THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2021-000420

Donna Bell Sellers, a/k/a Donna Bell Peclet,

Appellant,

v.

Grover Seaton, III,

Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court correctly granted summary judgment to Respondent on Appellant's claims for fraud and negligent misrepresentation based on the parties' stipulated facts that Respondent made no actionable representations to Appellant.

2. Whether the trial court correctly found that Respondent owed no duties to and was immune from liability to Appellant for alleged legal advice Respondent gave to Appellant's then-husband about their divorce 36 years ago.

STATEMENT OF THE CASE

Appellant Donna Bell Sellers, a/k/a Donna Bell Peclet appeals the circuit court's order granting summary judgment to Respondent Grover Seaton, III. Appellant filed this action in the Court of Common Pleas for Greenville County on February 23, 2017, alleging causes of action against Respondent for negligent misrepresentation and fraud arising out of alleged legal advice that Respondent gave 36 years ago to Appellant's then-husband about his divorce from Appellant. (R.__; Complaint).

An amended summons and complaint were filed on March 22, 2017 to correctly identify Respondent. Respondent accepted service on March 24, 2017. On March 30, 2017, a consent order was entered transferring venue of the action to the Court of Common Pleas for Berkeley County. Respondent answered on April 10, 2017, denying liability and asserting affirmative defenses.

The parties entered into a Joint Stipulation of Facts for the purpose of cross-motions for summary judgment. (R.__). On November 2, 2020, Respondent filed a motion for summary judgment. (R.__). Respondent filed a memorandum in support on December 7, 2020. (R.__). On December 8, 2020, Appellant filed a cross-motion for summary judgment, also based on the parties' Joint Stipulation of Facts. (R.__). Appellant filed a memorandum in support on December 16, 2020. (R.__).

On January 22, 2021, the parties' cross-motions for summary judgment appeared on the Berkeley County motions roster for the February 8, 2021 term with the Hon. Deadra L. Jefferson presiding. On February 1, 2021, the trial court advised the parties that the cross-motions for summary judgment would be disposed of without the necessity of a hearing pursuant to the Chief Justice's April 3, 2020 Order, as amended December 16, 2020, Section (c)(4). Appellant filed an

amended memorandum in support on February 5, 2020. (R.__). Respondent filed a reply memorandum on February 8, 2020. (R.__).

On March 24, 2021, the trial court entered an order granting Respondent's motion for summary judgment, (R.__), followed by a second order denying Appellant's motion for summary judgment. (R.__). No motion to reconsider was filed. Appellant's notice of appeal was served and filed on April 14, 2021.

STIPULATED FACTS

The parties stipulated to the following facts for purposes of cross-motions for summary judgment:

1) Donna Bell Sellers, now known as Donna Peclet ("Donna") married Carroll W. Sellers, Jr. ("Sellers") on August 18, 1982. The parties were residing in Moncks Corner, Berkeley County, South Carolina when they separated in February, 1985.

2) Sellers, or Sellers' father Carroll Sellers, Sr., contacted Grover Seaton, III ("Seaton") to inquire about obtaining a divorce from Donna.

3) Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic.

4) Sellers took the paperwork to Donna and obtained her notarized signature on the paperwork to obtain a divorce in the Dominican Republic.

5) Sellers told Donna that Seaton was his attorney and was handling the paperwork for the divorce in the Dominican Republic.

6) Sellers traveled to the Dominican Republic to obtain a divorce from Donna.

7) Sellers returned from the Dominican Republic with a divorce decree and told Donna that they were divorced.

8) Seaton was not paid by Sellers, Donna or the law firm in the Dominican Republic.

9) Seaton never spoke to or communicated with Donna in connection with the divorce.

10) Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce.

11) Upon receiving the divorce decree, Donna believed she was divorced from Sellers.

12) Donna relied on Sellers' statement to her that Seaton was involved in the divorce, but Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton.

13) Donna subsequently went through a marriage ceremony with Joseph Edward Peclet ("Peclet") on March 14, 1987.

14) On October 14, 2014, Donna filed for divorce from Peclet in Greenville County, South Carolina after what she believed was a twenty-seven-year marriage.

15) By Order entered May 27, 2015, Donna's divorce action against Peclet was dismissed on the ground that the Dominican Republic divorce was not

recognized in South Carolina for purposes of her re-marriage to Peclet. Donna did not appeal the Order dismissing her divorce action against Peclet.

16) As a result of the dismissal of Donna's divorce action, Donna lost the ability to pursue claims for alimony, equitable division of marital properties and attorney fees, but was able to successfully partition the former marital home that she jointly owned with Peclet.

17) In March 2017, Donna filed an Amended Complaint against Seaton alleging negligent misrepresentation and fraud arising out of her Dominican Republic divorce.

(R. __; Joint Stipulation of Facts).

