Circuit Court for Anne Arundel County
Case No. C-02-CV-15-003260

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 231

September Term, 2017

DANIEL ARNOLD

v.

GERALD SOLOMON, ET AL.

Berger,
Arthur,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: May 14, 2018

This appeal arises from a legal malpractice claim brought by Daniel Arnold ("Arnold") against Gerald Solomon, Esq., the Law Office of Gerald Solomon, P.A., and Solomon & Bascietto, LLC (collectively, "Solomon") in the Circuit Court of Anne Arundel County. Solomon rendered legal services to Arnold in an appeal from a judgment in a foreclosure action. This Court dismissed Arnold's appeal as moot on the grounds that the subject property had already been sold to a bona fide purchaser, John G. Coe ("Coe"), and that Arnold had not filed a supersedeas bond to stay judgment.

In his complaint for malpractice, Arnold alleged, *inter alia*, that Solomon breached the duty of reasonable care in refusing to challenge Coe's bona fide purchaser status before this Court. Solomon moved for summary judgment, arguing that the bona fide purchaser issue had not been preserved at the trial level. The circuit court granted summary judgment in Solomon's favor, and Arnold timely appealed.

On appeal, Arnold raises the following question for our review:

> Whether the circuit court erred in granting summary judgment for Solomon.

For the reasons stated herein, we shall reverse.

FACTUAL BACKGROUND

On December 19, 2008, Jacob Geesing, Howard Bierman, and Carrie Ward (collectively, "Substitute Trustees") filed a foreclosure action against Arnold. The Substitute Trustees alleged that Arnold had defaulted on a loan secured by deed of trust against Arnold's residential property at 180 Kinder Road, Millersville, Maryland 21108

("Property"). The case was captioned *Jacob Geesing, et al. v. Daniel Arnold*, Case No. 02-C-08-137126 in the Circuit Court for Anne Arundel County.

Proceedings at the Trial Level

Arnold, proceeding *pro se*, moved to dismiss the foreclosure action. The circuit court denied the motion to dismiss, and Arnold filed a motion for reconsideration. On July 28, 2009, the Property was sold to Coe, Arnold's neighbor. Notice of the sale was duly published, with the third and final notice appearing in the August 24, 2009 edition of *The Capital*.

On September 1, 2009, Arnold filed a motion "opposing approval of [the] notice to ratify and confirm sale" ("Motion Opposing Approval"). The Substitute Trustees filed an opposing motion. While these motions were before the circuit court, Coe filed a motion to intervene and expedite the hearing date. On October 13, 2009, Arnold filed an opposing motion ("Opposition to Intervention") in which he argued that Coe lacked standing to intervene because he purchased the Property with notice of defects:

> Petitioner, the next door neighbor to this Defendant and the Petitioner's only next door neighbor, being otherwise surrounded by public property, had asked this Defendant if it was alright to bid on Defendant's property at the foreclosure sale on February 10, 2009. Defendant replied that there was no objection to Petitioner's bidding, and Petitioner was further advised of the potential lack of validity of the Note.
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> [. . .]
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> Petitioner knew, or should have known, the status of this instant case, having been informed of the situation several times by this Defendant and by public record. Petitioner had frequently spoken with this Defendant, Petitioner visited Defendant's home and inspected the home several times before

> the first sale date and continuing visitations up through and beyond the second sale date. Petitioner was kept well appraised [sic] of the fact that there was opposition to the foreclosure and a significant defect due to the lack of assignment of the Debt Instrument, the Note itself, and the authenticity and legitimacy of the Substitute Trustee's right to foreclose.

On October 14, 2009, the circuit court vacated its previous order denying Arnold's motion to dismiss. On January 19, 2010, the circuit court held a hearing on Arnold's motion to dismiss and Coe's motion to intervene. At the conclusion of the hearing, the court denied the Motion Opposing Approval.[1] On the same day, the circuit court issued an order denying the Opposition to Intervention and ratifying the sale of the Property.

