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

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2053

September Term, 2019

DANIEL ARNOLD

v.

GERALD SOLOMON, *et al*.

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 2021

*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.

Daniel Arnold, appellant, filed a legal malpractice claim in the Circuit Court for Anne Arundel County against Gerald Solomon, Esq., the Law Office of Gerald Solomon, P.A., and Solomon & Bascietto, LLC (collectively "Solomon"), appellees. The case proceeded to jury trial and the court granted Solomon's motion for judgment at the close of appellant's evidence. Mr. Arnold raises seven issues on appeal, which reduce to five: (1) whether the court abused its discretion in denying his motion to continue; (2) whether the court erred in granting the motion for judgment; (3) whether he was denied the right to a jury trial; (4) whether Gerald Solomon should have been allowed to represent himself and the other appellees; and (5) whether the trial judge should have recused himself.[1] For the reasons that follow, we shall affirm the judgment.

BACKGROUND

In 2008, Jacob Geesing, Howard Bierman, and Carrie Ward, acting as substitute trustees, filed an Order to Docket seeking to foreclose on Mr. Arnold's residential property at 180 Kinder Road, Millersville, Maryland 21108. Mr. Arnold, proceeding *pro se*, filed a motion to dismiss the foreclosure action, which the circuit court denied. In July 2009, the property was sold to John G. Coe, Mr. Arnold's neighbor. The sale was ratified in January 2010, and the circuit court subsequently denied Mr. Arnold's *pro se* motion for

[1] Mr. Arnold also raises two other "issues" in his brief: (1) whether Gerald Solomon engaged in "questionable activities throughout the time I have known him," and (2) whether there are "defects in the legal system." However, these are not cognizable legal claims for which we can provide relief on appeal. Moreover, with certain exceptions not applicable here, this Court will only address issues that were "raised in or decided by the trial court[.]" Maryland Rule 8-131(a).

reconsideration and motion to set aside the sale based on newly discovered evidence of fraud.

In August 2010, Mr. Arnold, still acting *pro se*, filed a notice of appeal to this Court. The substitute trustees subsequently filed a motion to dismiss the appeal on mootness grounds. In doing so, they relied on *Mirjafari v. Cohn*, 412 Md. 475, 484 (2010) for the proposition that "an 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." This Court ultimately granted the motion to dismiss.

Around the time of Mr. Arnold's appeal, Solomon became involved in the case, although the parties dispute when that representation actually began. At any rate, Solomon acknowledges that, after this Court granted the motion to dismiss, he assisted Mr. Arnold in filing a motion to reconsider that dismissal.[2] According to Mr. Arnold, he and Solomon disagreed on the appropriate legal strategy to pursue, with Mr. Arnold wanting to challenge Mr. Coe's status as a bona fide purchaser (BFP), and Solomon wanting to argue that we could consider the appeal, even if it was moot, because it presented issues that were capable of repetition, yet evading review. The motion to reconsider that was ultimately filed by Solomon did not challenge the purchaser's status as a BFP.[3]

[2] Mr. Arnold claims that Solomon also filed an answer and amended answer to the motion to dismiss, as well as a motion to vacate the foreclosure sale in the circuit court.

[3] Mr. Arnold subsequently filed a *pro se* "addendum" to the motion to reconsider, in which he asserted that Coe was not a bona fide purchaser. In denying the motion for reconsideration, we declined to consider that addendum, noting that the "right to counsel and the right to defend *pro se* cannot be asserted simultaneously."

In 2015, Mr. Arnold, represented by counsel, filed a legal malpractice action alleging that Solomon was negligent in failing to provide proper and correct advice; failing to properly research and present factual and legal arguments; failing to make proper filings on his behalf; failing to file key factual and legal arguments as to the mootness and BFP issues in response to the motion to dismiss; and failing to prepare and file briefs in this Court while counsel of record. He further contended that, but for Solomon's negligence, this Court would not have dismissed the appeal and instead would have reversed the circuit court's ratification order, resulting in the return of his residential property.

After discovery concluded, Solomon filed a motion for summary judgment, which the circuit court granted. Mr. Arnold appealed, and we reversed. *See Arnold v. Solomon*, 231 Sept. Term 2017 (filed May 14, 2018). In doing so, we rejected Solomon's argument that he could not have been negligent as a matter of law in failing to raise the BFP issue.[4] Rather, we held that, at the summary judgment stage, Mr. Arnold had "presented legally sufficient evidence that a reasonable attorney would have raised the bona fide purchaser issue in challenging the dismissal of his appeal." Notably, that evidence included an expert witness disclosure filed by Mr. Arnold, which identified an expert who would "provide expert testimony at trial as to the breaches of the standard of care by [Solomon] in this matter." Although we reversed the grant of summary judgment, this Court indicated that it was not opining on the strength or weakness of Mr. Arnold's case and that the issue of

[4] Solomon claimed on appeal that he could not have raised the BFP issue because it had been waived.

whether Solomon's actions fell below the standard of reasonable care would ultimately "be a question of fact for the jury to decide with the assistance of expert witnesses."

