THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank Addy, Jr., Circuit Court Judge

Appellate Case No. 2021-000179

Daniel Pruitt, Appellant

v.

Kyle Parker, Pope & Hudgens Attorneys, PA, Respondents.

FINAL BRIEF OF APPELLANT

Daniel Pruitt
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Pro Se Appellant

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2. DID THE TRIAL COURT ERR IN FINDING THAT THE APPELLANT'S SUIT WAS BARRED BY THE STATUTE OF LIMITATIONS?

STATEMENT OF THE CASE

On May 22, 2020, Daniel Pruitt brought an action alleging legal malpractice against Kyle Parker and his firm, Pope & Hudgens Attorneys, PA. On June 18, 2020, Kyle Parker and Pope & Hudgens Attorneys answered alleging the appellant failed to state facts sufficient to establish a cognizable cause of action and that the appellant failed to institute this action within the time permitted by law under the statute of limitations. On June 25, 2020, the respondents filed a Motion to Dismiss based on the appellant's alleged failure to commence the action within the time permitted by law. The appellant responded to the Motion to Dismiss with an Opposition to the Respondents' Motion to Dismiss mailed on June 30, 2020. The Motion to Dismiss was heard by Judge Koon on July 13, 2020. On July 17, 2020, Judge Koon granted the respondents' Motion to Dismiss. On August 17, 2020, the appellant filled a Notice of Civil Appeal appealing the judgment granting the respondents' Motion to Dismiss. Judge Addy Jr. heard the appeal on January 11, 2021. On January 13, 2021, Judge Addy Jr. affirmed the order of the magistrate. On February 16, 2021, Appellant served a notice of appeal on the respondents.

STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), SCRCP an appellate court applies the same standard of review as the trial court." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Id. (internal quotations omitted). The appellate court may uphold the dismissal when "the facts alleged in the complaint do not support relief under any theory of law." Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003). However, questions of law like an untimely filing under the statute of limitations are decided de novo. Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

FACTS

On March 10, 2014, Mr. Daniel Pruitt signed a retainer with Mr. Kyle Parker of Pope, Hudgens Attorneys for representation in a probate matter. For the previous twenty (20) years, Mr. Pruitt had been the personal representative for his uncle, Lubuster Sartor. After Mr. Sartor passed away at the age of 90 from the effects of dementia, prostate cancer and debilitating lung and heart conditions, Mr. Pruitt looked through his important papers for the copy of his will. His will was always kept in a personal safe in the family home and when the safe was accessed the will was missing with only its envelope remaining. Mr. Sartor's live-in friend and caregiver, Mary Hair, stated that he had created a new will just before his death leaving everything to her, excluding all his family members, two nephews and three nieces. A copy of this new will was

requested from Ms. Hair and her attorney Mr. Pyatt, but neither party would produce this new will or give any background information relating to its origin. These were the circumstances explained to Mr. Parker when Mr. Pruitt engaged him for representation in this matter.

In later March of 2014, Mr. Parker probated Mr. Sartor's previous will from 1995, using a copy that Mr. Pruitt had of his last known will. That April, the alleged new will was entered into probate by Mr. Pyatt on behalf of Ms. Hair. The drastic differences between the new will as well as Mr. Sartor's state of mind and health at the time of the alleged signing of the new will, convinced Mr. Pruitt that his new will was not Mr. Sartor's doing. These criticisms were documented to Mr. Parker in a hand written letter by Mr. Pruitt.

There were six main concerns. First, the new will replaced Mr. Pruitt, Mr. Sartor's personal representative in two previous wills, with Ms. Hair, a person he new to be illiterate. Second, the signature purported to be Mr. Sartor's was not his very familiar John Hancock. Third, his assets passed from Ms. Hair to her niece, Lisa Boyd, excluding all of Mr. Sartor's family. Fourth, the will's second witness was Ms. Hair's sister, Bessie Williamson. Fifth, Ms. Hair's attorney, Mr. Pyatt, drew up the new will and was also the first witness to the will. Last, when the estate accounting document was filed in probate, it showed Mr. Pyatt's law firm as the recipient of $4,300, the balance of Mr. Sartor's estate.