Arnold subsequently filed a motion for reconsideration and an exception to the auditor's statement of account, both of which were denied. Coe subsequently moved for judgment awarding possession of the Property. On March 2, 2010, Jacob Geesing ("Geesing") filed a corrective affidavit admitting that "he [had] not signed nor personally appeared when certain documents and affidavits filed in this case here being signed." In response, Arnold filed a motion to set aside the sale based on recently discovered evidence.

On June 7, 2010, the circuit court declined to set aside the sale:

> At this juncture, where we are, I don't believe that even if there was some irregularities, this could have been presented to the Court well before now, and they are not newly discovered and they have not risen to the level of fraud. While there is disciplinary action pending against [Geesing], the outcome of that is not known, and the allegations with respect to that were not presented and so the Court finds that there was no proof of

[1] The allegations made by Arnold in the Opposition to Intervention may very well have been argued at the hearing on January 19, 2010. The transcript of that hearing is not, however, part of the record before us.

> fraud demonstrated to the necessary level that it must be in order for the Court to set aside the sale.

The circuit court awarded possession of the Property to Coe and ordered Arnold to vacate the premises within ten days. Arnold filed a motion for reconsideration and an emergency motion to stay the judgment awarding possession. The circuit court denied Arnold's motions.

Arnold's Appeal

On August 4, 2010, Arnold, still acting *pro se*, filed a notice of appeal in the circuit court. Arnold's appeal was docketed before this Court as *Daniel Arnold v. Jacob Geesing et al., Substitute Trustees*, No. 1322, Sept. Term 2010. The Substitute Trustees moved to strike the notice of appeal, arguing that it was both untimely and moot. The circuit court agreed and struck the notice of appeal on October 22, 2010.[2]

According to Arnold, Solomon became involved in the case in "the fall of 2010."[3] On November 12, 2010, the Substitute Trustees moved to dismiss Arnold's appeal for mootness. The Substitute Trustees cited *Mirjafari v. Cohn* for the proposition that "an

[2] As we explain *infra*, we eventually vacated the circuit court's order striking Arnold's notice of appeal. In the meantime, Arnold filed a motion in the circuit court entitled "Motions: Issue a Show Cause Order; New Trial; and/or Dismiss Based on Fraud on the Court and Exhibits." On motion by the Substitute Trustees, this filing was stricken by the circuit court. Thereafter, Arnold filed a second notice of appeal, which was docketed before this Court as No. 2656, Sept. Term 2010. According to Arnold, Solomon was representing him and filing documents on his behalf throughout this time. Arnold's second appeal was rendered moot when we ruled on his first appeal.

[3] Although Arnold does not provide an exact timeline, we note that Gerald Solomon filed an entry of appearance in the circuit court on November 1, 2010.

appeal becomes moot if the property is sold to a bona fide purchaser in the absence of a supersedeas bond because a reversal on appeal would have no effect." 412 Md. 475, 484 (2010). The Substitute Trustees argued that Coe was a bona fide purchaser because he "purchased the Property at foreclosure sale for 'good and valuable consideration' and without notice of any alleged defects in the foreclosure sale." It was undisputed that Arnold had not filed a supersedeas bond.[4]

Arnold filed an answer, which he subsequently amended. Neither the initial answer nor the amended answer asserted that Coe lacked bona fide purchaser status. According to Arnold, it was Solomon who filed both the answer and the amended answer, and Solomon "failed and refused to even mention" that Coe was not a bona fide purchaser. Solomon disputes this timeline, claiming that "Appellee agreed to represent the Appellant . . . at the appellate level for a motion to reconsider a ruling by the Court of Special Appeals dismissing the appeal because Appellant failed to secure a *supersedeas* bond."