STANDARD OF REVIEW

When reviewing the grant of summary judgment, the appellate court applies the same standard of review applied by the trial court pursuant to Rule 56(c), SCRCP. Cowburn v. Leventis, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). "Pursuant to Rule 56(c), SCRCP, summary judgment may be affirmed if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." Id. (citing Trousdell v. Cannon, 351 S.C. 636, 639, 572 S.E.2d 264, 265 (2002)). When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In re Estate of Boynton, 355 S.C. 299, 301, 584 S.E.2d 154, 155 (Ct. App. 2003); WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court owes no particular deference to the trial court's legal conclusions. Boynton, 355 S.C. at 301-02, 584 S.E.2d at 155; J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

ARGUMENT

I. The trial court correctly found that Seaton was entitled to judgment as a matter of law based on the parties' stipulated facts.

A. No representations were made.

Appellant asserted causes of action for negligent misrepresentation and fraud. At the most fundamental level, both causes of actions are premised on the defendant making a false representation to the plaintiff. Armstrong v. Collins, 366 S.C. 204, 220, 621 S.E.2d 368, 375–76 (Ct. App. 2005).

The parties stipulated that Mr. Seaton never made any representations to Appellant whatsoever. (R.__; Joint Stipulation of Facts, ¶ 9, ¶ 10, ¶ 12) ("Seaton never spoke to or communicated with Donna in connection with the divorce. . . Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce. . . Donna never believed that Seaton was her attorney and she never sought or received any advice or representation from Seaton."). Based on the parties' stipulated facts, the trial court correctly concluded that Appellant did not have a viable claim against Seaton for negligent misrepresentation or fraud.[1]

B. No factual dispute exists.

Appellant argues for the first time on appeal that factual disputes precluded summary judgment. Appellant presents the issue on appeal as "[d]id the circuit court err in granting summary judgment to Respondent because the Appellant raised factual questions that should be addressed by a fact finder." (Brief of App., p. 1). Appellant then argues in her brief that paragraphs 2 and 3 of the parties' Joint Stipulation of Facts "present a question of fact that the

[1] Without a representation, it was factually impossible under the stipulated facts to satisfy the remaining elements of negligent misrepresentation or fraud.

Respondent was involved in conduct that represented to Appellant that she was being legally divorced from her husband." (Brief of App., p. 2).

Appellant's argument on appeal is wholly inconsistent with the parties' agreement to enter into the Joint Stipulation of Facts for purposes of cross-motions for summary judgment, which left only questions of law for the trial court to decide. Harleysville Mut. Ins. Co. v. R.W. Harp & Sons, Inc., 305 S.C. 492, 493, 409 S.E.2d 418, 418 (Ct. App. 1991) ("The facts were stipulated, leaving only a question of law for the circuit court."); see also Belue v. Fetner, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) ("When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided.").

Consistent with the Joint Stipulation of Facts, Appellant asserted below in her cross-motion for summary judgment that "there is no genuine issue as to any material fact and Plaintiff is entitled to judgment or liability as a matter of law." (R.__; Pltf's Mtn. for Summary Jmt.). Appellant filed two memoranda, which likewise did not raise any factual dispute as a basis for contesting summary judgment.

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006). The issues were presented and decided below as questions of law based on stipulated facts. As the trial court found in the order granting summary judgment, "[t]he parties have agreed the facts of this case are uncontroverted as supported by the parties' filing of their Joint Stipulation of Facts and submission of cross-motions for summary judgment, thereby conceding the remaining issue for resolution is a question of law for the

Court." (R.__ Order, p. 4, n 4). No motion to reconsider was filed. To the extent Appellant's argument is preserved for review, Appellant remains bound by the parties' Joint Stipulation of Facts.

C. "Involvement in conduct" is not a substitute for showing an actionable representation was made.

Appellant acknowledges that Seaton never made any representations to her, but argues that he can still be held liable for negligent misrepresentation and fraud because he was "involved in conduct that represented to Appellant that she was being legally divorced from her husband." (Brief of App. p. 2). The conduct cited by Appellant was that "Seaton provided Sellers with paperwork prepared by a law firm in the Dominican Republic pertaining to divorce procedures in the Dominican Republic." (R.__, Joint Stipulation of Facts, ¶ 3).

However, as the parties have stipulated, "Seaton did not provide any legal representation to Donna and never made any representations to Donna regarding the divorce[,]" and for that matter, "Seaton never spoke to or communicated with Donna in connection with the divorce." (R.__, Joint Stipulation of Facts, ¶¶ 9-10). Further, even if the representation element could be replaced with "involve[ment] in conduct[,]" providing paperwork about divorce procedures to Appellant's then-husband is not tantamount to a representation that she was divorced.

To find that Appellant has a viable claim against Seaton based on these stipulated facts would require eliminating the fundamental element on which both causes of action are premised – that the defendant made a false representation to the plaintiff – and would significantly expand tort liability in South Carolina to anyone "involved in conduct" that a litigant subjectively interprets as a representation. The trial court correctly rejected Appellant's argument and that decision should be affirmed.