Over the course of his representation, Mr. Parker's frequent refrain was that these matters take time. In July of 2016, Mr. Parker filed a motion for summary judgment, which he subsequently lost. This motion did not include any of the above concerns voiced by Mr. Pruitt. Mr. Pruitt later learned that summary judgement is generally a defense tactic and would have never resulted in the probate court throwing the fraudulent will out. Mr. Parker, was repeatedly asked about Mr. Pyatt's conflict of interest, being the individual who wrote the will, signed as a

witness, was paid by the estate for the will and is now representing the sole heir, Ms. Hair. Mr. Parker always defended Mr. Pyatt and blamed Ms. Hair's family for any issues.

At this point several years into the representation with no progress, Mr. Pruitt wrote a motion to reconsider based on his concerns and Mr. Parker refused to consider it. Mr. Parker stated that there were only two possible options moving forward, partition the property giving Ms. Hair Mr. Sartor's share and then buying the property back at auction or going to trial. Mr. Pruitt chose trial.

Trial for Mr. Parker began with wanting to do video depositions of all of Mr. Sartor's doctors, which would allow Mr. Pyatt the opportunity to cross examine. The doctors' affidavits were already on the record. This seemed unnecessary and redundant and Mr. Pruitt reiterated that his concerns centered around the fraudulent will and Mr. Pyatt's conflict of interest.

On August 23, 2016, after receiving a settlement offer from Mr. Pyatt, Mr. Pruitt again communicated his concerns relating to Mr. Pyatt and his reservations in making any deals with someone attempting to steal Mr. Sartor's property. In a note on August 24, Mr. Parker stated "You are dealing with some scruples-less people for sure; however, I don't think Mr. Pyatt is one of them. He's simply doing his job."

On September 2, 2016, Mr. Pruitt asked for an accounting of the $4300 charged to Mr. Sartor's estate by Mr. Pyatt and again raised issues regarding Mr. Pyatt's involvement. Mr. Parker did not respond.

On November 11, 2016, Mr. Pruitt emailed Mr. Parker asking at what point does Mr. Pyatt become a witness instead of an attorney. He inquired as to whether Mr. Pyatt would need to hire an attorney to cross examine himself at trial. This email went unanswered for several weeks. At one point, Mr. Pruitt reached out to the Probate court for guidance regarding the lack

of communication and they raised no alarms simply suggesting to keep trying to reach Mr. Parker.

On December 6, 2016, Mr. Pruitt emailed Mr. Parker again for clarification as to how Mr. Pyatt, who is a witness to the will, can participate in depositions and settlement offers. Mr. Pruitt reiterated that it seems Mr. Pyatt could have been removed from the case years ago. Mr. Parker responded that he can move to have Mr. Pyatt disqualified prior to deposing the doctors if that is what Mr. Pruitt wanted. Mr. Pruitt pressed Mr. Parker for answers as to why in three years he had not mentioned disqualifying Mr. Pyatt or that it was even a possibility. Mr. Parker then stated on December 14, 2016 that he was going to ask to be removed from the case citing a breakdown of the attorney-client relationship. Mr. Pruitt did not agree to this removal. He wanted answers to his questions and an explanation as to why Mr. Pyatt had not already been disqualified as that was an initial concern. The concerns Mr. Pruitt had communicated over the years to Mr. Parker had never been conveyed by Mr. Parker to the judge. When notified by Mr. Parker of his intent to quit, Mr. Pruitt asked for his fees back so that he could hire a new attorney.

On January 31, 2017, Mr. Parker's motion to withdraw was granted by Judge Nobles without the client's consent. Mr. Pruitt received the case files from Mr. Parker and immediately began calling new attorneys to take on this case. Mr. Pruitt hired a new attorney and voiced his same concerns and that attorney immediately took on the task of disqualifying Mr. Pyatt.

On April 16, 2018, Mr. Pruitt's new attorney successfully disqualified and removed Mr. Pyatt from the probate matter. Finally, on July 10, 2019 the probate matter was successfully concluded in Mr. Pruitt's favor. The fraudulent will was thrown out and Mr. Sartor's original will was entered into probate with Mr. Pruitt appointed as his personal representative.