On May 17, 2011, this Court ruled that Arnold's notice of appeal had been timely filed but that the appeal was moot. Because the notice of appeal was timely, we vacated

[4] Under Maryland Rule 8-422(a), an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a supersedeas bond. A supersedeas bond is "conditioned upon the satisfaction in full of (1) the judgment from which the appeal is taken, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or (2) any modified judgment and costs, interest, and damages entered or awarded on appeal." Md. Rule 8-423(a). In a foreclosure action, the amount of the bond "shall be the sum that will secure the amount recovered for the use and detention of the property, interest, costs, and damages for delay." Md. Rule 8-423(b)(2).

the circuit court's order striking Arnold's notice of appeal. In determining that Arnold's appeal was moot, we noted the following:

> As of the date of this Order, Appellant has not filed a supersedeas bond in accordance with Rule 8-423 or alternative security as prescribed by Rule 1-402(e)[5] in connection with the judgment from which the appeal was noted. *See Mirjafari v. Cohen*, 412 Md. 475, 484 (2010) (". . . [A]n appeal becomes moot if the property is sold to a bona fide purchaser in the absence of a supersedeas bond because a reversal would have no effect." (quoting *Pizza v. Walter*, 345 Md. 664, 674 (1997)). Consequently, the appeal has become moot.

Accordingly, we ordered that the appeal be dismissed.

Arnold's Motion for Reconsideration

As we explain *supra*, the parties do not agree on when, precisely, Solomon began representing Arnold. The parties agree, however, that Solomon was assisting Arnold with the motion for reconsideration, and that Solomon and Arnold differed as to the appropriate legal strategy to pursue. Arnold wanted to challenge Coe's status as a bona fide purchaser. Solomon, believing that the bona fide purchaser issue had not been preserved, proposed arguing that an appellate court could decide Arnold's appeal even though it was moot because it presented an issue that was capable of repetition, yet evading review.[6]

[5] Maryland Rule 1-402(e) provides that "[i]nstead of a surety on a bond, the court may accept other security for the performance of a bond, including letters of credit, escrow agreements, certificates of deposit, marketable securities, liens on real property, and cash deposits."

[6] We may express our views on the merits of a moot case "where a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review." *Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 292 (2015).

On May 26, 2011, Solomon filed a motion for reconsideration on Arnold's behalf ("Motion for Reconsideration"). In the Motion for Reconsideration, Solomon argued that the lower court lacked jurisdiction in the foreclosure action due to an extrinsic fraud perpetrated by Geesing. Solomon did not challenge Coe's status as a bona fide purchaser. On May 31, 2011, Arnold filed a *pro se* "Addendum to Motion for Reconsideration of Dismissal Due to Mootness" in which he asserted that Coe was not a bona fide purchaser.

On August 16, 2011, Solomon filed a motion to withdraw as Arnold's counsel. The same day, Arnold filed a separate motion to remove Solomon as his counsel. After securing an extension of the filing deadline, Arnold, acting *pro se*, filed a brief as the appellant on November 2, 2011.

On May 1, 2012, this Court issued an order denying the Motion for Reconsideration. We declined to consider Arnold's *pro se* addendum because

> [i]t is well established that the "right to counsel and the right to defend *pro se* cannot be asserted simultaneously. The two rights are disjunctive."

In the same order, we struck Solomon's appearance as counsel for Arnold.[7]

PROCEDURAL BACKGROUND

On October 22, 2015, Arnold filed a complaint and demand for jury trial in the Circuit Court for Anne Arundel County alleging that Solomon's negligent representation had caused Arnold "substantial economic loss and emotional trauma." In particular, Arnold alleged the following deficiencies in Solomon's representation:

[7] Arnold argues that "Solomon was responsible to represent Arnold until such time that COSA granted his withdrawal."

> a. Failing to provide proper or correct advice to Arnold in connection with the Case and COSA appeals;
>
> b. Failing to properly research and present factual and legal argument in the Case and in the COSA appeals;
>
> c. Failing and refusing to make proper filings on behalf of Arnold in the Case and in the COSA appeals;
>
> d. Failing and refusing to file key factual and legal argument as to the Mootness and BFP issues in Response to Motions to Dismiss filed by Geesing in the Case and in the COSA appeals; and
>
> e. Failing and refusing to prepare and file Briefs for Arnold while Defendants were counsel of record for Arnold in the COSA appeals.

