

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 002742

September Term, 2014

DEBORAH SHORT

v.

MICHAEL O. RAMSEY

Meredith,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 15, 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.

The appellant in this case, Deborah Short, acting *pro se*, filed a complaint in the Circuit Court for Baltimore City against Michael O. Ramsey, appellee, who is an attorney who had previously provided legal representation to Ms. Short. She alleged that she had suffered damages because he had violated his duty to provide adequate legal representation. After the discovery deadline, counsel for Mr. Ramsey moved for summary judgment, and asserted that Ms. Short would be unable to establish liability without an expert witness. The circuit court agreed, and entered judgment in favor of Mr. Ramsey as to each count stated in Ms. Short's amended complaint. A motion for reconsideration was denied. This appeal followed.

QUESTIONS PRESENTED

Ms. Short presents five questions for our review:

1. Did the circuit court err by awarding summary judgment to Mr. Ramsey on Ms. Short's claims of negligence and gross negligence on the ground that an expert witness was required?
2. Did the circuit court err by granting summary judgment to Mr. Ramsey for Ms. Short's breach of contract claim on the ground that an expert witness was required?
3. Did the circuit court err by granting summary judgment to Mr. Ramsey for Ms. Short's breach of fiduciary duty claim on the ground that an expert witness was required?
4. Did the circuit court err by granting summary judgment to Mr. Ramsey on Ms. Short's claims of intentional and negligent misrepresentation on the ground that an expert witness was required?

For the reasons stated below, we conclude that the Circuit Court for Baltimore City did not err in granting Mr. Ramsey's motion for summary judgment, and we affirm the judgment entered by that court.

FACTUAL AND PROCEDURAL BACKGROUND

On November 10, 2010, Ms. Short retained Mr. Ramsey as counsel in connection with a bankruptcy matter; she wanted to discharge her debts but retain her real property located at 3402 Pebble Drive, Aberdeen, Maryland. On December 6, 2010, Mr. Ramsey filed a voluntary petition on behalf of Ms. Short pursuant to Chapter 7 of Title 11 of the United States Code. *In re Short*, Ch. 7 Case No. 10-37507, (D. Md. Dec. 6, 2010). The record reflects that, in June of 2011, Mr. Ramsey moved to withdraw as counsel in Ms. Short's bankruptcy case. On June 23, 2011, the United States Bankruptcy Court for the District of Maryland entered an order striking Mr. Ramsey's appearance. Ms. Short represented herself thereafter.

In the bankruptcy proceedings, Ms. Short initially maintained that her real estate had little net value. After it became apparent that the court was likely to approve an order for the sale of the property, however, Ms. Short argued that the sale price obtained by the Trustee, *i.e.*, \$140,000.00, was too low. The property was ultimately sold for \$140,000.00. Ms. Short obtained a Discharge in Bankruptcy, with \$21,625.00 in exemptions.

On October 15, 2013, Ms. Short filed a complaint against Mr. Ramsey in the Circuit Court for Baltimore City. On July 31, 2014, Ms. Short filed an amended complaint asserting that Mr. Ramsey had failed to provide her adequate legal representation. The amended complaint included five counts that were captioned: (1) Malpractice - Negligence and Gross Negligence; (2) Malpractice - Breach of Contract; (3) Malpractice - Breach of Fiduciary Duties; (4) Fraudulent or Negligent Misrepresentations; and (5) Intentional or Negligent Infliction of Emotional Distress.

After Mr. Ramsey filed an answer, the circuit court issued a scheduling order that included a requirement for Ms. Short to identify expert witnesses and submit expert reports on or before May 31, 2014. The scheduling order further provided that the deadline for the close of all discovery was October 30, 2014. Ms. Short did not identify any expert witnesses. On November 26, 2014, Mr. Ramsey filed a motion for summary judgment. Ms. Short filed a response opposing the motion, after which Mr. Ramsey filed a second motion for summary judgment.

