

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROBERT AMOS MATTISON, *Plaintiff/Appellant*,

v.

V. TYLER HARRISON, et al., *Defendants/Appellees*.

No. 1 CA-CV 15-0463
FILED 1-5-2017

Appeal from the Superior Court in Maricopa County
No. CV2015-003369
The Honorable Randall H. Warner, Judge

AFFIRMED

COUNSEL

Robert Amos Mattison, San Luis
Plaintiff/Appellant

Manning & Kass, Ellrod, Ramirez, Trester, LLP, Phoenix
By Robert B. Zelms
Counsel for Defendant/Appellee Harrison

Broening Oberg Woods & Wilson, PC, Phoenix
By Donald Wilson, Jr., Jathan P. McLaughlin
Counsel for Defendant/Appellee Christina Scott

MEMORANDUM DECISION

Judge Rick A. Williams¹ delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

WILLIAMS, Judge:

¶1 Appellant Robert Amos Mattison challenges the dismissal of his claims against two attorneys who represented him in a criminal matter. We affirm for the reasons set forth below.

BACKGROUND

¶2 Appellees Christina Scott and V. Tyler Harrison represented Mattison in a criminal case. Scott represented Mattison from approximately January 2012 to July 2014. Harrison represented Mattison from approximately July 2014 to April 2015.

¶3 Mattison filed a civil lawsuit while his criminal case was still pending, alleging that Scott and Harrison “deviated from duties, obligations and standards of care required by laws, rules, regulations relying on false or fraudulent information.” Although Mattison claimed Scott and Harrison refused to consult with him, he did not allege or otherwise describe facts regarding what they did or failed to do that caused him harm. He instead alleged that the grand jury proceedings were deficient and that the police failed to establish probable cause for his arrest; neither issue appears to relate to Scott’s or Harrison’s services.

¶4 Scott and Harrison moved to dismiss the complaint. Mattison filed a lengthy response alleging, among other things, that Scott and Harrison ignored him and that Harrison somehow engineered a “pre-determined outcome” in his criminal case. Mattison also sought leave to amend his complaint. The trial court dismissed Mattison’s civil complaint, finding that: (1) Mattison could not assert ineffective assistance of counsel claims in a separate civil case; (2) to the extent his complaint alleged legal malpractice, those claims were premature because his criminal cases had

¹ The Honorable Rick A. Williams, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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not yet been resolved; and (3) his complaint did not clearly state any other claims.

¶5 Mattison filed a premature notice of appeal, following which the trial court entered final judgment pursuant to Arizona Rule of Civil Procedure (“Ariz. R. Civ. P.”) 54(c). Mattison subsequently entered into a plea agreement in his criminal case. We have jurisdiction over Mattison’s appeal pursuant to Arizona Revised Statutes section 12-2101(A)(1) (2016).²

DISCUSSION

¶6 We review the dismissal of a complaint under Ariz. R. Civ. P. 12(b)(6) *de novo*. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7, 284 P.3d 863, 866 (2012). We accept all well-pleaded facts as true and give Mattison the benefit of all inferences arising therefrom. *See Botma v. Huser*, 202 Ariz. 14, 15, ¶ 2, 39 P.3d 538, 539 (App. 2002). We will affirm the dismissal only if Mattison would not have been entitled to relief under any facts susceptible of proof in his complaint. *See Coleman*, 230 Ariz. at 356, ¶ 8, 284 P.3d at 867.

I. The Trial Court Properly Dismissed Mattison’s Complaint.

A. Mattison Cannot Assert a Civil Claim for Ineffective Assistance of Counsel.

¶7 Mattison alleged that Scott and Harrison “substantially decrease[d] and avoid[ed] the scope of legal representation . . . causing actual willful injurie(s) [sic] and damage(s) [sic] against their own client’s interest . . .” It appears these allegations are an attempt to state an ineffective assistance of counsel claim. *See State v. Fillmore*, 187 Ariz. 174, 180, 927 P.2d 1303, 1309 (App. 1996) (stating that, to establish ineffective assistance of counsel, a criminal defendant must show “(1) that counsel’s representation was unreasonable or deficient under the circumstances and (2) that he was prejudiced by counsel’s deficient performance”). To the extent that Mattison intended these allegations to raise an ineffective assistance of counsel claim, we agree with the trial court that these allegations should have been raised in a Rule 32 post-conviction relief

² Harrison correctly points out that Mattison’s opening brief does not comply with the Arizona Rules of Civil Appellate Procedure. But “we prefer to determine cases on their merits rather than on points of procedure.” *Rodriguez v. Williams*, 104 Ariz. 280, 283, 451 P.2d 609, 612 (1969). We therefore address Mattison’s arguments to the extent we understand them.

