Circuit Court for Washington County
Case No.: 21-C-11-41891-OT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2624

September Term, 2016

EDWIN B. GLESNER, JR., et al.

v.

MILES & STOCKBRIDGE P.C.

Meredith,
Nazarian,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 20, 2018

In 1995, Edwin and Rebecca Glesner, appellants, sold a parcel of land to USA Cartage Leasing, LLC ("Cartage"). The Glesners' purchaser engaged in extensive litigation with Todd A. Baer, the owner of adjoining property, relative to an easement that had been granted by the Glesners. *See USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138 (2011), *aff'd*, 429 Md. 199 (2012). After the neighboring property owner prevailed, Cartage sued the Glesners for breach of the special warranty in the deed to Cartage, and succeeded in obtaining a judgment against the Glesners in the amount of $136,715.66, representing the attorney's fees Cartage had expended in the title dispute with the owner of the adjoining property. The Glesners then filed a complaint in the Circuit Court for Washington County against Miles & Stockbridge, P.C., appellee, the law firm that had represented Cartage's lender at closing in 1995. Miles & Stockbridge had prepared the special warranty deed transferring title from the Glesners to Cartage. The Glesners alleged in their complaint that they had "engaged [Miles & Stockbridge] to prepare a deed for the purpose of conveying certain real property" to Cartage. They asserted that the law firm was negligent in failing to properly reference the easement in the deed, and "was otherwise negligent in representing the Plaintiffs." Neither the Glesners nor Miles & Stockbridge requested a jury trial. At the trial, at the close of the Glesners' case, the court granted a motion for judgment in favor of Miles & Stockbridge based upon the court's finding that there was no attorney-client relationship between the Glesners and Miles & Stockbridge. The trial court also ruled, in the alternative, that the Glesners' claim was barred by the statute of limitations. This appeal followed.

QUESTIONS PRESENTED

The Glesners presented five questions in their brief, but we need only address one issue: Was the trial court's finding that the Glesners had not proved they had an attorney-client relationship with Miles & Stockbridge clearly erroneous?[1] Because we conclude that the trial court's finding was not clearly erroneous, we will affirm the judgment in favor of the appellee.

[1] In their brief, the Glesners presented the following questions:

> 1. Was Appellants' negligence claim barred by limitations under the discovery rule, where no warranty claim existed at the time the trial court opined that limitations began to run?
> 2. Was Appellants' negligence claim barred by limitations under the discovery rule, where Appellants lacked understanding sufficient to enable them to perceive a risk in signing the deed prepared for their use by Appellee?
> 3. Did the trial judge commit reversible error with respect to the claim of Mrs. Glesner in attributing knowledge of Mr. Glesner to her in opining when limitations began to run against her under the discovery rule?
> 4. Did the undisputed preparation of a warranty deed and the provision to Appellants of the deed by Appellee at closing, with the undisputed expectation that the deed would be used by Appellants to convey real property, combined with the undisputed request by Appellee of a fee for the preparation of the deed and the undisputed payment by Appellants of the fee requested, provide a sufficiently reasonable basis as a matter of law to support Appellants' expectation of representation by Appellee in the preparation of the deed?
> 5. Did the trial judge commit reversible error with respect to the claim of Mrs. Glesner in attributing statements of Mr. Glesner to her in concluding that she had no reasonable expectation of representation by Appellee?

FACTS AND PROCEDURAL HISTORY

The Glesners had, at one point in time, owned two adjoining parcels of real estate. One of the two parcels did not have direct access to Governor Lane Boulevard. That parcel was the first to be conveyed by the Glesners, and, at the time of the conveyance of that parcel to its purchaser in 1985, the Glesners granted the purchaser a 25-foot-wide easement across the parcel they were retaining. The easement was intended to provide the purchaser access to Governor Lane Boulevard. When the Glesners sold the second parcel to Cartage in 1995, Mr. Glesner personally advised the buyer's principal of the easement, but the special warranty deed conveying the second parcel to Cartage — prepared by Miles & Stockbridge — did not mention the easement. Litigation regarding the easement ensued between Cartage and the owner of the adjoining parcel, and Cartage did not prevail in that litigation. As noted above, the detailed history of those transactions and litigation is set forth in our opinion in *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138.