At the conclusion of a hearing on January 9, 2015, the circuit court announced that it would grant Mr. Ramsey's motions for summary judgment on all five counts. The court explained:

THE COURT: There are five claims in the amended complaint. The first three all concern explicitly the issue of malpractice. The first is negligence and gross negligence. The second is breach of contract. The third is breach of fiduciary duty. All of those rest on allegations that would require an adjudication of Mr. Ramsey's handling of the matter as an attorney. And although there are narrow exceptions in Maryland law where malpractice by an attorney might be able to be proved without an expert, this is not one of them. The gist of the plaintiff's claims would require someone to understand bankruptcy law and the status of real property in bankruptcy law, the relationship between the different chapters in bankruptcy law, and the suitability [sic] of filing attorney would have to take in evaluating whether to file a petition, and the subsequent handling of that. And all of those are matters that would be beyond the general knowledge of jurors, and therefore, would require expert testimony. And because the plaintiff in this case does not have an expert prepared to testify [sic] those three counts --- summary judgment will be granted on those three counts because the plaintiff would be unable to prove them.

The fourth count is misrepresentation, both negligent and intentional. And while that count might lie outside the expertise of the requirement of an expert in proving malpractice, in this case I'm unable to identify in the amended complaints specific misrepresentations beyond those wrapped up with the handling of the case as an attorney. And therefore, I find that count

four has the same defect that it's not supported by expert testimony to explain what the standard of care was for an attorney handling a bankruptcy case of this sort and in what way has Mr. Ramsey allegedly breached that standard of care.

The fifth count is intentional or negligent infliction of emotional distress. Maryland does not recognize the tort of negligence infliction of emotional distress. And the Court of Appeals has imposed a very high standard for proving intentional infliction of emotional distress. And I find as a matter of law that these allegations on their face do not satisfy either the requirements of intentional conduct or extreme and inappropriate conduct that would be required to show that tort.

Therefore, I'm going to grant summary judgment to the defendant on all of the claims that are pending.

STANDARD OF REVIEW

"The standard for appellate review of a trial court's grant or denial of a motion for summary judgment is whether the trial court was legally correct. A trial court decides issues of law, not fact, when granting summary judgment." *Heat and Power Corp. v. Air Prods. and Chems., Inc.*, 320 Md. 584, 591 (1990). Pursuant to Maryland Rule 2-501, summary judgment is properly granted if there is no genuine dispute of fact and the moving party is entitled to judgment as a matter of law.

DISCUSSION

The circuit court correctly granted the motion as to the counts alleging legal malpractice because of the lack of an expert witness to support Ms. Short's claims against Mr. Ramsey. As the circuit court observed, Maryland courts have made it clear that, with narrow exceptions, a plaintiff in a legal malpractice case must support the claim with expert testimony. *See Franch v. Ankney*, 341 Md. 350, 357 (1996) ("Expert testimony as to the relevant standard of care is necessary in any attorney malpractice case, except in those

cases where the common knowledge or experience of laymen is sufficient to allow the fact finder to infer negligence from the facts.”); *Hooper v. Gill*, 79 Md. App. 437, 441 (1989) (“Expert testimony is necessary in a legal malpractice case to establish the existence of a breach of a reasonable legal duty, except in that class of cases ‘where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence from the facts.’”). *Cf. Central Cab Company v. Clarke*, 259 Md. 542 (1970) (no expert required in a case in which the plaintiff’s lawyer had abandoned his representation without notifying his client).

Here, the crux of Ms. Short’s complaint against Mr. Ramsey is that he did not provide legal representation that achieved her desired goals, and, because of his failure to meet her expectations, she believes he committed malpractice. In her opening brief in this Court, Ms. Short summarizes her claims against Mr. Ramsey as follows:

This case is about an individual’s right to adequate legal representation from a retained legal professional. Ms. Short is asking the Court to overturn the circuit court’s decision to remove the inherently factual consideration of determining breach from the jury by granting summary judgment. Mr. Ramsey is asking the Court to uphold the circuit court’s decision to disregard Ms. Short’s [sic] because she did not provide expert testimony.

Because Ms. Short had an explicit agreement with Mr. Ramsey that he represent her in her bankruptcy matter, which is the matter at the center of this claim, Mr. Ramsey and Ms. Short had an attorney-client relationship. R. at E. 39, E. 224-225. Further, Mr. Ramsey breached his reasonable duty as an attorney to Ms. Short in the bankruptcy proceeding when he failed to advise Ms. Short of documents she would need to produce in order to build her case, failed to disclose significant information about her case, and misrepresented material facts about the case. R. at E. 52-53, E. 57-59. Mr. Ramsey’s neglectful behavior constitutes negligence and gross negligence, breach of contract, breach of fiduciary duty, negligent and intentional

misrepresentation, and intentional infliction of emotional distress to Ms. Short.