Several weeks after the notice of appeal was filed, Mr. Arnold's trial counsel withdrew his appearance in the circuit court. After the mandate issued from this Court, almost one year elapsed with no action being taken in the case. Finally, on May 22, 2019, Mr. Arnold, now representing himself, filed a motion requesting the court to schedule a jury trial. Several months later, Mr. Arnold also filed a pre-trial statement. On September 19, 2019, the court entered a pre-trial order, which was signed by Mr. Arnold, setting the trial date for December 10, 2019. That order noted that the trial date was "firm" and that "last minute continuances will not be granted absent extraordinary circumstances."

The day before trial, Mr. Arnold filed a motion to continue, which Solomon opposed. In that motion, Mr. Arnold claimed that he had met with an attorney who had verbally committed to represent him on October 23, 2019, and "accepted retainer funds on November 8, 2019."[5] Mr. Arnold further alleged that several weeks later, the same attorney had "quit, resigned, and refused to represent [him]" and therefore, he was not prepared to go forward with the trial until he could obtain new counsel. In support of his motion, Mr. Arnold attached several exhibits, including a series of text messages between himself and the attorney and a handwritten note, which he claimed constituted the retainer agreement. The text messages did not indicate that the attorney had agreed to represent appellant. However, the last text, on November 27, 2019, stated: "I regret offering to help you. I am

[5] It is not clear from the record how much Mr. Arnold allegedly paid the attorney; however, in his brief he asserts that he paid the attorney "$100 in cash."

not representing you in this or any other matter. . . I explained to you more times than I can count that you need an expert to establish damages. You have no one and especially true, you have no one that's willing to donate more of their time to you. You need to dismiss the case as you have no way of proving anything based on how you explained it to me."

On the morning of trial, the court heard arguments and denied the motion to continue, finding that Mr. Arnold had failed to establish sufficient cause to continue the case. Specifically, the court indicated that Mr. Arnold had ample time to prepare for trial, noting the case had been pending since 2015 and that the parties had agreed on the trial date at the pre-trial conference three months earlier, despite the fact that Mr. Arnold did not have counsel at that time. The court also expressed doubt as to whether the attorney that Mr. Arnold contacted had actually agreed to represent him, noting that the "retainer agreement" attached to his motion was "illegible" and that the attorney had never entered an appearance in the case.

Mr. Arnold refused to dismiss the case, and the case proceeded to trial, over Mr. Arnold's objection. Mr. Arnold testified on his own behalf, and reiterated his claims that Solomon had been negligent in representing him in the foreclosure action. Thereafter, Mr. Arnold informed the court that, because he had not been prepared to try the case, he did not have any more witnesses. The court then granted Solomon's motion for judgment, finding that Mr. Arnold had failed to adduce sufficient evidence from which the jury could find that Solomon was negligent because there "are no expert witnesses who can testify to the issue of whether or not Solomon's actions fell below the standard of care" or "testify to the damages." This appeal followed.

DISCUSSION

Mr. Arnold first contends that the court should have granted his motion to continue that he filed the day before trial. We disagree. Maryland Rule 2-508(a) states that "[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." "Under Rule 2-508, the trial court has wide latitude in determining whether to grant a continuance." *Das v. Das*, 133 Md. App. 1, 31 (2000) (citations and quotations omitted). "Generally, an appellate court will not disturb a ruling on a motion to continue unless discretion is arbitrarily or prejudicially exercised." *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (internal quotation and alteration omitted). An abuse of discretion occurs only when "no reasonable person would take the view adopted by the [trial] court, . . . when the court acts without reference to any guiding rules or principles[,] . . . where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, . . . or when the ruling is violative of fact and logic." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations and quotation marks omitted).

In claiming that a continuance was required, Mr. Arnold asserts that the attorney he had engaged to represent him withdrew his representation several weeks before trial and that he was not prepared to represent himself without the assistance of counsel. However, *Serio v. Baystate Props., LLC*, 209 Md. App. 545 (2013) is instructive. In *Serio*, counsel notified Mr. Serio approximately 60 days before trial that she was moving to strike her appearance, but Mr. Serio failed to obtain new counsel until just before trial. *Id.* at 557. At trial, Mr. Serio requested a continuance to give his newly retained counsel time to prepare

for trial, because otherwise his counsel would not enter an appearance in the case. However, the trial court denied the motion, finding that it was "not reasonable that Mr. Serio waited until apparently just recently to contact another lawyer" and therefore "to the extent that there might be prejudice to Mr. Serio by proceeding pro se . . . it's his own fault." *Id.* We affirmed that ruling, holding that the court had not abused its discretion in denying the motion to continue.

