2017 IL App (1st) 161456-U

No. 1-16-1456

Order filed October 6, 2017

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ESSAM A. AMMAR, Plaintiff-Appellant, v. SCHILLER, DUCANTO AND FLECK, LLP, CHARLES J. FLECK, ESQ., RINELLA AND RINELLA, LTD., JOSEPH PHELPS, ESQ., GRUND AND LEAVITT, DANIEL I. GRUND, ESQ., JACQUELINE I. AMMAR, LEVIN AND BREND, P.C., JEFFREY W. BREND, ESQ., TD AMERITRADE, INC., J. THOMAS BRADLEY, JR., REED, CENTRACCHIO AND ASSOCIATES, LLC, BRYAN V. REED, ESQ., MANDAS LAW OFFICES, LLC, and LEAH MANDAS, ESQ., Defendants (Schiller, DuCanto And Fleck, LLP, Charles J. Fleck, Esq. Levin And Brend, P.C., and Jeffrey W. Brend, Esq., Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County. No. 14 L 272 Honorable Larry G. Axelrood, Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's dismissal of legal malpractice claims against the defendant law firms and attorneys with prejudice was affirmed where the claims were barred by the statute of limitations as to certain defendants and the failure to state a cause of action as to other defendants.

¶ 2 The plaintiff, Essam A. Ammar, appeals *pro se* from the dismissal with prejudice of claims in his third amended complaint against the defendants, Schiller, DuCanto & Fleck, Charles J. Fleck (collectively SDF), Levin & Brend, P.C., and Jeffrey W. Brend (collectively L&B). On appeal, the plaintiff contends that the dismissal of SDF and L&B was error. For the reasons set forth below, we affirm the order of the circuit court.

¶ 3 BACKGROUND

¶ 4 On January 10, 2014, the plaintiff filed a *pro se* verified complaint[1] against SDF seeking damages for legal malpractice and psychological injuries he sustained as a result of its representation of him in dissolution of marriage proceedings brought by defendant Jacqueline I. Assam (Jacqueline), his now former wife. The circuit court granted SDF's motion to dismiss the complaint but allowed the plaintiff leave to amend his complaint to add new parties and new causes of action.

¶ 5 On September 8, 2014, the plaintiff filed a verified amended five-count complaint against SDF, L&B, Jacqueline and other law firms and attorneys that had represented the plaintiff or

[1] The complaint was not captioned a verified complaint, but the plaintiff certified the pleading pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2014)).

Jacqueline during the dissolution of marriage proceedings. [2] Thereafter, the plaintiff amended the complaint several times. The instant appeal concerns the claims alleged against SDF and L&B in the verified third amended complaint.

¶ 6 In count I, the sole count against SDF, the plaintiff alleged that SDF committed legal malpractice when it failed to comply with the plaintiff's request that it petition the circuit court to have its monthly fees and related expenses paid from the plaintiff's nontaxable funds, forcing the plaintiff to pay the fees from his taxable retirement account. As a result, the plaintiff incurred significant tax liabilities.

¶ 7 In count VI, the sole count against L&B, the plaintiff claimed that during the dissolution of marriage proceedings, L&B, specifically defendant Jeffrey W. Brend, knowingly assisted the fraudulent conduct of its client Jacqueline, as alleged in counts IV and V against her. The plaintiff alleged that, as a result of false statements and improper arguments attorney Brend made to the circuit court, the plaintiff was precluded from establishing that a $200,000 asset was his premarital property and that he disposed of the asset to satisfy a personal obligation. The plaintiff further alleged that attorney Brand knowingly assisted Jacqueline's fraudulent conduct by using an affidavit signed by Jacqueline that contradicted a previous affidavit she had executed.

¶ 8 SDF filed a motion to dismiss count I of the verified third amended complaint on statute of limitations grounds pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2014)). Pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2014)), L&B filed a combined motion to dismiss count VI of the verified third

[2] Jacqueline and the other named defendants are not parties to this appeal.

amended complaint on statute of limitations grounds (735 ILCS 5/2-619(a)(5) (West 2014)) and failure to state a cause of action (735 ILCS 5/2-615 (West 2014)).

