

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0026

September Term, 2014

RALPH T. BYRD

v.

MELVIN G. BERGMAN

Krauser, C. J.,
Reed,
**Zarnoch, Robert A.,
Retired, Specially Assigned,

JJ.

Opinion by Reed, J.

Filed: March 17, 2016

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

**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 arises from appellant, Ralph T. Byrd’s legal malpractice action against appellee, Melvin I. Bergman. The Circuit Court for Prince George’s County granted appellee’s motion for summary judgment and denied appellant’s motion for partial summary judgment.

Appellant timely appealed that decision and presents four questions for our review, which we have rephrased and condensed into one:¹

¹ Appellee presented the following questions, as originally stated:

I. Did Material Issues Of Fact Preclude A Finding By The Circuit Court That Defendant Did, In Fact, Recognize The Perjury Charges At The Judicial Hearing, But Exercised Defendant’s Professional Judgment To Not Challenge The Perjury Charges At The Judicial Hearing, And, Instead, Challenge The Perjury Findings At The Disposition Hearing?

II. If Material Issues Of Fact Did Not Preclude A Finding By The Circuit Court That Defendant Did, In Fact, Recognize The Perjury Charges At The Judicial Hearing, But Exercised Defendant’s Professional Judgment To Not Challenge The Perjury Charges At The Judicial Hearing, And, Instead, Challenge The Perjury Findings At The Disposition Hearing, Did Defendant Negligently Exercise Such Professional Judgment By Failing To Satisfy His Duty Under MRPC 1.0(f) And MRPC 1.4(a)1 To Obtain Plaintiff’s Prerequisite Informed Consent To Such Course Of Action?

III. Was The Record Sufficiently Developed To Enable The Circuit Court To Grant Summary Judgment For Defendant Without Requiring Expert Testimony As To The Relevant Standard Of Care?

IV. Did the Circuit Court Err When It Granted Summary Judgment For Defendant Despite Material Issues Of Fact Relative To Whether Defendant Satisfied A Duty To Question The Court Of Appeals’ Impartiality?

Did the circuit court err in granting the appellee’s motion for summary judgment?

For the following reasons, we answer this question in negative. Therefore, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The current appeal arises from a legal malpractice claim against appellee, who represented appellant before the Attorney Grievance Commission relating to allegations that appellant filed false reports in violation of bankruptcy laws and mishandled a number of client matters. The federal bankruptcy court had found that appellant engaged in “bad faith,” “dilatory,” and “frivolous” conduct that was “designed to frustrate the judicial process” and “reek[ed] of flagrant abuse.” After the Attorney Grievance Commission was notified of this conduct, it brought three complaints against appellant. Appellee represented appellant in the proceedings. The Court of Appeals referred the petition to the Honorable Ronald B. Rubin of the Circuit Court for Montgomery County for an evidentiary hearing and the making of findings of fact. The complaints, which related to appellant’s filing of false reports with the bankruptcy court and his representations of former debtor defendant clients, were found to be supported by clear and convincing evidence by Judge Rubin. The Court of Appeals sanctioned appellant with disbarment for his conduct in violation of the Maryland Rules of Professional Conduct.

Appellant initially filed suit against appellee in the United States District Court for Maryland Southern Division, which dismissed for lack of jurisdiction, and noted that the complaint appeared to be “frivolous and vexatious”. Appellant was directed to “show

cause as to why sanctions . . . should not be imposed for vexatiousness, malfeasance, bad faith, or the like.” Appellant failed to appear for the Show Cause hearing and was fined \$15,000. He then failed to appear for three subsequent hearings and also failed to pay the \$15,000 fine within the required time. Thus, after dismissing the federal claim against the appellee, the federal court concluded that the appellant should be charged with criminal contempt in a separate proceeding.²

Appellant then filed the complaint at issue on November 21, 2012, in the Circuit Court for Prince George’s County, alleging the following:

- Appellee failed to recognize or defend the perjury charges brought against appellant;
- Appellee failed to fully disclose his past relationship with one of the law firms that, by filing a complaint with the Attorney Grievance Commission and supplying Bar Counsel with information related to said complaint, contributed to appellant’s disbarment;
- Appellee failed to interview and call relevant witnesses;
- Appellee failed to challenge or raise the issue of impartiality in the disciplinary proceedings;
- Appellee failed to make appropriate objections at trial; and
- Appellee failed to prepare properly for oral argument.