Cartage then pursued a claim against the Glesners seeking reimbursement of the legal fees it had incurred in the title dispute with the owner of the easement (*i.e.*, Baer). In that case, the trial court found that the Glesners had breached the covenant of warranty in the deed to Cartage, and Cartage was therefore entitled to nominal damages plus $136,715.66 in attorneys' fees Cartage had incurred in defending the suit by Baer.[2]

[2] Maryland Code, Real Property Article (1974, 2015 Repl. Vol.), § 2-106 provides:

continued…

In an unreported opinion, we affirmed the judgment against the Glesners, holding that "[the Glesners] were required to defend USA Cartage's title under the covenant and subsequently breached the same when they failed to do so." *Edwin B. Glesner, Jr. et ux. v. Todd A. Baer, et al.*, No. 857, Sept. Term 2014, slip op. at 17 (filed November 13, 2015).

The Glesners, in turn, filed a separate suit in the Circuit Court for Washington County, alleging professional negligence on the part of Miles & Stockbridge in preparing the deed that failed to include a reference to the easement across the property being purchased by Cartage. That is the suit that led to the present appeal. In their complaint, the Glesners alleged that, "[i]n 1995, [the Glesners] engaged [Miles & Stockbridge] to prepare a deed for the purpose of conveying certain real property and improvements in Washington County, Maryland, to USA Cartage Leasing, LLC"; that Miles & Stockbridge performed a title examination and prepared a deed "on behalf of" the Glesners for use in that transaction; that, "[r]elying upon the advice of [Miles & Stockbridge], [the Glesners] executed and delivered the deed at closing"; that Miles & Stockbridge "was negligent in failing to include an exception [in the deed] for a right-of-way of record disclosed in a deed from [the Glesners] to M.K.S. Development [Baer's

---

continued…

> A covenant by a grantor in a deed "that he will warrant specially the property hereby granted" has the same effect as if the grantor had covenanted that he will warrant forever and defend the property to the grantee against any lawful claim and demand of the grantor and every person claiming or to claim by, through, or under him.

predecessor in title] dated April 11, 1985, and recorded among the Land Records of Washington County"; and that Miles & Stockbridge had been "otherwise negligent in representing the [Glesners]," and had caused the Glesners to incur damages, including liability under a court order compelling them to pay Cartage's attorney's fees incurred in defending the Baer case. The Glesners' suit was stayed pending resolution of the litigation between Cartage and Baer, and after Cartage's appeals were exhausted, the stay was lifted on March 3, 2016.

A bench trial on the Glesners' claims against Miles & Stockbridge was conducted on February 1 and 2, 2017. Edwin Glesner testified that he and his wife, Rebecca, originally bought a 5.26-acre parcel of land in 1984, "at the intersection of Governor Lane Boulevard and [Maryland Route 68]." The property backed up to a railroad siding and fronted on Governor Lane Boulevard. At the time the Glesners purchased the property, it was vacant land. The Glesners constructed a warehouse on the property to be used as a distribution center for the family produce business. Because the warehouse did not cover the entire parcel, and Glesners had "[q]uite a bit" of under utilized property, the Glesners subdivided the property into two parcels. One parcel contained 2.91 acres and was the land on which the warehouse was located; this parcel was eventually sold to Cartage in 1995. The other parcel, which eventually became known as the Baer parcel, contained 2.35 acres, and was sold by the Glesners to M.K.S. Development in 1985.

Edwin Glesner testified that Dick McCleary, who owned a local lumber company, approached him about buying the smaller parcel because the railroad access could be

useful to McCleary's business. But, Mr. Glesner explained, after the property was subdivided into two smaller parcels, only the 2.91-acre parcel on which his warehouse was situated had access to Governor Lane Boulevard. In order to give McCleary access to Governor Lane Boulevard, the Glesners granted M.K.S. Development (the entity controlled by McCleary that actually purchased the property) a 25-foot-wide access easement for ingress and egress. The easement did not appear on the plat of two subdivided lots because the plat predated the grant of easement, but the 1985 deed by which the 2.35 acre lot was conveyed, and the easement was granted, from the Glesners to M.K.S. Development was duly recorded among the land records of Washington County.[3]

In September 1994, Edwin Glesner decided to close the family produce business, which he had been operating from the warehouse on the 2.91 acre lot. He spoke to an

