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14 FEB 2020
ORDER GRANTING
MOTION TO DISMISS
(SAME AS PLACEHOLDER
EXHIBIT B)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ALAN G. NIX,

Plaintiff,

vs.

SLOAN LAW FIRM, P.A. and
WILLIAM H. SLOAN,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-01496

ORDER GRANTING MOTION
TO DISMISS

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SC Court of Appeals

This matter comes before the Court on Defendants Sloan Law Firm, P.A. and William H. Sloan's (collectively, "Defendants") Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, filed on July 31, 2019. A supporting memorandum was filed on December 19, 2019. A hearing was held on January 27, 2020. Present were Alan G. Nix, Plaintiff *pro se*, and counsel for Defendants. After careful consideration of the filings, oral arguments, and review of the record, the Court finds Plaintiff's Complaint fails to state a claim for which relief can be granted. Accordingly, for the reasons set forth herein, Defendants' motion is GRANTED.

BACKGROUND

Plaintiff retained Defendants in December 2014 to represent him in a lien foreclosure matter pending in Charleston County (the "Underlying Case"). (Compl. ¶ 8.) The Underlying Case was called to trial in the Charleston County Master in Equity Court for the two-week term beginning on April 4, 2016. (Compl. ¶ 12.) A roster meeting was held on March 21, 2016, at which Attorney Sloan and counsel for the plaintiff in the Underlying Case agreed to strike the

Underlying Case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. (Compl. ¶¶ 16-18.)

Plaintiff alleges Attorney Sloan committed malpractice in various ways, including failing to file the appropriate pleadings (Compl. ¶¶ 21-23, 27-30); failing to prepare a witness list or identify witnesses (Compl. ¶ 24); failing to communicate with opposing counsel (Compl. ¶ 25); failing to discuss with Plaintiff the trial strategy and other unidentified, “normal” preparatory matters (Compl. ¶ 26); and failing to “participate in the 21 March 2016 roster hearing as required and appropriate” (Compl. ¶ 30).

LEGAL STANDARD

“In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Id.

ANALYSIS

Plaintiff failed to file the supporting affidavit required by S.C. Code Ann. § 15-36-100.

In an action for damages against an attorney, “the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B). If the affidavit is not timely filed, “the complaint is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1). It is undisputed that Plaintiff did not, and has not, filed the required expert affidavit.

Plaintiff's claim of legal malpractice requires the testimony of an expert to establish a breach of the applicable standard of care. See Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (holding that plaintiff in a legal malpractice action must generally establish the standard of care by expert testimony). Expert testimony is required to opine whether Attorney Sloan deviated from the standard of care, which is disputed. Additionally, the "common knowledge" exception is inapplicable. See H & H of Johnston, LLC v. Old Republic Nat. Title Ins. Co., 405 S.C. 469, 474, 748 S.E.2d 72, 74 (Ct. App. 2013) (affirming dismissal of claims against attorney pursuant to § 15-36-100 because plaintiff failed to file expert affidavit); Barnes v. Seigler, No. CIV.A. 5:11-1156-MBS, 2012 WL 265409, at *2 (D.S.C. Jan. 30, 2012) (dismissing *pro se* plaintiff's legal malpractice claim for failure to file expert affidavit and holding that for breaches of professional duty arising exercise of legal judgment, more than "common knowledge" is required to evaluate whether his actions violate the standard of care owed by members of his profession).

Plaintiff, who is not a lawyer, alleges Attorney Sloan did not file various pleadings which he should have filed based on Plaintiff's own determination of what Attorney Sloan should have filed, including dispositive motions, a motion for continuance, and an amended answer. (Compl. ¶¶ 20-29). These allegations are of the type contemplated by S.C. Code Ann. § 15-36-100(B). Without expert support to signify how these alleged acts or omissions constitute negligence, the Complaint fails to state a claim.

Based on the foregoing, Plaintiff's Motion to Dismiss is GRANTED.

IT IS SO ORDERED!

[Electronic Signature Follows]

J. Derham Cole
Circuit Court Judge



Charleston Common Pleas

Case Caption: Alan G Nix VS Sloan Law Firm PA

Case Number: 2019CP1001496

Type: Order/Dismissal

IT IS SO ORDERED!

s/J. Derham Cole 2053

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