Arnold also attached an affidavit describing his conversations with Coe in greater detail:

> Coe bid on the Property despite the fact that I had previously explained in detail to Coe a number of times that I had valid defenses in the case, including the significant defect due to the lack of assignment of the Debt Instrument, the Note itself, fraud in the case, and lack of standing of [the Substitute Trustees] to even file the Foreclosure Case and other defects revealed to Coe and the Courts. Shortly before the sale, Coe asked me if it was alright for Coe to bid on the Property, and I reminded him of the lack of validity of the Note and to "be sure to get good title insurance as I would be appealing this wrongful decision." Coe was at two of the hearings (and his wife was also at the third hearing). After the hearings, Coe told me that he "thought I would win." I kept Coe apprised of the status of the Foreclosure Case throughout the entire case, beginning well before Coe even bid on the property. Coe had also told me that he had spoken with Geesing and/or his office even prior to bidding on the foreclosure sale.

Motion for Summary Judgment

On November 4, 2016, Solomon filed a motion for summary judgment. Solomon argued that failing to challenge Coe's bona fide purchaser status was not negligence because the issue had not been preserved:

> Since the action was clearly moot and Arnold failed to preserve the issue at the lower court, there is no way that Arnold could even reach the question of whether the alleged malpractice would have any effect on subsequent proceedings.

Solomon further argued that Arnold had waived his right to raise the bona fide purchaser issue by failing to raise it in a Rule 14-305 motion.[8]

In his response, Arnold argued that there was a dispute of material fact as to whether he had raised the bona fide purchaser issue at the trial level:

> Defendants assert that Arnold never raised the issue of [Coe] not being a BFP at the lower Court. In fact, in a document relied upon by Defendants, [the Opposition to Intervention], Arnold informed the Circuit Court of the very facts that Coe was not a bona fide purchaser of the Property, stating, *inter alia*, that Coe "was kept well apprised of the fact that there was opposition to the foreclosure and a significant defect due to lack of assignment of the Debt Instrument, the Note itself, and the authenticity and legitimacy of the Substitute Trustee's right to foreclose."

[8] Maryland Rule 14-305, which governs the procedure following a foreclosure sale, provides the following:

> A party . . . may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

Quoting *Pizza v. Walter*, 345 Md. 664, 674 (1997), Arnold noted that "[b]ona fide purchaser status extends only to those purchasers without notice of defects in title, or in this case, defects in the foreclosure sale." Because Coe "was intimately involved at all stages of the sale" and "had actual notice of defects in title[,]" Arnold argued that "Defendants as competent counsel had the obligation to make this winning argument to the Court of Special Appeals[.]"

Arnold also argued that the Court of Special Appeals could have decided the bona fide purchaser issue even if he had failed to raise it at the trial level. Arnold pointed out that appellate courts in Maryland have discretion under Maryland Rule 8-131 to decide issues that were not raised at the trial level "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Arnold disputed the defendants' assertion that the bona fide purchaser issue had to be raised in a Maryland Rule 14-305 motion:

> The fact that Coe was not a bona fide purchaser was not a procedural defect in the sale and was not even an issue that could properly be raised in exceptions pursuant to MD Rule 14-305.

Hearing and Disposition

On March 8, 2017, the circuit court held a hearing on the motion for summary judgment. At the hearing, Solomon argued again that Arnold had failed to raise the bona fide purchaser issue. Arnold responded that the bona fide purchaser issue had been sufficiently raised in the Opposition to Intervention. Arnold further argued that the

appellate court could have considered the bona fide purchaser issue as part of its mootness inquiry.

In rebuttal, Solomon argued that Arnold needed to raise the bona fide purchaser issue in a specific motion dedicated to that question:

> THE COURT: So you're saying that it doesn't matter what the -- was said in passing during these proceedings because there wasn't a specific motion filed on that topic.
>
> MR. SOLOMON: That's correct.
>
> THE COURT: So it's not a factual dispute in your mind because it's irrelevant.
>
> MR. SOLOMON: Because it's irrelevant.
>
> Where it had to have been -- in this particular case after the report of sale Mr. Arnold at that point should have asked the court to stay saying that he is going to file a motion, (a), he's going to appeal it, and (b), he's going to file a motion to determine the status of the purchaser and ask the court to stay pending his filing of the motion. That didn't happen.