[3] The deed dated April 11, 1985, was in evidence at trial as Plaintiffs' Exhibit 6, and it provided, *inter alia*, that the Glesners were selling to M.K.S. Enterprises a certain 2.35 acre parcel of land,

> TOGETHER with a non-exclusive right-of-way 25 feet in width, leading from the existing entrance from Governor Lane Boulevard, shown on the Plat of the above-referenced property, recorded at Plat folio 1806, to the property hereby conveyed.
>
> Said lands being subject to any and/or all rights-of-way, easements, or restrictions of record, if any.
>
> And we, the said Edwin B. Glesner, Jr. and Rebecca A. Glesner, his wife, do hereby covenant that we will warrant generally the property hereby conveyed and that we will execute such other and further assurances as may be requisite.

acquaintance, Ralph Richmond, who owned a trucking company (which at some later point was incorporated as Cartage). Richmond expressed interest in buying the lot. By this time, the adjoining lot was owned by Donald and Joan Baer, the parents of Todd Baer. Glesner knew that Richmond and Todd Baer had a contentious relationship, and, in light of the fact that Richmond was contemplating buying the property upon which there was an easement in Baer's favor, Glesner met Richmond at the property so that Glesner could show Richmond the location of the easement. Although the easement had never been paved or marked in any way, Glesner showed Richmond where he and McCleary had envisioned the easement's location ten years earlier.

To effectuate the sale of the 2.91 acre lot to Richmond, the Glesners engaged William Wantz, Esquire, to prepare an Agreement of Sale. The Agreement provided in Paragraph 4 that the Glesners would deliver, at closing: "A deed or deeds with covenants of special warranty and further assurances conveying the fee simple interest in the Land, Improvements and Appurtenances to [Richmond], which shall be in form for recording."

The closing on the sale from Glesners to Richmond's designee (Cartage) took place on April 7, 1995.[4] The Glesners attended the closing, and did not bring a deed. They did not ask either Mr. Wantz or any other attorney to represent them at, or accompany them to, closing. Richmond and Cartage were represented at closing by

[4] By the time the parties went to settlement on this property, the purchaser was USA Cartage Leasing, LLC, not Richmond individually, although Richmond signed all the relevant purchase documents on behalf of USA Cartage Leasing, LLC as "Member."

Semmes, Bowen and Semmes. Nations Bank, the lender for Richmond and Cartage, was represented at closing by Miles & Stockbridge, listed on the Settlement Statement as the "Settlement Agent." At closing, the Glesners were asked to sign a deed that had been prepared by Miles & Stockbridge. Edwin Glesner testified that he "believe[d] – [or] guess[ed]" that the individual who "presented this deed to [him] and asked [him] to sign it" was "the attorney for the bank." The deed did not contain any reference to the 1985 easement the Glesners had granted to M.K.S. Development. And the easement was not mentioned by anyone at closing. Both Glesners testified that they did not read the deed closely. They did not ask anyone at the settlement table any questions. The Settlement Statement reflects that $65.00 had been charged to the Glesners for "Deed Preparation [paid] to Miles & Stockbridge."[5]

In addition to signing the deed, the Glesners also signed an "Owners Affidavit" at closing, representing:

> [I am an] owner of the above-described real property which is being conveyed (herein, "the Property"). My enjoyment of the Property has been peaceable and undisturbed, and the title to the Property has never been disputed or questioned to my knowledge, nor do I know of any facts by reason of which the title to, or possession of, the Property might be

[5] The deed bears a Miles & Stockbridge watermark on the bottom left corner. Attorney David Severn, who was a partner at Miles & Stockbridge in 1995, "concentrating in land use and real estate," signed a certification on the bottom of the deed reflecting that it had "been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland." Severn also testified at trial in the Glesners' case, and said that, although he did not remember specifically the deed prepared for this 1995 transaction, he recalled generally the procedures followed by Miles & Stockbridge at that point in time.

> disputed or questioned, or by reason of which a claim to any portion of the Property might be asserted adversely against me.

Edwin Glesner testified that this representation was true as far as he knew when he signed it, because "we intended to sell the property knowing that the easement had been granted there."

