

Circuit Court for Prince George's County
Case No: CAL20-18849

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 342

September Term, 2021

RONALD J. BROOKING

v.

DANIEL MOLONEY

Graeff,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 2, 2022

*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.

This appeal stems from a September 2016 incident in which pedestrian, Jadene B. Brooking, was struck and killed by a motorist in Prince George’s County, Maryland. Following the incident, her father, Ronald J. Brooking, appellant, retained attorney Daniel Moloney, appellee, as counsel with respect to any wrongful death claim arising from the incident. During the course of Mr. Moloney’s representation, he was able to secure a settlement from the negligent motorist’s insurance carrier. The record does not reflect that Mr. Moloney pursued any other party for potential liability.

In 2019, Mr. Brooking filed a complaint for legal malpractice against Mr. Moloney in the Circuit Court for Prince George’s County. The complaint alleged that Mr. Moloney had failed to disclose that additional tort claims, stemming from his daughter’s death, could have been filed against Prince George’s County, the Metro system, and the District of Columbia. In October 2020, Mr. Brooking’s complaint was dismissed, without prejudice, for its failure to set forth “facts supporting any cognizable claim[.]” The following month, Mr. Brooking filed a second complaint against Mr. Moloney, asserting claims of legal malpractice, negligence, wrongful death, and breach of contract. In the complaint, he alleged that Mr. Moloney failed to “make a timely Tort Claim Notice to the Maryland Treasurer to any potential liable governmental agency for failure to properly keep the intersection [in which his daughter was struck] safe for pedestrians,” “file a suit against any potential liable government agency,” and “conduct any investigations as to any potential liable government agency for intersection safety.” As a result of these failures, Mr. Brooking alleged, the statute of limitations on these claims expired and he was unable to make claims against these entities in which “he would have prevailed.”

In response, Mr. Moloney moved to dismiss the complaint, contending that Mr. Brooking had failed to plead facts sufficient to support the causes of action raised. Alternatively, Mr. Moloney requested the entry of summary judgment. Mr. Brooking filed a written opposition thereto, responding primarily to Mr. Moloney’s request for summary judgment. Prior to a hearing on the motion to dismiss, Mr. Brooking made several additional filings, including: 1) a request for the entry of a default order, 2) a motion to strike Mr. Moloney’s opposition to the entry of a default order, and 3) a motion for summary judgment. Upon hearing argument by the parties, the circuit court granted Mr. Moloney’s motion and dismissed Mr. Brooking’s complaint with prejudice. After seeking reconsideration, Mr. Brooking noted a timely appeal to this Court.

On appeal, Mr. Brooking raises five questions for the Court’s consideration, which we consolidate, reorder, and rephrase for clarity:

1. Did the circuit court err in dismissing with prejudice Mr. Brooking’s complaint?
2. Did the circuit court err in failing to rule on Mr. Brooking’s Motion to Strike, Motion for Summary Judgment, and Motion for Order of Default?

For the following reasons, we shall affirm.

DISCUSSION

I. Motion to Dismiss

This Court reviews the grant of a motion to dismiss de novo. *See Unger v. Berger*, 214 Md. App. 426, 432 (2013). The Court, in reviewing the grant of a motion to dismiss, “must determine whether the Complaint, on its face, discloses a legally sufficient cause of

action.” *Scarborough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted). In doing so, we “presume the truth of all well-pleaded facts in the Complaint, along with any reasonable inferences derived therefrom in a light most favorable to the plaintiffs.” *Id.* 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). We will hold that the grant of a motion to dismiss is proper where “the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Id.*

On appeal, Mr. Brooking does not argue with particularity that his complaint, as filed, disclosed a legally sufficient cause of action. While he maintains in his brief that Mr. Moloney committed legal malpractice, it was necessary for Mr. Brooking to address whether his complaint sufficiently alleged facts that, when viewed in the most favorable light, would have supported a claim of legal malpractice. Because his brief does not address the sufficiency of his complaint, we decline to consider on appeal whether the court erred in dismissing the complaint with prejudice. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party's position.”); *Klaunberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

Even were we to exercise review, we do not discern any error by the court in dismissing Mr. Brooking’s complaint for failure to state a claim upon which relief could

be granted. Firstly, his written opposition to Mr. Moloney’s motion to dismiss,¹ which Mr. Brooking contends the court did not consider, did not raise argument addressing the sufficiency of his complaint. Instead, the opposition focused on whether there was a genuine dispute of material fact in response to Mr. Moloney’s alternative request for summary judgment. As a result, Mr. Brooking failed to defend his complaint and argue that the facts set forth therein were sufficient to maintain the causes of action alleged. This failure is pertinent as it indicates that Mr. Brooking did not preserve any argument regarding the sufficiency of the complaint for appeal. *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).

Secondly, the facts set forth in the complaint, even when viewed in the light most favorable to Mr. Brooking, did not support the causes of action alleged in his complaint. With respect to the claim for legal malpractice, for instance, Mr. Brooking needed to set forth facts that, if true, established “(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). As to the “loss to the client” requirement, Mr. Brooking needed to set forth facts that he “probably would have prevailed in the underlying action, but for the lawyer’s negligence.” *Berringer v. Steele*, 133 Md. App. 442, 473 (2000). However, Mr. Brooking’s complaint did not sufficiently address that he would have prevailed in a negligence action against any

¹ Entitled: “Motion in Total Opposition of Defendant’s Motion to Dismiss, or in the Alternative Motion for Summary Judgment.”

governmental entity. The complaint did not identify which governmental entity was responsible for maintaining the crosswalk in which his daughter was struck, nor did it state that there was any defect in the design or maintenance of the crosswalk which resulted in her death. As a result, Mr. Brooking’s complaint failed to set forth a coherent claim of negligence against any governmental agency and, therefore, he did not sufficiently plead that he would have prevailed in such a claim but for Mr. Moloney’s purported malpractice.

II. Motions Not Ruled Upon

On appeal, Mr. Brooking contends that the court erred by failing to rule on several of his pending motions, filed after Mr. Moloney’s motion to dismiss. However, upon the dismissal of Mr. Brooking’s complaint with prejudice, there was no longer an existing controversy pending between the parties. Accordingly, Mr. Brooking’s pending motions were rendered moot by the dismissal. *See Simms v. Maryland Dep’t of Health*, 240 Md. App. 294, 314 (2019) (stating that a case is deemed moot when “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.”). Because the “[c]ourts generally do not address moot controversies,” *id.*, the court was not required to rule on Mr. Brooking’s pending motions.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**