After the argument concluded, the circuit court granted Solomon's motion for summary judgment holding:

> Based upon the motions and arguments of counsel the Court finds that there are no relevant facts in dispute and I'm going to grant the motion for summary judgment.

Arnold filed a timely notice of appeal.

Additional facts shall be discussed as necessitated by our discussion of the issues on appeal.

STANDARD OF REVIEW

Under Maryland Rule 2-501, "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." In reviewing a trial court's decision to grant summary judgment, we ask whether the court was correct as a matter of law. *Piscatelli v. Van Smith*, 424 Md. 294, 305 (2012) (citing *Rosenberg v. Helinski*, 328 Md. 664, 674 (1992)). As the Court of Appeals explained in *Roy v. Dackman*,

> We "review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Tyler v. City of Coll. Park*, 415 Md. 475, 499, 3 A.3d 421, 434 (2010) (citing *Charles Cnty. Comm'rs*, 393 Md. at 263, 900 A.2d at 762). This review is done in "the light most favorable to the non-moving party and [we] construe any reasonable inferences that may be drawn from the well-plead facts against the moving party." *Id.*

445 Md. 23, 39 (2015), *reconsideration granted* (Nov. 24, 2015). On review, "an appellate court determines whether there was sufficient evidence to create a jury question." *Mathews v. Underwood-Gary*, 133 Md. App. 570, 579 (2000) (quoting *Saponari v. CSX Transp., Inc.*, 126 Md. App. 25, 37 (1999), *cert. denied*, 353 Md. 473 (1999)), *aff'd*, 366 Md. 660 (2001).

DISCUSSION

Arnold contends that the allegations he made in the Opposition to Intervention were sufficient to preserve the bona fide purchaser issue for appellate review. In the alternative, Arnold argues that the bona fide purchaser issue did not need to be preserved. Solomon counters that this Court could not have considered the bona fide purchaser issue because it

was not properly raised or decided at the trial level.[9] Because of disputed facts, we hold that the circuit court erred in granting summary judgment.

To prevail on a claim for legal malpractice, a former client must prove "(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." *Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010) (quoting *Thomas v. Bethea*, 351 Md. 513, 528-29 (1998)). Because legal malpractice claims involve a breach of a reasonable duty, we typically treat them as a species of negligence action. *See Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A*, 152 Md. App. 698, 717-18 (2003) ("A legal malpractice action, therefore, is similar to any other negligence claim which requires that a plaintiff prove duty, breach, causation, and damage."). Indeed, the crux of Arnold's complaint, according to the appellant, is that Solomon "negligently failed to render proper representation (and in some instances rendered no representation at all) to Arnold in the Case and the Appeals)."

"Generally, whether there is adequate proof of the required elements needed to succeed in a negligence action is a question of fact to be determined by the fact finder." *Davis v. Bd. of Educ. for Prince George's Cty.*, 222 Md. App. 246, 260-61 (2015) (quoting

[9] Arnold moved to strike Solomon's response brief on the grounds that it was not timely filed. Under Maryland Rule 8-502, "[a]n appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court." Because Arnold's case was submitted on brief, there is no oral argument that would be delayed by allowing Solomon to file a response brief after the deadline. In the absence of any specific prejudice alleged by Arnold, we deem it appropriate to review all arguments and authorities presented by both sides. Accordingly, we deny Arnold's motion to strike Solomon's brief.

Valentine v. On Target, Inc., 353 Md. 544, 549 (1999)). The Court of Appeals has held that "[a]ny legally sufficient evidence of negligence, however slight, must be submitted to a jury to be weighed and evaluated."[10] *Kassama v. Magat*, 136 Md. App. 637, 657 (2001) (citing *Fowler v. Smith*, 240 Md. 240, 246 (1965)), *aff'd*, 368 Md. 113 (2002); *see also id.* at 658 ("The question of negligence becomes a matter of law only when reasonable minds could not differ."). Thus a plaintiff must present evidence "of legal probative force and evidential value[,]" rather than "a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture that such other party has been guilty of negligence[.]" *Malik v. Tommy's Auto Serv., Inc.*, 199 Md. App. 610, 620 (2011) (quoting *Fowler v. Smith*, 240 Md. 240, 247 (1965)).