It was the Glesners' theory at trial of this case that, by supplying them a deed at closing in 1995 and charging them $65 for deed preparation, Miles & Stockbridge was engaged in the practice of law and acting as the Glesners' attorneys, and therefore committed malpractice by providing a deed containing no reference to the easement. But their testimony did not confirm that they ever communicated with Miles & Stockbridge about engaging that law firm to represent them as clients. Mr. Glesner gave the following testimony on direct examination:

> Q. [BY GLESNERS' COUNSEL]: **Did you request any representation of any attorney at the closing?**
>
> A. [BY MR. GLESNER]: **I didn't request any representation for the closing in particular, no.**
>
> Q. Did you feel you needed an attorney to, uh, assist you or be present at the closing?
>
> A. No, sir.

Mr. Glesner testified on re-direct:

> Q. [BY GLESNERS' COUNSEL]: Why didn't you take a lawyer with you to closing?
>
> A. [BY MR. GLESNER]: Other than the preparation of the deed, I didn't really see that I needed a lawyer at the closing.
>
> Q. And why didn't you ask anyone at the settlement about the deed?

A. What about the — about — what about the deed?

Q. Why didn't you ask anybody about anything relating to the deed at settlement?

A. I assumed that the deed was prepared by [a] competent law firm.

(Emphasis added.)

On cross-examination, the following colloquy ensued:

Q. [BY MILES & STOCKBRIDGE'S COUNSEL]: . . . [T]here was nothing stopping you from obtaining a lawyer to represent you at the USA Cartage closing, was there?

A. [BY MR. GLESNER]: No, sir.

Q. And isn't it true that at the time you signed the Agreement of Sale, you did not have an understanding of the term — what the term, "Special warranty," meant?

A. That's correct.

Q. Despite not understanding this term, you never asked Mr. Wantz to explain it to you did you?

A. No, sir.

Q. Similarly, isn't it true that prior to signing the USA Cartage deed, you never asked anyone at Miles to explain the significance of the term, "Special Warranty"?

A. I never did, but I was never given an opportunity to.

Q. Was there anything that prevented you from asking any questions?

A. No, sir.

Q. And I believe you testified you attended USA Cartage, uh, closing; correct?

A. That's correct.

Q. And isn't it true, you didn't request Mr. Wantz to accompany --- accompany you to this closing?

A. That's correct.

Q. **And isn't it also true that you did not ask any questions of Miles and Stockbridge at the closing?**

A. **That's correct.**

Q. And to your knowledge, the easement was not discussed, was it?

A. It wasn't.

(Emphasis added.)

Mr. Glesner testified on re-cross examination:

Q. [BY MILES & STOCKBRIDGE'S COUNSEL]: **Mr. Glesner, you never asked Miles and Stockbridge to represent you did you?**

A. [BY MR. GLESNER]: **No, sir.**

Q. **And isn't it true, you never asked, uh, Miles and Stockbridge for any legal advice?**

A. **Yes, sir.**

Q. And isn't it also true that you never signed a retainer agreement with Miles and Stockbridge?

A. That's correct. We've established that.

Q. . . . Isn't it true that the Contract of Sale required you to provide the deed at closing?

A. That's correct.

(Emphasis added.)

Mrs. Glesner's testimony was to similar effect. On direct examination, she testified:

> [BY GLESNERS' COUNSEL]: Did you understand that you were to provide the deed [for closing]?
>
> [BY MRS. GLESNER]: Yes.
>
> * * *
>
> Q. What was your expectation with regard to the role of Miles and Stockbridge in preparing the deed?
>
> A. What was my expectation?
>
> Q. Yes.
>
> A. I assumed that they were a competent legal firm and that — that they would just — if they presented the deed to us that we — we would sign it and, you know, that would be it. It would be a legal document that we could use to transfer the property.

Neither of the Glesners ever communicated this "expectation" to Miles & Stockbridge, however, as Mr. Glesner had already testified, and as Mrs. Glesner testified on cross-examination:

> Q. [BY MILES & STOCKBRIDGE'S COUNSEL]: You never asked Mr. Wantz any questions about the Agreement of Sale?
>
> A. [BY MRS. GLESNER]: No.
>
> Q. **Isn't it also true that you never asked Miles and Stockbridge any questions about the deed?**
>
> A. **No.**
>
> Q. Isn't it also true that you never requested that Miles and Stockbridge serve as your attorneys?