¶ 9 On April 26, 2016, the circuit court granted the motions and dismissed count I and count VI of the verified third amended complaint with prejudice. Pursuant to Illinois Supreme Court Rule 304(a), the court found no just reason to delay enforcement or appeal of the order.

¶ 10 The plaintiff appeals from the April 26, 2016, order of the circuit court.

¶ 11 ANALYSIS

¶ 12 I. Standards of Review

¶ 13 The circuit court dismissed the verified third amended complaint against SDF and L&B pursuant to section 2-619(a)(5) (statute of limitations) and against L&B pursuant to section 2-615 (failure to state a cause of action). We review dismissals under both section 2-619 and 2-615 *de novo*. *Dumas v. Pappas*, 2014 IL App (1st) 121966, ¶ 11. In *de novo* review we perform the same analysis a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). Moreover, we may affirm the circuit court on any basis in the record whether or not the court relied on that basis or its reasoning was correct. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st), 142372, ¶ 21.

¶ 14 II. Statute of Limitations

¶ 15 The statute of limitations applicable to claims of legal malpractice provides that such claim must be filed within two years "from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought. 735 ILCS 5/13-214.3(b) (West 2014). "This statute of limitations incorporates the discovery rule, 'which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have

known of the injury and that it may have been wrongfully caused.' " *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 23 (quoting *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1997)).

¶ 16 In *Carlson*, this court set forth the applicable rules for determining when the legal malpractice statute of limitations begins to run for purposes of determining the date by which a claim for legal malpractice must be brought, stating as follows:

> "A statute of limitations begins to run when the purportedly injured party has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue. [Citation.] Knowledge that an injury has been wrongfully caused does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action. [Citation.] A person knows or reasonably should know an injury is wrongfully caused when he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. [Citation.] The law is well settled that once a party knows or reasonably should know both of his injury and that it was wrongfully caused, the burden is upon the injured person to inquire further as to the existence of a cause of action. [Citation.] For purposes of a legal malpractice action, a client is not considered to be injured unless and until he [or she] has suffered a loss for which he [or she] may seek monetary damages." (Internal quotation marks omitted). *Carlson*, 2015 IL App (1st) 140526, ¶ 23 (quoting *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005); *Castello v.*

Kalis, 352 Ill. App. 3d 736, 744, 45 (2004); *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (2002); *Dancor International, Ltd.*, 288 Ill. App. 3d at 673).

¶ 17 A. Dismissal of Count I Against SDF

¶ 18 The plaintiff contends that the dismissal of count I of the verified third amended complaint on statute of limitations' grounds was error. He argues that the running of the two-year limitations period was not triggered until 2012 when he was injured by having to pay taxes on the funds he withdrew from his retirement account in order to pay SDF. The plaintiff further argues that under the discovery rule, he could not have known in 2010 that the refusal of SDF to request that their fees be paid from the nontaxable escrow funds in their possession was actionable legal malpractice. SDF responds that the plaintiff made judicial admissions which established that by July 2010, the plaintiff possessed sufficient information of the negligent conduct of SDF and that he was injured by it to trigger the running of the two-year limitations period. In support of its motion, SDF attached the affidavit of attorney Eric Pfanensteil stating that the plaintiff's first payment of attorney fees to SDF was made on July 15, 2010. The plaintiff did not file a counteraffidavit, and thus the fact of the payment and its date are deemed admitted. See *Callahan v. Village of Clarendon Hills*, 401 Ill. App. 3d 287, 293 (2010).

¶ 19 "A judicial admission is 'a deliberate, clear, unequivocal statement of a party regarding a concrete fact within the party's peculiar knowledge and is conclusive upon the party making it, thereby relieving the opposing party from presenting any evidence.' " *Jordan v. Knafel*, 355 Ill. App. 3d 534, 544 (2005) (quoting *Bank of Chicago v. Park National Bank*, 277 Ill. App. 3d 167, 172 (1995)). It is well established that a fact admitted in a verified pleading is a formal, conclusive judicial admission. *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 396-97 (1990). A

court may consider judicial admissions when ruling on a motion to dismiss. *Jordan*, 355 Ill. App. 3d at 544.