Appellee moved to dismiss the case, alleging that appellant failed to state a claim.

In a subsequent filing, appellee incorporated documents outside of the pleadings, and thus

² See Record Extract of Appellant at E64-E77. The status of this separate matter is unclear from the record; its disposition, however, is of no moment to our decision in this case.

converted the motion into a motion for summary judgment. The circuit court issued an opinion on November 4, 2013, stating that “[appellee] did in fact recognize [and attempt to refute] the perjury charges against [] [appellant] arising from his filings with the bankruptcy court.” Furthermore, the circuit court explained that during arguments before the Court of Appeals, the Commission stated that, although it “did not specifically allege perjury, [it] rather simply outlined the particular facts that would have supported such a claim.” Finally, the circuit court concluded that appellant’s bald allegations did not raise a genuine issue of material fact and thus granted appellee’s motion for summary judgment and denied appellant’s motion for partial summary judgment.

We shall include additional facts as necessary to our discussion.

DISCUSSION

A. Parties’ Contentions

Appellant contends that the circuit court erred when it granted summary judgment in favor of appellee despite the existence of material facts in dispute. Appellant argues that the material fact at issue is whether appellee was aware of the perjury charges and whether appellee failed to defend him on that charge.

B. Standard of Review

“[T]he proper standard for reviewing the granting of a summary judgment motion should be whether the trial court was legally correct,” *Heat & Power Corp. v. Air Products & Chemicals, Inc.*, 320 Md. 584, 592 (1990), in its determination that “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.” Rule 2-501(f). Thus, “[i]n determining whether the trial court correctly entered summary judgment as a matter of law, we apply a *de novo* standard.” *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009) (citing *Conaway v. Deane*, 401 Md. 219, 243 (2007)). In addition, “[w]e review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010) (citation and internal quotation marks omitted).

C. Analysis

“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) the loss to the client proximately caused by that neglect of duty.” *Id.* at 239. As the Court of Appeals explained:

In a lawyer-negligence or fiduciary-breach action brought by one who was the plaintiff in a former and unsuccessful civil action, the plaintiff usually seeks to recover as damages the damages that would have been recovered in the previous action or the additional amount that would have been recovered but for the defendant’s misconduct. To do so, the plaintiff must 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. The plaintiff must thus prevail in a “trial within a trial.” All the issues that would have been litigated in the previous action are litigated between the plaintiff and the plaintiff’s former lawyer, with the latter taking the place and bearing the burdens that properly would have fallen on the defendant in the original

action. Similarly, the plaintiff bears the burden the plaintiff would have borne in the original trial. . . .

Id. at 241-42 (citation omitted).

Furthermore, Maryland Rule 2-501(a) provides that a motion for summary judgment may not be granted unless the court concludes that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Maryland courts have defined a “material fact” as “a fact the resolution of which will somehow affect the outcome of the case.” *Faulkner v. Am. Cas. Co. of Reading, Pa.*, 85 Md. App. 595, 614 (1991) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)).

Here, the circuit court found that “[appellant] cannot establish the second step of a legal malpractice claim: ‘that, but for the [appellee’s] misconduct, the [appellant] would have obtained a more favorable judgment in the previous action.’” Quoting *Suder*, 413 Md. at 241. In so finding, the circuit court determined, contrary to appellant’s contention, that whether or not appellee recognized the perjury charge during the disbarment proceedings is immaterial:

The Court of Appeal’s decision to impose a sanction of disbarment clearly arose not from a single instance or factor, but from [appellant’s] course of conduct, which, under the totality of the circumstances, constituted a flagrant disregard for, and frustration of, the judicial process. Even assuming [the appellee failed to address the perjury charge during the disbarment proceedings], [appellant] has failed to make any showing beyond his bare allegations that the ultimate outcome would be altered.

Therefore, having determined that there was no genuine issue of material fact and that appellee was entitled to judgment as a matter of law by virtue of appellant’s inability to

prove the proximate causation element of legal malpractice, the circuit court granted the appellee’s motion for summary judgment. We hold that this was not error.