A. I never specifically asked, but they did prepare the deed, and we paid them for that service.

Q. I understand that. **Did you ever in writing or verbally request that Miles and Stockbridge represent you?**

A. **No**.

Q. **Did Miles and Stockbridge either verbally or in writing ever represent that they were gonna represent you?**

A. **No.**

Q. **Isn't it true that you never asked for any legal advice from Miles and Stockbridge?**

A. **No.**

Q. **No, you didn't or, no, that** . . .

A. **We didn't, no. We — we didn't specifically ask any advice from Miles and Stockbridge.**

Q. And isn't it also — isn't it also true that Miles and Stockbridge didn't provide you with any legal advice?

A. No. The only service they did was prepare the deed for us.

Q. Isn't it true that you never paid Miles and Stockbridge any attorney's fees?

A. Uh, they actually did get paid a fee of $65 for preparing the deed.

Q. And you would agree that that's under the heading, subheading, "Miscellaneous Items," on the settlement statement? Correct?

A. It's under — it's under the main heading of, "Seller's," um, "Fees."

Q. And then under the subheading, "Miscellaneous," correct?

A. That's correct.

(Emphasis added.)

Miles & Stockbridge made a motion for judgment pursuant to Rule 2-519 at the close of the Glesners' case.[6] The court took the motion under advisement, and reconvened the next day to deliver an oral ruling granting Miles & Stockbridge's motion. The court explained that it was not persuaded that there was an attorney-client relationship between the Glesners and Miles & Stockbridge:

> [BY THE COURT]: The Court was asked to consider whether or not there was an attorney-client relationship that existed between Miles and Stockbridge and the Glesners. The Court finds that Miles and Stockbridge did prepare a deed, the deed that was used to – to convey this property. Preparing a deed is a legal service in the State of Maryland. The Court finds the Glesners did pay $65 for that deed preparation, and [the] Glesners signed the deed that was prepared by Miles and Stockbridge. **The Court finds that this does not rise to the level of an attorney-client relationship.** The evidence presented over the last two days indicates that the Glesners — **there's no evidence that the Glesners ever made contact with Miles and Stockbridge before the closing, during the closing, after the closing, after settlement. They never requested Miles and Stockbridge to prepare anything that I'm aware of. The evidence didn't show that Miles was — Miles and Stockbridge were asked to perform any legal service for them. And [the] Glesners were aware that Miles and Stockbridge represented the lender in this transaction, Nations Bank.** The Glesners were aware that the Contract of Sale said that they were to provide the deed, and they came to the settlement empty-

[6] Maryland Rule 2-519(b) provides that, in a case tried without a jury, the court may weigh the evidence and make factual findings at the close of the plaintiff's case, without considering the evidence in the light most favorable to the plaintiff:

> When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. . . .

> handed. **Miles and Stockbridge, representing the lender as part of their services to the lender, prepared the deed among other documents.** During the closing, the Glesners did not ask for counsel. They did not assert that Miles and Stockbridge was their counsel. **And the Court declines to accept the Glesners' representation that they reasonably expected Miles and Stockbridge to be their lawyers or to represent them at this time.** Miles and Stockbridge, as I said, was never contacted by the Glesners, were never retained, never offered advice or counsel to the Glesners. And at trial in the underlying case, that I'll simply refer to as — as Baer v. Cartage, just for simplicity purposes, but the trial that took place here in Washington County before Judge Dwyer, Mr. Glesner was asked, "Do you have an attor — did you have an attorney with you at the time you were at the closing?" The response was, "No, sir." Then when asked a follow-up question about who presented the deed, the response was, quote, "I believe I guess it would have been the attorney for — the attorney for the bank." In this case, the testimony from Mr. Glesner was that he did not request any representation at closing. He was asked if he needed an attorney, "Did you need an attorney to assist you or be present at closing?" [Answer:] "No, sir." That was in direct. And then on re-direct, Mr. Glesner further stated that he didn't believe a lawyer was necessary at closing. He assumed the deed was prepared by a competent attorney, not stating his attorney, just a competent attorney. There's a reoccurring theme in the testimony that creates distance between the Glesners and Miles and Stockbridge. **The Court just can't accept the Glesners[']** representation **in this trial that they reasonably expected Miles and Stockbridge to represent them when they had never — never had any contact with Miles and Stockbridge, merely put their signature on a document created by Miles and Stockbridge.** They were charged the $65 fee, which they paid at settlement, but the Court does not see this as a retainer. It does not see it as attorney's fees. And as I indicated, the settlement sheet reflects attorney's fees in another location. It — the — the $65 fee was for deed preparation, and it merely reflects that they, by the Contract of Sale that they had drawn up, had obligated themselves to produce the deed. They paid $65 for that deed being produced. **If there's no attorney-client relationship, then there is no duty on behalf of Miles and Stockbridge to the Glesners.**

(Emphasis added.)