¶ 20 In his verified third amended complaint, the plaintiff alleged as follows:

> "46. Beginning on June 30, 2010 and on multiple occasions after that date, [the plaintiff] requested SDF to petition the Court to pay their fees and [the plaintiff's] other related case expenses including income tax payments to the IRS from his nontaxable non-marital escrow funds in their possession.
>
> * * *
>
> 49. SDF failed to petition the Court to pay their fees and [the plaintiff's] other case related expenses from his nontaxable non-marital escrow funds in their possession, despite repeated requests from [the plaintiff] to file said petition.
>
> 50. Because of the SDF's refusal to bring said petition, [the plaintiff] had no choice but to pay the SDF's monthly fees from [the plaintiff's] only available asset, which was his taxable retirement account."

¶ 21 The plaintiff's allegations in his verified third amended complaint constitute judicial admissions that in June 2010, he had requested that SDF seek permission to pay his legal fees from his nontaxable non-marital funds. He alleged that SDF's failure to do so constituted legal malpractice. When the plaintiff made his first payment to SDF on July 15, 2010, he knew or should know that SDF's conduct injured him in that he was forced to pay SDF's legal fees from his taxable retirement account.

¶ 22 Since as of July 2010, the plaintiff knew of his injury and that it was caused by the conduct of SDF that he alleged constituted legal malpractice, his 2014 complaint against SDF

was brought beyond the two-year statute of limitations. Therefore, the circuit court did not err in dismissing count I of the verified third amended complaint against SDF with prejudice.

¶ 23 B. Dismissal of Count VI Against L&B

¶ 24 The plaintiff contends that aiding and abetting a fraud is not an act of legal malpractice. Therefore, he maintains that the two-year statute of limitations in section 13-214.3(b) of the Code does not apply to count VI of his verified third amended complaint against L&B. Because the interpretation of a statute is a question of law, our review is *de novo*. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 13.

¶ 25 Section 13-214(b) provides in pertinent part as follows: "An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services *** must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214(b) (West 2014). In *Evanston Insurance Co.*, our supreme court held the "arising out of" language found in both the limitations and repose sections of section 13-214

> "indicates an intent by the legislature that the statute apply to all claims against attorneys concerning their provision of professional services. There is no express limitation that the professional services must have been rendered to the plaintiff. Nor does the statute state or imply that it is restricted to claims for legal malpractice. Had the legislature wished to do so, it could have limited the statute to legal malpractice actions or to actions brought by a client of the attorney. *** The statute unambiguously applies to all claims brought against an attorney arising out of actions or omissions in the performance of professional

services." *Evanston Insurance Co.*, 2014 IL 114271, ¶ 23 (overruling *Ganci v. Blauvelt*, 294 Ill. App. 3d 508 (1998)); see *800 South Wells Commercial, LLC v. Horwood Marcus & Berk Chartered*, 2013 IL App (1st) 123660.

Section 13-214(b)'s two-year limitations period applies to the plaintiff's aiding and abetting a fraud claim against L&B.

¶ 26 The plaintiff contends that as of September 8, 2014, when he filed his verified amended complaint naming L&B as defendants, the two-year limitations period had not expired. L&B responds that the plaintiff had actual knowledge of his injury on June 29, 2012, when the circuit court entered an order barring him from presenting evidence that a $200,000 asset was the plaintiff's non-marital property and had been used to satisfy a non-marital debt. The plaintiff also knew that the injury was caused by L&B when attorney Jeffrey Brend made misrepresentations to the court which resulted in the June 29, 2012, order. By August 22, 2012, when the circuit court denied the plaintiff's motion to vacate the June 29, 2012, order, L&B maintains the plaintiff had sufficient information as to require him to inquire as to whether that he had a potential cause of action to trigger the running of the two-year limitations period.

¶ 27 In addition, L&B points out that the fact that the plaintiff did not know the extent of his damages resulting from L&B's alleged actions did not toll the running of the two-year limitations period. See *MC Baldwin Financial Co. v. DiMaggio, Rosario & Veraja, LLC*, 364 Ill. App. 3d 6, 17 (2006) (the existence of some injury can start the running of the limitations period on any claim arising out of the same events even though the injury may further develop or additional injuries may result from the same breach of duty).