ARGUMENTS

1. BECAUSE THE RESPONDENTS DID NOT ALLEGE A DEFECTIVE OR MISSING EXPERT AFFIDAVIT CONTEMPORANEOUSLY IN THEIR ANSWER AND MOTION TO DISMISS, THAT MISSING AFFIDAVIT CANNOT BE ARGUED LATER TO DISMISS THE APPELLANT'S CASE.

Appellant's complaint filed against the respondents included specific allegations and facts to support a claim of legal malpractice but did not include an expert affidavit. SC Code § 15-36-100 (2013) subsection (E) states "If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective." Mr. Cuttino, counsel for the respondents states legal malpractice claims "require some lawyer or some expert to give an opinion about that and that was lacking at the underlying case and it is lacking now." (Record on Appeal - pg. 57, lines 1-3) In reviewing the respondents' answer filed on July 18, 2020 and the Motion to Dismiss filed on July 25, 2020, which it must be noted were not filed contemporaneously, nor did they state the lack of an affidavit as a specific reason in their motion to dismiss as required under SC Code § 15-36-100 (2013) subsection (E). (Record on Appeal - pg. 21, pg. 23-25) As the respondents did not raise this issue "with specificity" as required by the relevant statute, the Court of Common Pleas erred in finding the lack of the expert affidavit a reason for dismissing the appellant's complaint. (Record on Appeal - pg. 64, para 1.) Moreover, the statute provides the appellant would have thirty (30) days to cure the defect had the respondents properly filed their answer and motion raising this defect.

Additionally, the appellant did not file an expert affidavit, because under SC Code § 15-36-100 (2013) subsection (C) (2) "the contemporaneous filing requirement [of an expert affidavit]...is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." As the original claim was to be held in small claims court, tried by a judge not a jury, and focused on extremely basic legal issues arising from an attorney-client relationship, such as communication and not having clients on both sides of a case, the appellant believed it would not require the trier of fact to garner any specialized knowledge. Conflict of interest and lack of communication are easy concepts that should justify the use of the common knowledge exception as they are concepts that any layperson could easily grasp, especially a judge presiding over a bench trial. (Record on Appeal - pg. 50, lines 1-8)

In Holmes vs. Haynesworth Sinkler Boyd, P.A., 408 S.C. 620, 760 S.E.2d 399 (2014), the court addresses the issue of using expert testimony to establish a legal malpractice claim. Unlike Holmes vs. Haynesworth, the appellant's case is quite simple in terms of legality and understanding the claim and given the opportunity at a hearing, Mr. Pruitt and witnesses will layout the malpractice claims "establish both the standard of care and the deviation by the defendant from such standard" as allowed under the common knowledge exception. (Record on Appeal - pg. 50, lines 1-8)

Furthermore, Mr. Cuttino, counsel for the respondents, after discussing the expert affidavit states Judge Koon "did not rule that the statute of limitations was the ground that he dismissed the malpractice case" (Record on Appeal - pg. 57, lines 9-11) implying that the order states the lack of the expert affidavit was the reason. In contrast, Judge Koon does not

mention the requisite statute nor the expert affidavit in his order. (Record on Appeal - pg. 38, para 3)

Therefore, the Court of Common Pleas erred in dismissing the appellant's case based on a lack of an expert affidavit and if the court believed this affidavit was required the appellant should have been given the statutory length of time of thirty (30) days to fix the defect based on SC Code § 15-36-100 (2013).

2. BECAUSE THE APPELLANT FILED THE CLAIM WITHIN THREE (3) YEARS OF THE SUCCESSFUL RESOLUTION OF THE UNDERLYING MATTER, THE COURT ERRED IN FINDING THAT THE APPELLANT'S SUIT WAS BARRED BY THE STATUTE OF LIMITATIONS.