The court also found that Glesners were not intended to be third-party beneficiaries of the actions Miles & Stockbridge took on behalf of its client, Nations

Bank, and any benefit to Glesners of Miles & Stockbridge providing a deed to use at closing was incidental. Finally, the court found that the Glesners' complaint was filed after the expiration of the statute of limitations; the court found that the statute of limitations "began tolling in 1995 at the time of the settlement, the time of the signing of the deed." The court saw no need to reach the contributory negligence issue raised by Miles & Stockbridge.

This appeal followed.

STANDARD OF REVIEW

This Court observed in *Crest Inv. Trust, Inc. v. Comstock*, 23 Md. App. 280, 296 (1974), that the question of "whether an attorney-client relationship exists depends on the facts and circumstances of each case." In *Crest*, we reviewed the trial judge's conclusion that an attorney-client relationship existed by applying the "clearly erroneous" standard. *Id*. at 294. Deferring to the trial judge's finding in *Crest*, we noted: "It was the trial court's responsibility to weigh the testimony and to judge the credibility of the witnesses. This is not our function; and the judgment of the lower court will not be set aside on the evidence unless clearly erroneous." *Id*. at 297 (citation omitted).

The clearly erroneous standard of appellate review is summarized in Maryland Rule 8-131(c) as follows:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

The Court of Appeals has explained: "'If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.'" *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (quoting *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 33, 930 A.2d 304, 323 (2007)). In *L.W. Wolfe Enterprises, Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 343-44 (2005), we said:

> Moreover, "[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Lemley v. Lemley*, 109 Md. App. 620, 628, 675 A.2d 596 (1996). Our task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record: "The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed." *GMC v. Schmitz*, 362 Md. 229, 234, 764 A.2d 838 (2001) (quoting *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834 (1975)).

DISCUSSION

I. Attorney-client relationship

The Glesners contend that the trial judge erred in finding that no attorney-client relationship existed between themselves and Miles & Stockbridge. They argue that the preparation of a deed is an act that necessarily constituted the practice of law pursuant to Maryland Code (2000, 2010 Repl. Vol.), Business Occupations and Professions Article, § 10-101(h)(2)(ii), and, because it was the Glesners' obligation under the Agreement of Sale to provide the deed, which they paid Miles & Stockbridge $65 to prepare, that law firm owed them the duty of care that applies to an attorney-client relationship. They point

out that an attorney-client relationship "'may arise by implication from a client's reasonable expectation of legal representation and the attorney's failure to dispel those expectations.'" (Quoting *Attorney Grievance Comm'n of Maryland v. Agbaje*, 438 Md. 695, 728 (2014).)

But the trial judge, who had the opportunity to observe both of the Glesners testify, expressly rejected the suggestion that the Glesners had a "reasonable" expectation of legal representation by Miles & Stockbridge. The trial judge stated: "[T]he Court declines to accept the Glesners' representation that they reasonably expected Miles and Stockbridge to be their lawyers or to represent them at [the closing]." And, after explaining the many factors that led to that conclusion, the trial judge reiterated: "The Court just can't accept the Glesners[']] representation in this trial that they reasonably expected Miles and Stockbridge to represent them[.]" The testimony of the Glesners, when considered in the light most favorable to the prevailing party, provides an ample basis for the trial court's disbelief that the Glesners had a reasonable expectation that Miles & Stockbridge was acting as their legal counsel.[7]