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proceeding in Mattison's criminal case. *See State v. Spreitz*, 202 Ariz. 1, 2, ¶ 4, 39 P.3d 525, 526 (2002) ("Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, *in a Rule 32 post-conviction relief proceeding*, subsequent claims of ineffective assistance will be deemed waived and precluded.").

B. Mattison's Complaint Did Not State a Colorable Legal Malpractice Claim.

¶8 To the extent the allegations quoted above were instead meant to state legal malpractice claims, such claims were premature because Mattison's criminal case had not yet concluded. *See Glaze v. Larsen*, 207 Ariz. 26, 32, ¶ 23, 83 P.3d 26, 32 (2004) ("[A] claim that an attorney's malpractice resulted in the conviction of a criminal client does not accrue until the complete termination of the criminal proceedings."). Additionally, as noted above, Mattison accepted a plea agreement after both Scott and Harrison had withdrawn. He thus cannot show that the criminal proceedings terminated in his favor, another necessary element of any malpractice claim against either Scott or Harrison. *Id.* at 32-33, ¶¶ 24-27, 83 P.3d at 32-33.

¶9 Finally, Mattison's malpractice claims were based entirely on alleged violations of the Rules of Professional Conduct, which do not by themselves "give rise to a cause of action against a lawyer" or "create any presumption in such a case that a legal duty has been breached." Ariz. R. Sup. Ct. 42, Preamble. Thus, to the extent Mattison intended to state a legal malpractice claim, it fails as a matter of law.

C. Mattison's Complaint Did Not Sufficiently Allege Any Other Claims.

¶10 To the extent Mattison is asserting other arguments based on the complaint, his arguments are unavailing. A complaint must include "[a] short and plain statement of the claim showing that the pleader is entitled to relief" and must give opposing parties fair notice of the nature and basis of the claims against them. Ariz. R. Civ. P. 8(a)(2); *Cullen v. Auto-Owners Ins.*, 218 Ariz. 417, 419, ¶ 6, 189 P.3d 344, 346 (2008). Mattison's complaint did not fairly notify Scott and Harrison of any other potential claims. *See Kline v. Kline*, 221 Ariz. 564, 571, ¶ 28, 212 P.3d 902, 909 (App. 2009) (stating the complaint must contain a plain and concise statement of the action and must give the defendant fair notice of the allegations as a whole). Dismissal therefore was appropriate.

II. Mattison Was Not Entitled to Amend His Complaint.

¶11 Although Mattison requested leave to amend his complaint, he did not submit a proposed amended complaint as required by Ariz. R. Civ. P. 15(a)(2). The trial court did not address Mattison's request; we therefore deem it denied. *See State v. Hill*, 174 Ariz. 313, 323, 848 P.2d 1375, 1385 (1993).

¶12 We review the denial of a request for leave to amend for an abuse of discretion. *Timmons v. Ross Dress For Less, Inc.*, 234 Ariz. 569, 572, ¶ 17, 324 P.3d 855, 858 (App. 2014). Leave to amend should be liberally granted, *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App. 1996), but "a court does not abuse its discretion in denying a motion for leave to amend if the amendment would be futile," *Elm Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 292, ¶ 26, 246 P.3d 938, 943 (App. 2010).

¶13 Mattison alleged in his request that Scott "botch[ed]" a legal investigation and "destroyed blood samples" and that Harrison "rel[ie]d] on frivolous police reports and never consult[ed] his client for over 8 months." Mattison also raised new allegations regarding his arrest and police misconduct that appear to be unrelated to either Scott's or Harrison's legal services. Even reading these allegations liberally, we do not find any viable claims.

¶14 In his request to amend, Mattison first reiterates his contention that Scott and Harrison failed "to follow the obligative [sic] rules and duties of the Arizona Supreme Court for professional conduct." We reject this contention for the reasons set forth above. Mattison also accused Scott and Harrison of "malicious prosecution," but neither Scott nor Harrison commenced any litigation against him. *See Chalpin v. Snyder*, 220 Ariz. 413, 418-19, ¶ 20, 207 P.3d 666, 671-72 (App. 2008) (stating malicious prosecution requires, among other things, that the defendant "instituted a civil action which was . . . motivated by malice [and] begun [or maintained] without probable cause") (second alteration in original).

¶15 Finally, Mattison appears to assert "substantive due process" claims. But he did not show that either Scott or Harrison, as private attorneys, could be liable for due process violations. *See, e.g., DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989) ("[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."). As such, Mattison's new claims were futile.

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CONCLUSION

¶16 We affirm the dismissal of Mattison's complaint and award Scott and Harrison their taxable costs incurred on appeal upon compliance with ARCAP 21(b).



AMY M. WOOD • Clerk of the Court
FILED: AA