Circuit Court for Prince George's County
Case No.: CAL16-36524

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 689

September Term, 2017

TAE M. KIM

v.

ROBERT V. CLARK, JR., ET AL.

Berger,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: August 22, 2018

*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.

Tae M. Kim, appellant, filed suit against Robert V. Clark, Jr. and the Law Firm of Clark & Steinhorn, LLC ("firm"), appellees, in the Circuit Court for Prince George's County, alleging that he had suffered damages resulting from appellees' failure to provide adequate legal representation. The circuit court granted summary judgment in favor of appellees. Appellant presents several questions on appeal, which we have rephrased and condensed as follows: Did the trial court err in entering summary judgment against him? For the reasons that follow, we affirm.

BACKGROUND

The Underlying Personal Injury Lawsuit

In 2012, appellant retained appellees as counsel in connection with a personal injury lawsuit. Appellees filed the original and amended complaints, served interrogatories and requests for admissions, deposed fact and expert witnesses, and corresponded and met with appellant about the case. A few days before the scheduled trial date, appellees filed a motion to withdraw their appearance, asserting that "irreconcilable difference[s]" had developed with appellant, and that he had requested that appellees cease representing his interests. The court denied the motion, and appellees proceeded to trial as appellant's attorneys of record.

At trial, appellant requested to discharge appellees from the case. The judge indicated that the trial date would not be continued for appellant to secure replacement counsel, and appellant was given time to reconsider whether he wanted to discharge counsel. When appellant reiterated to the court that he did not want to be represented by appellees, their motion to withdraw was granted. Trial commenced with appellant

representing himself, and at the end of his case-in-chief, the court entered judgment in favor of the defendants.

The Malpractice Lawsuit Against Appellees

In 2016, appellant, representing himself, filed a complaint against appellees alleging breach of contract, malpractice and breach of fiduciary duty, willful misconduct, and other claims related to the underlying personal injury lawsuit. Appellees filed an answer, and the scheduling order issued by the administrative judge required that appellant designate his expert witnesses before the pretrial conference. After the discovery deadline had passed, appellees filed a motion for summary judgment, arguing that, without expert witness testimony, appellant could not establish the breach of any duties owed to him or that appellees had caused him to lose the underlying lawsuit. The motion was accompanied by an affidavit from the defense expert witness who concluded, after reviewing the case file and an audio recording of the trial, that appellees' representation was "well within the reasonable standard of care expected of a civil litigator practicing in Maryland courts."

A summary judgment hearing was held on May 19, 2017, during which appellant supplemented his discovery responses but did not designate an expert witness. After hearing argument on the motion, the circuit court announced its ruling from the bench:

> In a case such as this, you have to have an expert. What is not in dispute is you have not named that expert. They have named someone to say—a very fine lawyer to say there was no malpractice. You elected to represent yourself.
>
> As diplomatically, politely and respectfully as I can, that is a decision that you made. And the only issue right now for me is whether you have done what you needed to do with regard to naming an expert has been done, and it is not. And you apparently have no intention of doing that.

> Accordingly, I am going to grant the Defendant's motion for summary judgment. Thank you very much. You're free to go. The case is closed.

STANDARD OF REVIEW

The entry of summary judgment is governed by Maryland Rule 2-501, which provides: "The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). Although the movant bears the burden of proof, "after the moving party has produced sufficient evidence of summary judgment, the non-movant 'must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence.'" *Clark v. O'Malley*, 434 Md. 171, 194 (2013) (citations omitted). "A material fact is a fact the resolution of which will somehow affect the outcome of the case." *Id.* at 195 (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)). "[F]acts in dispute must be presented 'in detail and with precision,' general allegations are insufficient." *Id.* (citations omitted). "The court is to consider the record in the light most favorable to the non-moving party and consider any reasonable inferences that may be drawn from the undisputed facts against the moving party." *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 598 (2013). When the decision of the circuit court turns on a question of law, not a dispute of fact, we review that court's decision to award summary judgment for legal correctness without deference to its conclusions. *Id.* (citations omitted).

DISCUSSION

Appellant contends that the trial court erred in granting the motion for summary judgment because there were material facts in dispute. His principal argument is that the negligence alleged in his case is "so obviously shown" that a layperson could recognize it without expert testimony, and therefore, summary judgment was improper. We disagree.

In a claim for malpractice, the plaintiff 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)). Accordingly, a legal malpractice lawsuit is comparable to any other negligence claim where the plaintiff must prove duty, breach, causation, and damages. *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 717 (2003). Conversely, where a plaintiff cannot point to facts to support each element of the claim, a defendant may prevail on a motion for summary judgment. *Id.* ("The absence of any one of those elements will defeat a cause of action in tort.").

With narrow exceptions, expert testimony is generally required to prove the elements of a legal malpractice claim. *See Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996)). As we have previously stated, "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)). The Court of Appeals has distinguished those cases where expert testimony is required to prove professional malpractice from cases where "the alleged negligence, if proven, would be so

obviously shown that the trier of fact could recognize it without expert testimony." *Schultz v. Bank of America, N.A.*, 413 Md. 15, 29 (2010) (citing *Crockett v. Crothers*, 264 Md. 222, 224 (1972)). As the Court of Appeals explained in *Schultz*:

> "an expert witness is not needed to explain the standard of care in cases where a dentist extracts the wrong tooth, a doctor amputates the wrong arm or leaves a sponge in a patient's body, or an attorney fails to inform his client that he has terminated his representation of the client. In those cases, the alleged negligence is so obvious that the trier of fact could easily recognize that such actions would violate the applicable standard of care."

Id. (citing *Central Cab Co. v. Clarke*, 259 Md. 542, 551 (1970)).

The crux of appellant's complaint was that appellees' litigation strategy did not meet his goals, that he was misled as to the expected outcome of his lawsuit, and that appellees either misled him or erroneously advised him to discharge them from the case on the first day of trial and proceed without counsel, which caused him to lose his lawsuit. Appellees, in support of their summary judgment motion, submitted a copy of appellant's signed retainer agreement, which stated that the "[a]ttorney makes no warranties concerning any particular outcome." The motion was also accompanied by a client letter explaining the rationale for not including certain defendants in the lawsuit and the difficulty in securing witnesses to corroborate his version of events. Appellees also produced appellant's signed consent to their motion to withdraw, as well as an affidavit from a legal malpractice expert who reviewed the audio recording of the trial and stated that appellant requested to the court that appellees be withdrawn as counsel. The expert also concluded that appellees' representation was well within the standard of care.

Appellant made no effort to dispute the signed retainer agreement, consent to withdraw, or client letter. He did not challenge the statement of the expert, who said that he heard appellant request to discharge appellees from the case. Although he alleged that appellees' secretary witnessed a conversation where he was assured that appellees would resume their representation after the trial was continued, he offered no evidence to prove his version of the events. Finally, appellant failed to designate a competent expert to challenge the opinion that malpractice had not occurred. To demonstrate that there was a genuine dispute of material fact and defeat summary judgment, appellant was required to offer facts that were "material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." *Benway v. Maryland Port Admin.*, 191 Md. App. 22, 46 (2010) (quoting *Carter v. Aramak Sports and Entm't Scrvs., Inc.*, 153 Md. App. 210, 225 (2003)). Considering appellant's failure to support his opposition motion with an affidavit attesting to material facts in dispute or to provide any evidence upon which a reasonable jury could find in his favor, we hold that the circuit court did not err in granting summary judgment in favor of appellees.

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