

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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ROBERT KASINECZ,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-L-1243
	)	
ALAN H. NELSON, TROTT NELSON, P.C.,	)	
and GREGORY K. TROTT,	)	Honorable
	)	Patrick J. Leston,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Bowman and Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court properly dismissed the plaintiff's complaint for attorney malpractice because the plaintiff's complaint did not demonstrate the defendants had breached any duty to the plaintiff.

¶ 1 The plaintiff, Robert Kasinecz, appeals from the August 4, 2011, order of the circuit court of Du Page County dismissing his complaint for attorney malpractice against the defendants, Alan Nelson, and Trott Nelson, P.C., and Gregory Trott. We affirm.

¶ 2 In March 2005, the plaintiff hired the defendants to represent him in breach of contract and mechanic's lien claims against Joseph Duffy. The plaintiff asserted that he had performed

construction work at premises owned by Duffy but Duffy had refused to pay him for that work. The plaintiff's claims against Duffy were for over \$500,000. The defendants subsequently prepared and filed an action to foreclose a mechanic's lien on behalf of the plaintiff against Duffy. Allegedly, however, the defendants never informed the plaintiff that he had to file a sworn contractor's statement pursuant to section 5 of the Mechanics Lien Act (770 ILCS 60/5 (West 2006)) in order to protect his claim against Duffy. On June 30, 2008, the trial court entered judgment in Duffy's favor due to the plaintiff's failure to file a sworn contractor's statement. Following the trial court's ruling, the plaintiff filed (1) a timely notice of appeal and (2) a complaint for attorney malpractice against the defendants for their failure to advise him of the need to file a sworn contractor's statement.

¶ 3 On March 10, 2011, this court reversed the trial court's decision. *Kasinecz v. Duffy*, No. 2-10-0156 (2011) (unpublished order under Supreme Court Rule 23) (*Kasinecz I*). We held that, based on existing precedent, the plaintiff did not need to file a sworn contractor's statement because (1) Duffy had not requested such a statement and (2) there was no danger of prejudice to Duffy arising from the lack of a sworn contractor's statement. *Id.* at 21.

¶ 4 On April 8, 2011, the defendants filed a motion pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) to dismiss the plaintiff's complaint. The defendants argued that there was no longer a basis for legal malpractice based on this court's favorable ruling to the plaintiff in *Kasinecz I*. In response, the plaintiff argued that he was damaged by the negligence of the defendants because he unnecessarily incurred attorney fees in excess of \$45,000 prosecuting an appeal which would not have been needed if the defendants had told him to provide a sworn contractor's statement. On August 4, 2011, following a hearing, the trial court dismissed the plaintiff's complaint with prejudice, finding that the plaintiff could not establish the

damages element of a legal malpractice claim because there was still a “live cause of action” in the mechanic’s lien case as a result of this court’s decision in *Kasinecz I*. The plaintiff thereafter filed a timely notice of appeal.

¶ 5 On appeal, the plaintiff argues that the trial court erred in dismissing his complaint. A motion to dismiss under section 2-619 allows for a threshold disposition of questions of law and easily proven issues of fact. *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1037 (2005). Under section 2-619, a motion to dismiss should be granted if, after construing the pleadings and supporting documents in the light most favorable to the nonmoving party, the court finds that no set of facts can be proved upon which relief could be granted. *Id.* A reviewing court considers whether the existence of a genuine issue of material facts should have precluded the dismissal or, absent such an issue of facts, whether dismissal was proper as a matter of law. *Id.* Motions to dismiss under section 2-619 are reviewed *de novo*. *Id.*

¶ 6 To succeed in a claim for legal malpractice, a plaintiff must plead and prove the following elements: (1) the defendant attorney owed the client a duty of care arising from the attorney-client relationship, (2) the defendant breached that duty, (3) as a proximate result, the client suffered injury. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 225-26 (2006). The existence of actual damages is essential to a cause of action for legal malpractice. *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 748 (2008).

¶ 7 Here, the plaintiff alleges that the defendants breached their duty to him by failing to advise him of the need to file a sworn contractor’s statement. However, in *Kasinecz I*, we held that the plaintiff did not need to file a sworn contractor’s statement. Thus, as the plaintiff did not have to file a sworn contractor’s statement, the defendants did not breach any duty to advise him to file such a

statement. Accordingly, even though the trial court dismissed the plaintiff's complaint on a different basis, we hold that the trial court's dismissal was proper because the plaintiff's complaint did not demonstrate that the defendants breached any duty to him. *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 502 (1998) (reviewing court may sustain a lower court's decision on any grounds appearing in the record).

¶ 8 We note that the plaintiff insists that "there was no potential adverse consequence in providing the [s]worn [c]ontractor's [statement]." The plaintiff further argues that a reasonably diligent attorney would have ensured that the statement was filed. Had the defendants ensured that the statement had been supplied, the plaintiff maintains that "the adverse ruling and the entire appeal would have been avoided." Although it is true that no harm would likely have resulted had the defendants advised the plaintiff to file the sworn statement, the fact remains, as was explained in *Kasinecz I*, the plaintiff was not obligated to file a statement. The real gist of the plaintiff's argument seems to be that the defendants should have anticipated that the trial court would have misapplied the law and therefore they should have ensured that a statement was filed to avoid the consequences of the trial court's misinterpretation of the Mechanics Lien Act. However, the plaintiff cites no case that imposes such a burden on attorneys. We decline to impose such a burden as well.

¶ 9 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 10 Affirmed.