Circuit Court for Baltimore City
Case No.: 24-C-20-001144

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1785

September Term, 2023

IRIS MCCLAIN

v.

LAW OFFICE OF CHRISTMAN & FASCETTA LLC, ET AL.

Beachley,
Albright,
Woodward, Patrick, L.
(Senior Judge, Specially Assigned)
JJ.

PER CURIAM

Filed: October 4, 2024

* This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

In March of 2017, appellant, Iris McClain, filed a grievance against her attorney, Edward Christman, Jr., appellee, in connection with her then-pending bankruptcy. On April 6, 2017, Mr. Christman notified Ms. McClain of his intention to withdraw as counsel and reminded her of an upcoming deadline – April 14, 2017 – to file her second amended Chapter 13 bankruptcy plan ("second amended plan").[1] On April 12, 2017, Ms. McClain filed correspondence advising the bankruptcy court of her dissatisfaction with Mr. Christman and instructing the court to, among other things, "let [Mr. Christman] go[.]" On April 27, 2017, the bankruptcy court struck Mr. Christman's appearance. Several months later, the bankruptcy court dismissed Ms. McClain's case for failure to file the second amended plan.

In February of 2020, Ms. McClain sued Mr. Christman and his law firm, the Law Office of Christman & Fascetta, LLC ("appellees"), for fraud, legal malpractice, negligent infliction of emotional distress, and punitive damages due, in part, to Mr. Christman's failure to file the second amended plan. The court granted appellees' motion to dismiss, and Ms. McClain noted her first appeal. From that appeal, we held that as to Ms. McClain's legal malpractice claim, she had "sufficiently pled all the elements of that cause of action[.]" *McClain v. Law Office of Christman & Fascetta, LLC*, No. 291, Sept. Term,

[1] As we observed in a prior appeal noted by Ms. McClain, the first bankruptcy plan was found insufficient by the bankruptcy trustee, and the second bankruptcy plan (the first amended plan) was rejected after a hearing before the bankruptcy court. *McClain v. Law Office of Christman & Fascetta, LLC*, No. 291, Sept. Term, 2021 (Md. App. August 18, 2022).

2021 (Md. App. August 18, 2022). Accordingly, we reversed in part and remanded Ms. McClain's legal malpractice claim for further proceedings. *Id*.

On remand, Ms. McClain filed a motion seeking to be excused from providing an expert witness or, alternatively, requesting that the court appoint an expert witness for her. Both requests were denied, and appellees thereafter filed a motion for summary judgment. The court granted that motion and entered summary judgment in favor of appellees. Ms. McClain noted the instant appeal, where she raises ten separate issues, which we consolidate to one: did the court err in granting summary judgment? We answer that question in the negative, and we shall affirm.

"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)). The third element, sometimes referred to as the "trial-within-a-trial doctrine[,]" requires a plaintiff to prove "by a preponderance of the evidence that, but for the defendant lawyer's misconduct, the plaintiff would have obtained a more favorable judgment in the previous action." *Suder*, 413 Md. at 241 (quotation marks and citation omitted). In other words, like any other negligence claim, a claim for legal malpractice "requires that a plaintiff prove duty, breach, causation, and damage." *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A*, 152 Md. App. 698, 717 (2003).

It follows that a plaintiff asserting a legal malpractice claim "bears the burden of overcoming the presumption that due skill and care were used." *Crockett v. Crothers*, 264

Md. 222, 224 (1972). To that end, subject to narrow exceptions, "[e]xpert testimony as to the relevant standard of care is necessary in an attorney malpractice case[.]" *Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996). Indeed, we have made clear that "'allegations of professional malpractice require expert testimony, because the intricacies of professional disciplines generally are beyond the ken of the average layman.'" *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 720 (2013) (quoting *CIGNA Prop. & Cas. Cos. v. Zeitler*, 126 Md. App. 444, 464 (1999)). When, however, "negligence is so obvious that the trier of fact could easily recognize that such actions would violate the applicable standard of care[,]" expert testimony is not required. *Schultz v. Bank of Am., N.A.*, 413 Md. 15, 29 (2010).

Summary judgment is proper where "'there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.'" *Berringer v. Steele*, 133 Md. App. 442, 470 (2000) (quoting *King v. Bd. of Educ.*, 354 Md. 369, 376 (1999)). We review the trial court's grant of a motion for summary judgment de novo. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006).

Here, the trial court correctly entered summary judgment after Ms. McClain failed to designate an expert witness in support of her legal malpractice claim. To prevail on her claim, Ms. McClain was required to prove that but for Mr. Christman's actions, she would have obtained a more favorable judgment in her bankruptcy case. At minimum, doing so successfully would involve expert testimony regarding the standard of care – particularly in light of Ms. McClain's request to be "let [] go" of Mr. Christman prior to his alleged breach – and the confirmability of a bankruptcy plan that could have led to a more favorable judgment. Without expert testimony on these matters, Ms. McClain could not possibly have

"expose[d] 'what the result should have been or what the result would have been' had the lawyer's negligence not occurred." *Suder*, 413 Md. at 242 (internal quotation marks and citation omitted).

On appeal, Ms. McClain contends that "[m]issing a filing deadline is an event that is common knowledge[,]" and thus, that expert testimony was unnecessary. She adds that an expert was not needed because "[p]resenting a plan for confirmation involves simple math" and because her case involves "no complex issues[.]" What Ms. McClain fails to acknowledge, however, is that prevailing on a claim for negligence requires not only a breach of a duty, but damages proximately caused by such a breach. *Supik*, 152 Md. App. at 717. Assuming, *arguendo*, that Mr. Christman's failure to file the second amended plan constituted a breach of duty, Ms. McClain failed to prove that she suffered any damages proximately caused by such a breach. Moreover, the fact that two prior bankruptcy plans were submitted, and rejected, defies her contention regarding the straightforward nature of her claims. In sum, we cannot say that the specialized knowledge and skill required to successfully prepare and confirm a Chapter 13 bankruptcy plan are within the perception of "'the average layman.'" *Catler*, 212 Md. App. at 720 (quoting *CIGNA Prop. & Cas. Cos.*, 126 Md. App. at 464).

Accordingly, without expert testimony supporting her allegations that, but for Mr. Christman's actions, she would have obtained a more favorable outcome, Ms. McClain failed to prove the "trial-within-a-trial" element of her legal malpractice claim. Summary judgment was proper. *Frankel v. Deane*, 480 Md. 682, 699-700 (2022) (holding that

"summary judgment is appropriate if the plaintiff fails to come forward with admissible expert testimony on standard of care, breach, and causation").

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