In a legal malpractice case, "[e]xpert testimony as to the relevant standard of care is necessary . . . 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." *Berringer v. Steele*, 133 Md. App. 442, 509 (2000) (quoting *Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996)). Indeed, this Court has cited with approval the holding of *Bonhiver v. Rotenberg, Shwartzman Richards*, 461 F.2d 925 (7th Cir. 1972), that "a determination of the standard of reasonable care by the trial judge based upon his own private investigation, or upon his own intuitive knowledge of the court, untested by cross examination, or any of the rules of

[10] Although the Court of Appeals articulated this principle in the context of a motion for judgment, we have invoked the same principle, using the same language, in reviewing a trial court's grant of summary judgment. *See, e.g.*, *Shafer v. Interstate Auto. Ins. Co.*, 166 Md. App. 358, 376 (2005).

evidence, constitutes a denial of due process in a criminal or civil matter." *Fishow v. Simpson*, 55 Md. App. 312, 319 (1983).

Turning to the case at hand, the parties agree that Solomon refused to argue the bona fide purchaser issue in the Motion for Reconsideration. Whether Solomon's actions fell below the standard of reasonable care would ordinarily be a question of fact for the jury to decide[11] with the assistance of expert witnesses.[12] Nevertheless, Solomon has attempted to show that Arnold could not possibly present legally sufficient evidence of negligence because the bona fide purchaser issue was, in fact, waived. In Solomon's view, any attempt to raise the bona fide purchaser issue at the appellate level would have been unsuccessful at best, and at worst would have resulted in sanctions.

The question of preservation is not, however, so clear-cut under the unique circumstances of this case. In dismissing Arnold's appeal, we specifically cited *Mirjafari v. Cohen* for the proposition that "[a]n appeal becomes moot if the property is sold to a

[11] Concerning the issue of proximate cause, the Court of Appeals has suggested that a judge may be in a better position than a jury to determine whether a particular appeal would have been successful in the absence of an attorney's negligence. *See Thomas v. Bethea*, 351 Md. 513, 534 n.7 (1998) (citing *Daugert v. Pappas*, 104 Wash. 2d 254 (1985)).

[12] Arnold filed an expert witness disclosure stating that Alan R. Engel, Esq., ("Engel") would "provide expert testimony at trial as to the breaches of the standard of care by the Appellees in this matter." Engel would also "testify that had Appellees provided the requisite legal services in accordance with the standard of care, the Court of Special Appeals would not have dismissed the appeals on the basis of mootness, and would have ruled in favor of Arnold reversing the Circuit Court's Orders and dismissing the Foreclosure Case." We need not decide here whether such evidence would be sufficient for Arnold to prevail; we only note that Arnold was prepared to present such testimony.

bona fide purchaser in the absence of a supersedeas bond because a reversal would have no effect." 412 Md. 475, 484 (2010) (quoting *Pizza v. Walter*, 345 Md. 664, 674 (1997)). Notably, Arnold's appeal could only be dismissed as moot if Coe was, in fact, a bona fide purchaser. In deciding the issue of mootness, we accepted the Substitute Trustees' undisputed assertion that Coe "purchased the Property at foreclosure sale for 'good and valuable consideration' and without notice of any alleged defects in the foreclosure sale." Solomon only concluded that the bona fide purchaser issue could not be raised *after* this Court had already heard, evaluated, and adopted the Substitute Trustees' argument that Coe was a bona fide purchaser.[13]

To be sure, there was limited evidence in the record that an appellate court could rely on to decide the bona fide purchaser issue. The record was not, however, completely silent on that question. In the Opposition to Intervention, Arnold made the following allegations:

> Petitioner, the next door neighbor to this Defendant and the Petitioner's only next door neighbor, being otherwise surrounded by public property, had asked this Defendant if it was alright to bid on Defendant's property at the foreclosure sale on February 10, 2009. Defendant replied that there was no objection to Petitioner's bidding, and Petitioner was further advised of the potential lack of validity of the Note.
>
> [. . .]
>
> Petitioner knew, or should have known, the status of this instant case, having been informed of the situation several

[13] Furthermore, under Maryland Rule 8-131 this Court has the discretion to decide unpreserved issues "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." We cannot say, therefore, that Coe's bona fide purchaser status was, *as a matter of law*, beyond the scope of appellate review.