[7] The Glesners also argue in their brief that the trial court erred in granting the motion as to Mrs. Glesner by "attributing knowledge" of, or "attributing statements" by Mr. Glesner to her. The Glesners contend that the trial court entered judgment against both Glesners based on statements made by Mr. Glesner alone. But the complaint was filed by both Glesners, asserting a joint claim for damages based upon a single set of facts. Rebecca Glesner was a co-owner of the property at issue. She signed all the relevant documents. She attended closing. She testified at trial. When the Glesners rested their case, they jointly rested, and the trial court committed no error in considering the sufficiency of the evidence as to both Glesners. Both Glesners testified that they never asked Miles & Stockbridge to represent them, nor did they ever seek legal services

continued…

The trial court's ruling is consistent with the Court of Appeals's discussion of legal malpractice claims in *Flaherty v. Weinberg*, 303 Md. 116, 134 (1985):

> [A] prerequisite for maintaining a negligence action against an attorney is that the plaintiff establish an employment relationship between himself and the attorney. *See Kendall v. Rogers,* [181 Md. 606 (1943)]. Although an express employment agreement is not necessary in all cases, *see Central Cab Co. v. Clarke*, 259 Md. 542, 549, 270 A.2d 662, 666 (1970) (failure to agree on payment of retainer does not preclude an attorney-client relationship), the circumstances must clearly indicate an employment relationship.[8]

Accord Noble v. Bruce, 349 Md. 730, 739 (1998) ("In *Kendall,* we set forth the elements of a cause of action for negligence or malpractice against an attorney. 181 Md. at 611-12, 31 A.2d at 315. Specifically, a plaintiff must allege: 1) the attorney's employment; 2) his neglect of a reasonable duty; and 3) loss to the client proximately caused by that neglect

---

continued…
from Miles & Stockbridge. There is no merit to the argument that the trial court erred by rejecting Mrs. Glesner's claim as well as Mr. Glesner's claim when the court granted the motion for judgment.

[8] The *Flaherty* opinion began by noting that the question before the Court was "whether an attorney is liable to a nonclient for professional malpractice." 303 Md. at 120. The *Flaherty* Court identified just one exception to the requirement of an employment relationship, noting that, while "Maryland, as a general rule, adheres to the strict privity rule in attorney malpractice cases," *id*. at 130, "[t]he sole exception that we have recognized to this rule is the third party beneficiary theory." *Id*. The Court explained: "[T]o establish a duty owed by the attorney to the nonclient the latter must allege and prove that the intent of the client to benefit the nonclient was a direct purpose of the transaction or relationship. In this regard, the test for third party recovery is whether the intent to benefit actually existed, not whether there could have been an intent to benefit the third party." *Id*. at 130-31. In this case, the Glesners do not claim that they qualify as third party beneficiaries under the rule explained in *Flaherty*. They state in their reply brief: "Appellants have not asserted third-party beneficiary status in this action."

of duty. *Flaherty*, 303 Md. at 128, 492 A.2d at 624."); *Goerlich v. Courtney Industries, Inc*., 84 Md. App. 660, 663 (1990) ("To maintain an action for professional malpractice, a plaintiff must first satisfy the threshold requirement of alleging and proving the existence of a duty between the plaintiff and the defendant. *Flaherty v. Weinberg*, 303 Md. 116, 492 A.2d 618 (1985). As a general rule, an attorney owes a duty of diligence and care only to his direct client/employer. *Clagett v. Dacy*, 47 Md. App. 23, 420 A.2d 1285 (1980).").

The Glesners never sought legal counsel from Miles & Stockbridge. They never asked Miles & Stockbridge to represent them, or asked Miles & Stockbridge any questions, or ever expressed to anyone, it would appear, that they believed that Miles & Stockbridge (counsel for Nations Bank) was acting as their attorney when Miles & Stockbridge provided the deed at closing. Although the Glesners argue in this Court that they were the sole beneficiaries of the deed preparation, they ignore the fact that a lender who expects to secure repayment of the purchase money funds by perfecting a lien against the real estate being purchased has a genuine interest in making sure the buyer/borrower receives a deed conveying title to the subject property. Consequently, the preparation of the deed by Miles & Stockbridge was not solely, or even primarily, for the benefit of the Glesners.

Because the trial court's finding that the Glesners had not provided persuasive evidence of an attorney-client relationship with Miles & Stockbridge was not clearly

erroneous, there was no error in the court's entry of judgment in favor of Miles & Stockbridge.

II. Other issues

Having held that the trial court was correct to find no attorney-client relationship between Glesners and Miles & Stockbridge, and accordingly no duty, we conclude it was not error to grant the motion for judgment. We need not address the trial court's alternative holding relative to the statute of limitations.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.