

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002420-MR

VERNON MILLS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 01-CI-01052

LAW OFFICE OF MELBOURNE MILLS, JR.;
DAVID STUART; AND MICHAEL P. CASEY

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This is an appeal from an order dismissing appellant's legal malpractice action for being filed outside the statute of limitations and for failure to state a claim.

Although we adjudge that appellant's action was filed within the one-year statute of limitations, we nevertheless agree that the complaint failed to state a cause of action. Hence, we affirm the dismissal of the claim under CR 12.02.

Appellant, Vernon Mills ("Vernon"), was injured in a car accident in Lexington on November 25, 1994. On November 2, 1995, Vernon filed a pro se personal injury action seeking damages for the injuries he received in the accident. After some discovery, Vernon retained the law offices of Melbourne Mills, appellees herein, to represent him in the action. After an unsuccessful settlement conference in 1998, the case proceeded to a jury trial on February 1, 1999. The jury rendered a verdict in Vernon's favor and awarded him \$20,000 for pain and suffering. The final judgment on the verdict was entered on June 23, 1999, and Vernon signed an acknowledgement of satisfaction of judgment on September 1, 1999.

Although he obtained a favorable result, Vernon felt he was entitled to more damages than were awarded and, thus, filed a post trial pro se motion seeking more damages/costs. On August 12, 1999, Vernon's counsel also filed a motion for costs on behalf of Vernon. On March 20, 2000, the court entered its order granting the attorney's motion for costs, but denying Vernon's pro se motion for more damages/costs. Vernon thereafter filed a motion for reconsideration of his motion, which was denied by the court on April 14, 2000.

On March 20, 2001, Vernon filed a pro se action in the Fayette Circuit Court against the Law Office of Melbourne Mills and two attorneys with the law firm, David Stuart and Michael

Casey. We shall discuss the complaint in further detail below. The complaint was essentially a legal malpractice action claiming, among other things, that the appellees were grossly negligent in their representation of Vernon. Following a motion to dismiss, the trial court dismissed the action on April 26, 2001, for being filed beyond the one-year statute of limitations and for failure to state a valid claim of legal negligence. After a subsequent order denying Vernon's motion to set aside the dismissal, Vernon now appeals pro se.

From the outset, we must note that appellant's brief is in large part unintelligible, as was his complaint. However, giving the pro se litigant the benefit of the doubt, we will endeavor to address his arguments.

First, appellant appears to argue that his action was filed within the statute of limitations, citing Alagia, Day, Trautwein & Smith v. Broadbent, Ky., 882 S.W.2d 121 (1994). We agree.

It appears that both parties agree that the applicable statute of limitations is one year under KRS 413.245 for legal malpractice claims. Appellees argue that the statute of limitations began to run when the satisfaction of judgment was entered on September 8, 1999, claiming that date constituted final resolution of the underlying claim. See Michels v. Sklavos, Ky., 869 S.W.2d 728 (1994). True, appellant did not

appeal the final judgment as in Hibbard v. Taylor, Ky., 837 S.W.2d 500 (1992). However, appellant did file a post-trial motion seeking additional damages and costs, and his counsel simultaneously filed a post-trial motion seeking costs. Regardless of the merits of appellant's post-trial motion, damages pursuant to a legal malpractice claim would not have been fixed until that motion was ruled upon, since the amount of damages he received (or did not receive) in the personal injury action would necessarily dictate what his damages were in the legal malpractice action. Just as the damages were not deemed to be fixed and non-speculative in Alagia, Day, Trautwein & Smith v. Broadbent, 882 S.W.2d at 125-26, until the IRS settlement was finalized, the damages here were not fixed until the ruling on appellant's post-trial motion for additional damages. Also, because appellees continued to represent appellant in the post-trial motion for costs, the statute of limitations would not begin to run until the attorney-client relationship was terminated, which appears to have been when this motion was ruled upon, March 20, 2000, in the same order appellant's pro se post-trial motion was ruled upon. See Alagia, Day, Trautwein & Smith, 882 S.W.2d at 125 (wherein the continuous representation rule was adopted.) Hence, appellant's filing of the legal malpractice action on March 20, 2001 was within the statute of limitations.

The remainder of appellant's brief is devoted to rehashing much of the evidence apparently elicited at trial or in discovery, although we cannot be sure as we do not have the benefit of the full record from the personal injury action. Appellant additionally appears to cite to what he claims were instances where his attorneys committed ethical violations or were negligent in their representation of him. We shall imply from this that appellant is seeking to refute the court's finding in the dismissal order that he failed to state a cause of action.

In the beginning of his complaint, appellant cites as jurisdiction for the action 42 U.S.C. Section 1983, 28 U.S.C.S. Section 1331, and the Fourteenth Amendment to the United States Constitution, which are clearly not proper grounds for the action herein. Appellant also later implicates Long Arm Jurisdiction which is likewise irrelevant to the action. Appellant additionally states that he is seeking relief for fraud, breach of contract, breach of professional ethics, and gross negligence. However, nowhere in the complaint does he state the basis for his claim of fraud. See CR 9.02.

As for the breach of contract claim, appellant alleges that appellees, in their representation of him, failed to file a contempt motion against the defendant for a discovery violation. However, it is undisputed that, during the litigation, appellant

ultimately obtained from the defendant the discovery document in question. Thus, appellant could allege no damages on this claim.

With regard to the negligence claim, appellant states, "By the gross negligence, of the attorney David Stuart, the jury did not get to here [sic] any of the pertinent facts, to prove that the wreck, caused Vernon Mills, a lot of injury, and pain, and mental anguse [sic], the above facts, are in depositions, and under oath." We presume that the above facts appellant was referring to were the numerous references to medical evidence made in the complaint wherein appellant describes various deposition and trial testimony. However, appellant does nothing more than simply recount the evidence in question and does not allege how this evidence is related to his claim for negligence.

CR 8.01 states that a claim shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Under the civil rules, a complaint need only give fair notice of the action and the relief sought, but it must still disclose a cause of action. Security Trust Co. v. Dabney, Ky., 372 S.W.2d 401 (1963). A cause of action should not be dismissed pursuant to CR 12.02 for failure to state a claim unless the pleading party appears not to be entitled to relief under any statement of facts which could be proved in support of his claim. Weller v. McCauley, Ky., 383 S.W.2d 356

(1964). To maintain a claim for negligence, the plaintiff must establish a duty on the part of the defendant, a breach of that duty, and a causal connection between the breach and an injury suffered by the plaintiff. Grisham v. Wal-Mart Stores, 929 F. Supp. 1054 (E.D. Ky. 1995), affirmed 89 F.3d 833 (6th Cir. 1996).

In the present case, appellant did establish a duty by virtue of stating that he had hired appellees to represent him in his lawsuit. However, he fails to allege how a breach of this duty caused him injury. Accordingly, the cause of action was properly dismissed for failure to state a claim under CR 12.02.

For the reasons stated above, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Vernon Mills, Pro Se
Hiedrick, Kentucky

BRIEF FOR APPELLEE:

James D. Ishmael, Jr.
Lexington, Kentucky