> times by this Defendant and by public record. Petitioner had frequently spoken with this Defendant, Petitioner visited Defendant's home and inspected the home several times before the first sale date and continuing visitations up through and beyond the second sale date. Petitioner was kept well appraised [sic] of the fact that there was opposition to the foreclosure and a significant defect due to the lack of assignment of the Debt Instrument, the Note itself, and the authenticity and legitimacy of the Substitute Trustee's right to foreclose.

Although these allegations were made in the context of Coe's motion to intervene in the proceedings, it is not clear that Arnold had a more appropriate means for raising the bona fide purchaser issue. After a foreclosure sale, "a debtor may file exceptions challenging only **procedural** irregularities in the foreclosure sale." *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008); Md. Rule 14-305(d).[14] Coe's alleged notice of defects in the foreclosure action was not, in itself, a procedural defect that Arnold could have raised under Maryland Rule 14-305.[15] Coe's bona fide purchaser status only became relevant, therefore, at the appellate level. In these circumstances, this Court could have determined that the issue was sufficiently preserved for the purposes of deciding whether the case was moot. In the

[14] Such procedural irregularities might include "allegations such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable, etc." *Jones*, *supra*, 178 Md. App. at 69 (quoting *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 741 (2005)).

[15] Solomon suggests that Arnold could have asked the court to waive the supersedeas bond and, as a basis for the waiver, allege that Coe was not a *bona fide* purchaser. Solomon has provided no authority to persuade us, however, that the purchase of a foreclosed property by a non-bona fide purchaser is an appropriate basis for waiving the supersedeas bond at the trial level.

alternative, we could have remanded the case to the circuit court for a full hearing on the bona fide purchaser issue.

Furthermore, there is a dispute of material fact concerning Solomon's role in Arnold's case before and after the Motion for Reconsideration. According to Solomon, "Appellee agreed to represent the Appellant, *pro bono*, at the appellate level for a motion to reconsider a ruling by the Court of Special Appeals dismissing the appeal because Appellant failed to secure a *supersedeas* bond." Arnold claims, however, that Solomon became involved in the case in "the fall of 2010" and assisted Arnold with at least one motion at the trial level.[16] Arnold further alleges that it was Solomon who filed the answer and amended answer to the Substitute Trustees' motion to dismiss.

Notably, Arnold's complaint for malpractice was not based solely on Solomon's handling of the Motion for Reconsideration; indeed, Arnold alleged that Solomon acted negligently before and after that particular motion was filed. Because the existence of an attorney-client relationship is one of the basic elements of an action for legal malpractice, we hold that a dispute over the beginning, end, and scope of Solomon's representation is a dispute of material fact precluding summary judgment.

Given that the bona fide purchaser issue was considered by this Court in our order dismissing Arnold's appeal, and that the lack of a specific motion raising the issue at the trial level was not an insurmountable obstacle to our review, we conclude that Arnold has

[16] The timeline set forth by Arnold is consistent with Gerald Solomon's entry of appearance in the circuit court on November 1, 2010.

presented legally sufficient evidence that a reasonable attorney would have raised the bona fide purchaser issue in challenging the dismissal of his appeal.[17] We further hold that there is a dispute of material fact concerning the scope and timeline of Solomon's representation. We, therefore, reverse the circuit court's grant of summary judgment in favor of Solomon.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. COSTS TO BE PAID BY APPELLEES.

[17] To be clear, we do not opine on the strength or weakness of Arnold's case. We merely hold that Arnold has met the evidentiary minimum to survive a motion for summary judgment based on the record as it exists at this time.