention, Gordon relies on a letter from Paul Blumenthal, Esquire, who was apparently hired to represent the Estate after Epstein withdrew from the case. The letter was attached to several pleadings filed by Gordon in the circuit court but was never mentioned in his complaint. Even if that letter had been mentioned in the complaint, it would not have been much help to Gordon's claim as the letter indicates that the complaint was dismissed *without prejudice* and that Gordon then decided not to re-file the complaint, despite being advised that this would result in the claim being "forever barred."