

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CALVIN OAKES,	§
	§ No. 609, 2012
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
JOHN A. CLARK, III,	§ C.A. No. N10C-04-146
	§
Defendant Below-	§
Appellee.	§

Submitted: May 10, 2013

Decided: June 18, 2013

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 18th day of June 2013, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, Calvin Oakes, filed an appeal from the Superior Court's November 2, 2012 order granting the motion of the defendant-appellee, John A. Clark, III, for summary judgment pursuant to

Superior Court Civil Rule 56.¹ We find no merit to the appeal. Accordingly, we affirm.²

(2) The record in this case reflects that, on April 19, 2010, Oakes filed a complaint in the Superior Court alleging that Clark, a Delaware attorney, had engaged in professional negligence while representing Oakes in divorce proceedings in the Family Court. The Family Court matter underlying Oakes' Superior Court complaint involved Oakes' 2006 divorce from his former wife and the litigation that ensued in 2008 in connection with the ancillary matters of property division, alimony and attorneys fees. In 2009, the Family Court issued its decision on the ancillary matters. Finding that Oakes was "evasive and untruthful regarding his income," the Family Court divided the marital property 50/50, denied Oakes' request for alimony and granted Oakes' former wife's request for attorney's fees.³

(3) In this appeal, Oakes claims that a) the Superior Court's decision was based on issues not raised in the motion for summary

¹ This Court previously reversed the Superior Court's dismissal of this action and remanded the matter to the Superior Court for further proceedings in accordance with Rule 56. *Oakes v. Clark*, Del. Supr., No. 708, 2010, Steele, C.J. (Nov. 10, 2011).

² On November 29, 2012, Clark filed a cross-appeal in this Court on the ground that the Superior Court's order erroneously failed to grant the motion for summary judgment on the additional ground of collateral estoppel.

³ This Court twice affirmed the Family Court's judgment. *Olsen v. Olsen*, 971 A.2d 170 (Del. 2009); *Owens v. Owens*, Del. Supr., No. 300, 2010, Ridgely, J. (Jan. 14, 2011). This Court also affirmed the Superior Court's dismissal of Oakes' complaint alleging bad faith and fraud against his former counsel, counsel's paralegal and his former wife. *Oakes v. Oakes*, Del. Supr., No. 709, 2010, Jacobs, J. (Feb. 16, 2011).

judgment; b) the Superior Court improperly engaged in its own fact-finding; and c) the Superior Court should have accepted the statements made in certain affidavits he submitted and, on that basis, should have denied the motion for summary judgment.

(4) In an appeal from the Superior Court's grant of summary judgment, this Court utilizes a *de novo* standard of review.⁴ On a motion for summary judgment, the moving party must demonstrate that there are no genuine issues of material fact and, viewing the facts in the light most favorable to the non-moving party, he is entitled to judgment as a matter of law.⁵ On a claim of legal malpractice, the plaintiff must establish the following elements: a) the employment of the attorney; b) the attorney's neglect of a professional obligation; and c) resulting loss.⁶ In connection with the final element, the plaintiff must demonstrate that the underlying action would have been successful but for the attorney's negligence.⁷ Moreover, it is well-settled that expert testimony is necessary to support a claim of legal malpractice, except in those cases where the attorney's mistakes are so obvious that such testimony is not required.⁸

⁴ *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

⁵ Super. Ct. Civ. R. 56(c).

⁶ *Weaver v. Lukoff*, Del. Supr., No. 15, 1986, McNeilly, J. (July 1, 1986) (citing *Seiler v. Levitz Furniture Co.*, 367 A.2d 999, 1008 (Del. 1976)).

⁷ *Id.*

⁸ *Brett v. Berkowitz*, 706 A.2d 509, 517-18 (Del. 1998).

(5) We have undertaken a careful, *de novo* review of the record below. We can discern no error or abuse of discretion on the part of the Superior Court in granting Clark's motion for summary judgment. We do not find Oakes' claims of error and abuse of discretion on the part of the Superior Court to be supported by the record. Finding that there were no genuine issues of material fact, and viewing those facts in the light most favorable to Oakes, the Superior Court properly determined that Oakes could not demonstrate that he would have been successful on his claims in the Family Court but for professional errors made by his attorney.⁹ We, therefore, conclude that the judgment of the Superior Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.¹⁰

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ Our review of the record below does not reflect that Oakes had engaged an expert to support his claim of legal malpractice.

¹⁰ We do not find it necessary to decide Clark's claim that the Superior Court erroneously failed to grant the motion for summary judgment on the additional ground of collateral estoppel. Therefore, Clark's cross-appeal is hereby dismissed as moot.