Here, Mr. Arnold's original counsel withdrew from the case in 2017. In May 2019, Mr. Arnold filed a *pro se* request for the court to schedule jury trial. He then signed a pre-trial order in September 2019, which set a "firm" trial date for December 10, 2019 and noted that "last minute continuances will not be granted absent extraordinary circumstances." However, despite the fact that he had more than two years to obtain counsel, and that he actively sought a trial date despite being unrepresented, he did not contact an attorney until October 23, 2019, less than two months before the jury trial that he had requested. And regardless of his subjective belief about having obtained representation, that attorney never entered an appearance in the case.[6] As in *Serio*, Mr. Arnold slept on his rights by waiting until the last minute to try and obtain counsel. Thus, the fact that his chosen counsel ultimately decided not to represent him did not demonstrate good cause such that a continuance was required. Consequently, we hold that the trial court did not abuse its discretion in denying his motion to continue.

[6] We agree with the circuit court that the exhibits submitted by Mr. Arnold do not clearly demonstrate that the attorney he contacted had agreed to represent him at the jury trial in this case, even if Mr. Arnold believed that such an agreement had been reached.

Mr. Arnold next claims that the court erred in granting Solomon's motion for judgment. Again, we disagree. Pursuant to Maryland Rule 2-519(a), "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all of the evidence." In ruling on such a motion "the trial judge must consider the evidence, including the inferences reasonably and logically drawn therefrom, *in the light most favorable to the party against whom the motion is made.* If there is any evidence, no matter how slight, legally sufficient to generate a jury question, the motion must be denied[.]" *Tate v. Bd. of Ed. of Prince George's County*, 155 Md. App. 536, 545 (2004) (citation omitted)(emphasis in original).

To prevail on his claim for legal malpractice, Mr. Arnold was required to prove (1) Solomon's employment, (2) Solomon's neglect of a reasonable duty, and (3) a loss "proximately caused by that neglect of duty." *Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010). However, subject to a few narrow exceptions, the elements of a legal malpractice claim cannot be proven without expert testimony. *See Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996). That is "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).

Mr. Arnold did not offer expert testimony to support his malpractice claims in this case. However, he contends that "it does not take an 'expert' to see the negligence" of Solomon. We disagree. To be sure there are some 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). For example,

malpractice is so obvious, and an expert witness is not needed "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." *Id.*

Here, however, all the instances of alleged malpractice by Solomon raise issues of substantive, legal matters and professional conduct that would not be so obvious that the trier of fact could easily recognize that they would violate the applicable standard of care. *See, e.g.*, *Taylor v. Feissner*, 103 Md. App. 356, 377 (1995) (expert testimony is "necessary to establish whether [the defendant attorney] exercised reasonable care in assessing the merits" of a legal theory and whether the attorney properly advised the client). Moreover, even assuming that Mr. Arnold did not need to present expert testimony to prove that Solomon breached the applicable standard of care, he was also required to prove that, but for Solomon's alleged negligence, this Court would have reversed the circuit court's final judgment ratifying the foreclosure sale. And the issue of whether Mr. Arnold's foreclosure appeal would have succeeded on the merits had it not been dismissed clearly exceeded the knowledge of the average lay juror and required expert testimony. Because Mr. Arnold carried the burden of establishing Solomon's negligence with expert testimony, and he did not provide such testimony in his case-in-chief, the court properly granted Solomon's motion for judgment.

Mr. Arnold's remaining claims also lack merit. For example, he alleges that he was denied the constitutional right to a jury trial because his claims were decided by the court instead of a jury. However, the granting of a motion for judgment does not infringe on the

right to a trial by jury any more than does the granting of a motion for summary judgment. Rather, Rule 2-519 is a procedural tool which permits the court to make a legal determination that the party with the burden of proof has failed to present evidence from which a jury could find in his or her favor. In short, having properly determined that the evidence failed to support Mr. Arnold's negligence claim as a matter of law, there was no issue for the jury to resolve.

Mr. Arnold further contends that the court erred in allowing Gerald Solomon to represent both himself and the other appellees at trial. However, Mr. Solomon is a licensed Maryland attorney. Therefore, he was permitted to represent both himself and the other corporate entities so long as there was no conflict of interest. Mr. Arnold has not identified any such conflict, and none appears in the record. Thus, Mr. Solomon's representation of himself and the other appellees was not improper.

Finally, Mr. Arnold asserts that the trial judge was biased and "hostile" toward him at trial. But this issue is not preserved for our review as Mr. Arnold did not request the judge to recuse himself. Moreover, this claim appears to be based on the fact that the trial court denied his motion for a continuance and granted Solomon's motion for judgment over his objection. However, for the reasons previously set forth, the court did not err in making either ruling. And in any event, the fact that the court ruled against him, without more, does not establish the existence of bias, such that recusal would have been required.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.