D. As an additional sustaining ground, a mistake of law is not an actionable misrepresentation.

To the extent Seaton's "involve[ment] in conduct" could subject Mr. Seaton to liability for negligent misrepresentation or fraud, such a representation would amount to a mistake of law, which is not actionable in a claim for fraud or negligent misrepresentation. Barber v. Barber, 291 S.C. 399, 353 S.E.2d 882, 883 (Ct. App. 1987) (attorney's misrepresentation to opposing party in divorce action that her prior divorce was invalid, when in fact it was valid, was not actionable because "fraud cannot be predicated on misrepresentations as to matters of law, much less on mere mistake of law."); AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868, 874 (Ct. App. 1992) (representations as to matters of law not actionable as negligent misrepresentation).

In Barber, the husband obtained an annulment by default after his wife failed to answer. Id. at 833. Wife claimed that she failed to answer because her husband's attorney fraudulently misrepresented to her that her prior divorce in Mexico was invalid. Id. The family court set aside the annulment, and husband appealed. Id. The Court of Appeals reversed, finding that opposing counsel's alleged misrepresentation about the validity of her prior foreign divorce was insufficient to prove fraud because "fraud cannot be predicated on misrepresentations as to matters of law, much less on mere mistake of law." Id. (*citing* First National Bank of Greenville v. United States Fidelity & Guaranty Co., 207 S.C. 15, 35 S.E.2d 47 (1945).

The matter of law or "mistake of law" at issue in Barber could not be more fitting for the present case. Whether an attorney mistakenly represented to his client's wife that her foreign divorce was valid or that it was invalid, it is still a mistake of law that cannot form the basis of a claim for fraud or negligent misrepresentation. Appellant's claims against Mr. Seaton have a more fundamental flaw in that Seaton never made any representation to Appellant in the first place, but

as an additional sustaining ground, the alleged representation here would not have been actionable even if it had been made.

II. The trial court correctly found that Seaton owed no duty of care to Appellant and cannot be liable to her for allegedly giving bad legal advice to her then-husband about their divorce.

Although couched as negligent misrepresentation and fraud, Appellant sought to hold Seaton liable for alleged bad legal advice that Seaton gave his client. The parties stipulated that Seaton did not represent Appellant, she never believed Seaton was her attorney, and she never sought or received any advice from Seaton. Regardless of the theory or cause of action, an attorney cannot be liable to a non-client third-party for giving bad legal advice to his client. Our courts have long recognized that an attorney acting in the course and scope of representing a client owes no duties to non-clients and is immune from liability to third parties absent some independent duty owed to the third party. Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995); Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986).

Fundamental to this rule of law is that a non-client cannot sue an attorney for advice, good or bad, that the attorney gave his client. Gaar, 339 S.E.2d at 889 ("The fact that through ignorance he gives his client bad advice, on which he acts to the hurt of another, will not make the attorney liable to the other."). This is precisely what Appellant attempted to do in this case. Appellant sued Seaton for allegedly giving bad legal advice to her then-husband about their divorce. Seaton did not represent her. He owed no duties to her. He cannot be held liable to her. The trial court correctly concluded that Seaton was entitled to judgment as a matter of law.

There is no support for Appellant's position in Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014). In Fabian, our Supreme Court recognized a very narrow, fact-specific

exception to the traditional requirement of privity in a legal malpractice claim against an estate planning attorney. Id. at 489-90, 140. The exception is limited to a claim against an estate planning attorney by an individual named in the estate planning document whose inheritance was reduced or eliminated as a result of a drafting error by the attorney. Id. at 491, 141. The Court in Fabian crafted to exception to apply only in situations where the attorney's client is deceased, where allowing the claim to proceed absent privity is the only mechanism to enforce the client's intent. Id.

There is no reading of Fabian that could support eliminating privity under the facts of this case, where an attorney is being sued by an adverse party for advising his client in a divorce. Appellant was not Seaton's client. She cannot sue him for advice, good or bad, that Mr. Seaton gave his client. Gaar, 287 S.C. at 528, 339 S.E.2d at 889. The trial court correctly found Fabian inapplicable and granted summary judgment for Mr. Seaton.

CONCLUSION

For the reasons stated, Respondent respectfully submits that the trial court's decision granting summary judgment should be affirmed.

This 14th day of July, 2021.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal upon Appellant by email on July 14, 2021, addressed to Appellant's attorney of record as follows:

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July 14, 2021

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Re: Donna Bell Sellers v. Grover Seaton, III
Appellate Case No.: 2021-000420
EO File No.: 110-282

Dear Ms. Kitchings:

Attached for filing in the above-referenced matter, please find the Respondent's Initial Brief, Respondent's Designation of Matter to be Included in the Record on Appeal and Rule 209(c) certification, and proof of service for the same

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me. Thank you in advance for your attention to this matter.

Sincerely,

MICHAEL B. McCALL

MBM:cmg
Attachments
cc: O.W. Bannister, Esq. (via email only; owbannister@bannisterwyatt.com)