Appellant argues it was error for the circuit court to grant summary judgment because it was disputed whether appellee recognized the perjury charge. However, it was that fact’s *materiality* rather than its disputedness that was the basis for the circuit court’s decision. Nevertheless, in light of the following dicta in the circuit court’s opinion, we understand why appellant is focused so greatly on whether or not appellee addressed the perjury charge during the disbarment proceedings:

Both [appellant] and [appellee] encouraged this Court to view the webcast of the oral arguments in front of the Court of Appeals. This Court has done so and finds that [appellee] did in fact recognize the perjury charges against the [appellant] arising from his filings with the bankruptcy court.

In front of the Court of Appeals, Assistant Bar Counsel Fletcher P. Thompson noted during Oral Arguments that he (on behalf of the Commission) did not specifically allege perjury, but rather simply outlined the particular facts that would have supported such a claim. Oral Argument at 11:17, *Attorney Grievance Comm’n of Maryland v. Byrd*, 408 Md. 449 (2009) (AG No. 69), *available at* www.courts.state.md.us/coappeals/webcasts/webcastarchive2008term.html.

During oral arguments in front of the Court of Appeals, [Appellee] Bergman refuted the allegations against Mr. Byrd by referring to the findings of Judge Catliota, who conducted the federal contempt hearing and cited [appellant] only for civil contempt rather than criminal contempt. Oral Argument at 11:25. In the course of oral arguments, [appellee] argued that from the perspective of Judge Catliota, the real contempt issue arose not from any false statements made by [appellant], but instead solely from the delays he caused. Oral Argument at 11:26. [Appellee] stated, “[Judge Catliota] never suggested anywhere in his findings . . . that this rose to some kind of level

that there were any false reports.” Oral Argument at 11:27. [Appellee] also argued that [appellant] had researched his planned courses of action and legitimately believed that his conduct was legal. Oral Argument at 11:21. After reviewing the Court of Appeals hearing, this Court finds that it was within [appellee’s] professional judgment to argue that Judge Catliota’s findings should garner more attention than those of Judge Rubin, and that [appellee] did attempt to refute the allegations of perjury against [appellant].

This dicta seems to have led appellant to believe the circuit court entered summary judgment on the grounds that it was impossible for him to prove the second prong of his legal malpractice claim: that the appellee neglected a reasonable duty regarding the perjury charge. *See Suder*, 413 Md. at 239. This, however, is an inaccurate reading of the circuit court’s opinion. The above-quoted section was merely incidental to the circuit court’s actual holding, which was “that [appellant] cannot establish the second step of a legal malpractice claim: ‘that, but for the [appellee’s] misconduct, the [appellant] would have obtained a more favorable judgment in the previous action.’” Quoting *Suder*, 413 Md. at 241.

In its opinion, the Court of Appeals explained that the Commission requested appellant be disbarred for his many rule violations, with the “most significant” being violations of MRPC 8.4(b) and (c).³ Therefore, the perjury charge was not the sole reason for appellant’s disbarment:

Moreover, those violations do not stand alone. In connection with the filing of false reports in the bankruptcy proceeding,

³ MRPC 8.4 provides:

...continued

Respondent also violated MRPC 8.4(d). It cannot be gainsaid that filing those reports was “conduct prejudicial to the administration of justice.” Respondent also violated MRPC 3.4(c) by flagrantly disobeying the bankruptcy court’s orders to provide the Trustee and his attorney with access to the residence, comply with discovery, and desist from filing court papers designed to frustrate the sale. By engaging in such conduct, Respondent “knowingly disobey[ed] an obligation under the rules of a tribunal...” Furthermore, Respondent repeatedly violated MRPC 1.1, 1.3, 1.4(a)(2), and 3.3(a)(1), in connection with his handling of the cases discussed in the Janis complaint. Those violations, like Respondent’s violations of MRPC 8.4(d) and 3.4(c), add further support for the sanction of disbarment.

Byrd, 408 Md. at 484-85. The multiplicity of appellant’s Rules violations led the circuit court to find that “[t]he Court of Appeals’ decision to impose a sanction of disbarment clearly arose not from a single instance or factor,” and that appellant “has failed to make any showing beyond his own bare allegations that the ultimate outcome would be altered”

...continued

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]

had appellee addressed the perjury charge to the extent appellant argues he should have. Having performed a complete review of the record, we agree.

We, therefore, hold that because appellant’s claims are insufficient to show that appellee’s alleged failure to address the perjury charge was the proximate cause of his disbarment, there did not exist a dispute as to any material fact. Thus, the circuit court did not err in granting the appellee’s motion for summary judgment.

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