The statute of limitations, relating to either a breach of contract or legal malpractice case, is a term of three (3) years. S.C. Code § 15–3–530(5) (2017) Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. (Record on Appeal - pg. 52, line 25 – pg. 53, line 6) All actions initiated under S.C. Code § 15–3–530(5) (2017) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. Thus, a claimant seeking recovery for a legal malpractice claim is constrained by two constants: (1) filing the claim within the statute of limitations, and (2) establishing the four requisite elements of his or her claim. As a result, a claimant must have knowledge of each element of the legal malpractice claim when it is filed. Since a statute of limitations operates on remedies, the limitation period cannot start until the client has a cause of action that has accrued. This accrual refers to the existence of a legally cognizable cause of action. As evidenced by this case, the key question is when the claimant's cause of action accrues to

trigger the running of the three-year statute of limitations. (Record on Appeal - pg. 53, lines 7-23)

In Stokes-Craven Holding Corp. vs. Robinson et al, 416 S.C. 517, 787 S.E.2d 485 (2016), it was found that the statute of limitations for a legal malpractice action may be tolled until resolution on appeal of the underlying case. In that matter the plaintiff expressed his disapproval of counsel on the witness stand during the trial, but the court still found that it was so important to know the outcome of his appeal that they ruled the statute of limitations did not begin until ruling on the appeal four years after the original ruling. (Record on Appeal - pg. 53, line 23 – pg. 54, line 6)

Similarly, in this matter we are asking the court to not start the statute of limitations until the resolution of the underlying matter, which was July 10, 2019. If the appellant immediately sued upon the quitting of his attorney, Mr. Parker, the court could have easily denied the claim as Mr. Pruitt would not have the knowledge that his course of action would have resulted in a positive outcome for his case. (Record on Appeal - pg. 54, lines 11-13) Due to the legal work provided by Mr. Pruitt's replacement attorney, after Mr. Parker quit, Mr. Pruitt won the underlying probate matter. The previous court uses the fact that Mr. Pruitt won his case in deciding he has no claim for damages, but this is not supported by case law. (Record on Appeal - p. 38, para 1) To be clear, Mr. Parker was not fired, although Mr. Pruitt was unhappy, he did not agree with Mr. Parker's removal. He still believed that Mr. Parker's expertise and knowledge would help him win the underlying matter. (Record on Appeal - pg. 32, para 9) On the date Mr. Parker quit and the date he was subsequently removed by the probate court, the elements of breach, damages and approximate cause were severely lacking of the requisite evidence to support any malpractice or breach of contract claim. (Record on

Appeal - pg. 54, lines 13-16) Yes, Mr. Pruitt was displeased and asked for his fees so that he could hire another attorney to finish the case, but this displeasure did not arise to the level of the specific elements for a lawsuit especially without the specific knowledge that comes with winning his case. In fact, Mr. Pruitt's displeasure did not even result in Mr. Parker being fired; Mr. Parker quit. (Record on Appeal - pg. 54, lines 16-22) One course of action Mr. Pruitt requested of his attorney was to have opposing counsel removed. Mr. Parker, in three years, made no attempts to have opposing counsel removed. If Mr. Pruitt's new attorney removed the opposing counsel and subsequently lost the case, Mr. Pruitt's theory of malpractice ceases to exist. (Record on Appeal - pg. 54, lines 22-24) In contrast, Mr. Pruitt's new counsel immediately removed opposing counsel and successfully won the underlying matter in about a year's time as compared to the three years spent by Mr. Parker, where he collected fees and made no progress as to the actual case. It is clear that Mr. Pruitt would have never been successful following the strategy of Mr. Parker, and this is shown by the new attorney following his client's wishes and winning the case in a third of the time. Mr. Parker should not be allowed to conveniently quit as his client is questioning the progress of their case and then unilaterally use the date he quit to begin the statute of limitations running while the underlying matter is still open. In fairness, Mr. Pruitt has to be allowed time for his new attorney to take on the legal strategy Mr. Parker adamantly would not follow in order to have a legal basis for a malpractice claim.

Judge Addy states that because "Mr. Pruitt retained new counsel and was ultimately successful in the underlying litigation...per case law he suffered no injury." (Record on Appeal - pg. 64, para 1.) Had Mr. Pruitt's new attorney continued the same course and legal strategy as Mr. Parker then Judge Addy's conclusion may be accurate. But in contrast, Mr.