¶ 28 Nonetheless, we agree with the plaintiff that as of September 8, 2012, he had not yet sustained actual damages from L&B's conduct that would have triggered the running of the 2-year limitations period. "A cause of action for legal malpractice does not accrue until the client discovers, or should discover, the factors establishing the elements of his cause of action." *Preferred Personnel Services, Inc. v. Meltzer, Purtill & Stelle, LLC*, 387 Ill. App. 3d 933, 941 (2009). "[I]njury alone is not sufficient to state a cause of action for legal malpractice; actual damage is a required element." *Preferred Personnel Services, Inc.*, 387 Ill. App. 3d at 941. In legal malpractice cases, the injuries are pecuniary injuries to intangible property interests. *Lucey v. Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349, 353 (1998). "Where the mere possibility of harm exists or damages are otherwise speculative, actual damages are absent and no cause of action for malpractice yet exists." *Lucey*, 301 Ill. App. 3d at 353.

¶ 29 As of the June 29, 2012, order, the plaintiff knew that he had been injured as a result of the misrepresentations made by L&B. However, it was not until the judgment for dissolution was entered that the plaintiff sustained any actual damage. See *Preferred Personnel Services Inc.*, 387 Ill. App. 3d at 939 (generally, a cause of action for legal malpractice will not accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which the plaintiff has become entangled due to the purportedly negligent advice of his attorney).

¶ 30 We conclude that the two-year statute of limitations began to run at the earliest on February 14, 2013, when the judgment for dissolution of the marriage of Jacqueline and the plaintiff was entered. At that time, the plaintiff knew that he had been injured by L&B's actions in aiding and abetting Jacqueline's fraud and had sustained actual damages. The plaintiff's verified amended complaint naming L&B as a defendant was filed on September 8, 2014, less

than two years after the entry of the February 14, 2013, judgment. Therefore, the circuit court erred when it dismissed count VI of the plaintiff's third amended complaint on statute of limitations grounds.

¶ 31 We now consider whether circuit court erred when it dismissed count VI against L&B for failure to state a cause of action.

¶ 32 III. Failure to State a Cause of Action

¶ 33 The plaintiff contends that the circuit court erred in dismissing count VI of the verified third amended complaint against L&B with prejudice. Count VI was dismissed because the court found that the plaintiff failed to state a cause of action against Jacqueline for fraud and breach of contract in counts IV and V, the basis for count VI against L&B. The plaintiff's sole argument is that, since the counts against Jacqueline were not dismissed with prejudice the dismissal of count VI against L&B with prejudice was error.

¶ 34 Under *de novo* review, this court does not defer to the circuit court's judgment or reasoning. N*ationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20. Nonetheless, that does not excuse the plaintiff's failure to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2017), requiring him to support his argument with citations to authority. "Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone." *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011). The plaintiff's *pro se* status does not allow him to claim ignorance of our supreme court rules or excuse his noncompliance. In Illinois, a party choosing to represent himself is held to the same standard as a licensed attorney and must comply with the

same rules. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Therefore, the plaintiff has forfeited this issue on appeal. In any event, the plaintiff's argument lacks merit.

¶ 35 Following the dismissal of counts IV and V of the verified third amended complaint, the plaintiff filed his verified fourth amended complaint, again alleging claims of fraudulent misrepresentation and breach of contract against Jacqueline in counts IV and V. Jacqueline filed a motion to dismiss. On October 13, 2016, the circuit court entered an order dismissing with prejudice counts IV and V of the verified fourth amended complaint. The court found that "Plaintiff still has not overcome the pleading defects from his Third Amended Verified Complaint that were noted in the Court's April 26, 2016 order."

¶ 36 Counts IV and V of the verified third amended complaint formed the basis of the plaintiff's claims against L&B in count VI of aiding and abetting Jacqueline's fraudulent misrepresentations. The dismissal with prejudice of those counts in the verified fourth amended complaint forecloses the plaintiff's argument that dismissal with prejudice of count VI of the verified third amended complaint against L&B was error.

¶ 37 CONCLUSION

¶ 38 The circuit court did not err in dismissing count I of the verified third amended complaint against SDF with prejudice where the claim was barred by the statute of limitations. While count VI was not barred by the two-year limitations period, the court did not err in dismissing count VI of the verified third amended complaint against L&B with prejudice for failure to state a cause of action.

¶ 39 The judgment of the circuit court is affirmed.

¶ 40 Affirmed.