As her summary makes plain, all five of Ms. Short's claims are based upon her theory that Mr. Ramsey provided substandard legal representation to her in a bankruptcy proceeding. The first three counts are express claims of legal malpractice. And, as her summary discloses, the other two counts also flow from that same assertion of inadequate legal representation relative to her bankruptcy action. In order to prove her assertion that Mr. Ramsey failed to do what a competent attorney handling her case would have done, Ms. Short needed to present the testimony of an expert witness to explain: (a) the applicable standard of professional care, (b) what Mr. Ramsey did, or failed to do, that constituted a breach of the standard of care, and (c) how, if at all, any breach of the standard of care proximately caused her to incur damages. *Shofer v. Stuart Hack Co.*, 124 Md. App. 516, 529 (1999) (In a professional malpractice case, the "plaintiff must prove that defendant, whether a physician, lawyer, architect, accountant, or pension administrator, breached the standard of care applicable to other like professionals similarly situated. Furthermore, plaintiff must prove defendant's breach of the standard of care caused the damages sustained by plaintiff.").

Ms. Short's allegations of malpractice on the part of Mr. Ramsey all raise issues about legal matters and professional conduct that are all beyond the ken of the average lay juror, and that is why expert testimony is required in a case such as this. *See, e.g., Taylor v. Feissner*, 103 Md. App. 356, 377 (1995) (expert testimony is "necessary to establish whether [the defendant attorney] exercised reasonable care in assessing the merits" of a

legal theory as applied to the client's case, and whether the attorney properly advised the client); *Royal Ins. Co. of America v. Miles & Stockbridge, P.C.*, 133 F. Supp. 2d 747, 761 (D. Md. 2001) (“[A] jury would not be able to infer negligence from [the attorney’s] decision not to file third-party claims based solely on the jury members’ common experiences.”). *See also Fishow v. Simpson*, 55 Md. App. 312, 318 (1982) (“The limitation on the requirement for expert testimony” in cases of obvious negligence is limited to “that class of cases where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence from the facts.”).

The circuit court was therefore correct in concluding that Ms. Short’s claims of malpractice could not be sustained without expert testimony. And, because Ms. Short’s fourth claim, asserting negligent and intentional misrepresentations, also alleged that the negligence and misrepresentations were in the nature of unsatisfactory legal advice and legal representation in her bankruptcy case, those claims also required expert testimony.

We agree with the circuit court’s conclusion to that effect; the circuit court explained:

While that count might lie outside . . . the requirement of an expert in proving malpractice, in this case I’m unable to identify in the amended complaint specific misrepresentations beyond those wrapped up with the handling of the case as an attorney. And therefore, I find that count four has the same defect that it’s not supported by expert testimony

With regard to the fifth count asserted by Ms. Short, alleging intentional or negligent infliction of emotional distress, the circuit court correctly noted that Maryland does not recognize the tort of negligent infliction of emotional distress. *Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 63 (1986) (“while other jurisdictions may allow recovery under the concept of negligent infliction of emotional distress[,] Maryland does not”).

Finally, a claim asserting intentional infliction of emotional distress requires the plaintiff to prove that the defendant engaged in extreme and outrageous intentional (or reckless) conduct that caused the plaintiff to suffer severe emotional distress. *Lassater v. Guttman*, 194 Md. App. 431, 448 (2010) (the tort requires proof of “extreme and outrageous conduct” which is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”). Ms. Short’s claims of misconduct do not rise to that level, even when considered in a light most favorable to her. Her amended complaint alleged that Mr. Ramsey made false or negligent statements in the course of providing legal representation. But she failed to identify any expert witness who will support her allegations that Mr. Ramsey’s legal advice was negligent or false, let alone constituted extreme or outrageous behavior that inflicted severe emotional distress. The circuit court correctly concluded that Ms. Short’s allegations, if proved at trial, would not be sufficient to submit to the jury her claim of intentional infliction of emotional distress.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**