Pruitt's new attorney basically had to start over from scratch and was unable to use the results of the three years of 'work' by Mr. Parker. This notion of winning the underlying case and therefore the appellant has no damages is contrary to case law as described in Hall vs. Fedor, 349 S.C. 169, 561 S.E.2d 654 (2002). In Hall vs. Fedor, a plaintiff in a legal malpractice claim is required to prove he "most probably" would have been successful in the underlying litigation if the attorney had not committed the alleged malpractice. (Record on Appeal - pg. 49, lines 6-10) There is no better way to show you "most probably" would win then actually winning the case. By continuing the underlying matter by a different course of action after Mr. Parker quit and winning, Mr. Pruitt was able to ascertain that he would have been successful had Mr. Parker not committed the alleged malpractice. This goes to the heart of the statute of limitations timing in this matter. The court found that the statute of limitations began to run at the time Mr. Parker quit, but it was not possible for Mr. Pruitt to prove he "most probably" would have been successful in the underlying litigation at that point in time. Therefore, as stated above, the statute of limitations should not begin until the success in the underlying matter is evident. (Record on Appeal - pg. 49, lines 10-20) In this case, evident could only be when opposing counsel was removed or the date the underlying matter was won.

Upon the probate court's removal of Mr. Parker at his request, Mr. Parker returned Mr. Pruitt's entire substantial case file to him. Mr. Pruitt, in the midst of a probate matter, is now forced to find a new attorney willing to take on a case three years in. Under these circumstances it is entirely possible that a reasonable person would quickly find a new attorney and hand over the thick case file without pouring over each document, which is exactly what Mr. Pruitt did. However, once Mr. Pruitt won the case and was considering a claim against Mr. Parker, he found an email that clearly shows Mr. Parker was the attorney for

the brother of the opposing party. (Record on Appeal - pg. 35, para 11 – pg. 36, para 11) This client asked Mr. Parker if he could write the fraudulent will, that was the subject of the probate case, prior to Mr. Pruitt retaining him as counsel. Mr. Parker never disclosed this clear conflict of interest, required by Rule 1.7, RPC and Rule 1.9, RPC. The respondents believe that handing over the case file means that Mr. Pruitt, should have reasonably read each document and as a layperson clearly understood the legal significance of each document, when even his own new attorney did not realize the significance of that email and alert him to the potential past conflict of interest. Even the respondents did not go over each document as they most likely would not have included the email evidence of their own conflict of interest in Mr. Pruitt's case file.

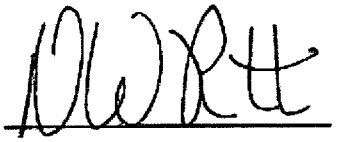
Additionally, in Stokes-Craven Holding Corp. vs. Robinson et al, 416 S.C. 517, 787 S.E.2d 485 (2016) the court reiterates the necessary elements that a plaintiff in a legal malpractice suit must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the plaintiff's damages by the breach. McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998); Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996); Henkel v. Winn, 346 S.C. 14, 550 S.E.2d 577 (Ct.App.2001), cert. denied. The appellant has clearly laid out in the initial complaint and subsequent motions and appeals, facts and evidence supporting each element. In the motion to dismiss in this case the respondents in neither argument nor by motion did not explicitly state how the appellant had not established a cause of action for legal malpractice. (Record on Appeal - pg. 21, pg. 23-25) The magistrate in their order determining that the cause of action was not established also did not state which element was missing or inadequate. (Record on Appeal - p. 38, para 3)

In summary, Mr. Pruitt's new counsel was able to disqualify the opposing attorney, which changed the course of the matter and was the course Mr. Pruitt had wanted Mr. Parker to consider for three years. This disqualification was granted on April 16, 2018. The appellant submits that this is potentially the date that a reasonable person would be on notice that their first attorney may have committed professional negligence or was in breach of their contract for legal representation. (Record on Appeal - pg. 54, lines 7-11) Therefore, in filing his claim, Mr. Pruitt, is well within the three (3) year statute of limitations. Accordingly on the basis of a failure to comply with the statute of limitations, the appellant asks the court to find that the appellant did file his complaint within the statute of limitations based on either the date opposing counsel in the underlying matter was removed, April 16, 2018 or the date the underlying matter was concluded successfully, July 10, 2019.

CONCLUSION

For the reasons stated herein, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



Date: August 26, 2021

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