NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued January 25, 2023
Decided February 24, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2154

FRANCINE KOKENIS,
Plaintiff-Appellant,

v.

DMYTRO KURYWCZAK, B. GEORGE OLEKSIUK, and B. GEORGE OLEKSIUK & ASSO., PC,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 21 C 2413

Joan H. Lefkow,
Judge.

O R D E R

Francine Kokenis, a citizen of California, brought a malpractice suit against the attorneys and law firm that represented her in Illinois probate proceedings. All of the defendants are citizens of Illinois. The probate judge imposed sanctions against Kokenis for submitting, and then defending, a handwriting expert's report that she knew to be false. Kokenis contends in this case that her lawyers committed legal malpractice by filing the report in the probate matter, allegedly against her specific directions. The district court granted the attorneys' motion to dismiss for failure to state a claim. Essentially, it thought that she had pleaded herself out of court, because the allegations

in the complaint amount to admissions that her own actions earned the sanctions, wholly apart from anything her lawyers did. We agree with that analysis and affirm.

I

We take the following account from Kokenis's complaint, accepting the facts she asserts as true for present purposes and drawing reasonable inferences in her favor. See *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, 20 F.4th 311, 317 (7th Cir. 2021). We also take judicial notice of public documents from the cases referenced in both the complaint and the motion to dismiss, not for the truth of the matters asserted in those documents but instead just to show what prompted the probate court's actions. *Geinosky v. City of Chicago*, 675 F.3d 743, 745 n.1 (7th Cir. 2012).

In 2015, Kokenis settled a wrongful-termination lawsuit she had filed against her father's business, Delta Energy Corporation, and her siblings, managers of the firm. See *Kokenis v. Delta Energy Corp.*, No. 1:13-CV-07358 (N.D. Ill. May 29, 2015). Lavelle Law represented Kokenis in this suit. In return for dismissal, Delta Energy paid Kokenis $1.5 million, and Kokenis's parents agreed they would maintain her one-third interest in their estate. See *id.*

But Kokenis was not satisfied with the settlement for long. Soon after it was reached, she hired Dmytro Kurywczak and B. George Oleksiuk, both members of B. George Oleksiuk & Associates, PC, to represent her in a legal malpractice suit against Lavelle Law in Illinois circuit court. Among other things, Kokenis alleged that Lavelle lawyers had attached her signature to the settlement agreement without her authorization. But she did not see that suit through to the end; instead, she dismissed it voluntarily. *Kokenis v. Lavelle Law*, 2017 L 002785 (Ill. Cir. Ct. Jan. 1, 2018).

After Kokenis's father died in 2016, she again hired Kurywczak and Oleksiuk, this time to represent her in the probate proceedings. There she objected to the trustee's accounting of her share. *Estate of James J. Kokenis*, No. 2016 P 003676 (Ill. Cir. Ct. Jun. 13, 2016). The trustee defended the accounting on the ground that the settlement agreement in the *Delta Energy* case had already released Kokenis's claims. On her own initiative, Kokenis commissioned and furnished to her attorneys the report of a handwriting expert to analyze her own signature on the *Delta Energy* settlement agreement. The expert concluded that it was forged. Oddly, Kokenis then passed the expert's report along to her attorneys, while at the same time admonishing them not to use the report without her express approval. The attorneys disregarded her instructions and filed the report with Kokenis's response to the defendants' motion to dismiss her objections. Her attorneys argued that the *Delta Energy* settlement was invalid because Kokenis's

signature was "likely a forgery." They did so despite the fact that Kokenis had, by then, cashed her $1.5 million settlement check.

This led the trustee and Kokenis's siblings to file motions against Kokenis personally and against her attorneys for sanctions. Kokenis's lawyers eventually withdrew the allegation of forgery, and then they withdrew entirely from representing Kokenis, who obtained new counsel. Meanwhile, the probate court was having trouble pinning Kokenis down about whether she knew the assertion of forgery to be false at the time she gave the report to her attorneys. It ordered a deposition before it ruled on the pending sanctions motions. The court's doubts were resolved when, at the deposition, Kokenis admitted to hiring the handwriting expert and giving the report to her attorneys though she *already knew* that her signature on the agreement was genuine. She continued to insist, however, that the settlement agreement was not enforceable because she did not sign the final page. When shown otherwise, she maintained that it was a "mystery" to her how her signature "showed up on the last page" when she had not put it there.

Through new counsel, Kokenis persisted for more than a year in asserting that the settlement was not enforceable, but she ultimately stipulated that it was valid. Kokenis and the parties then consented to an order dismissing the motion for sanctions against her former attorneys (defendants here) and granting the motion for sanctions against Kokenis personally. (The defendants have not argued that Kokenis's consent to be sanctioned in this manner precludes or estops her current argument that their conduct proximately caused her to be sanctioned. Nor are they making much of the fact that Kokenis is presumably still enjoying the benefit of the settlement, in the form of the $1.5 million payment.)

At a later hearing, the probate court awarded the movants more than $120,000 in costs and fees. In imposing the sanction, the probate court made the following findings: (1) Kokenis intentionally and knowingly made a false statement when asserting that her signature was forged; (2) in furtherance of that false statement, Kokenis retained a handwriting expert to opine on whether the signature was forged; (3) Kokenis intentionally and knowingly refused to acknowledge that her statement was false, resulting in additional cost and delay; (4) she provided "highly implausible" testimony when she asserted in her deposition that the settlement agreement was unenforceable; and (5) her misconduct continued for an eighteen-month period.

Having lost in the probate court, Kokenis turned to federal court with this lawsuit against her former attorneys and their firm; she is relying on the court's diversity jurisdiction. 28 U.S.C. § 1332. She raised three theories of recovery: first, that

her former attorneys negligently submitted the handwriting expert's report in the probate case; second, that the attorneys failed to communicate an offer to settle the sanctions motion; and third, that the attorneys were negligent by withdrawing the suit against Lavelle Law and not refiling in time. The first two counts claimed damages both in the amount of the sanction (approximately $120,000) and in the amount of the expenses she sustained in fighting the sanction (about another $120,000); the third count sought more than $250,000 from Lavelle Law for her lost chance of recovery.

The defendants moved to dismiss for failure to state a claim upon which relief could be granted. See FED. R. CIV. P. 12(b)(6). The district court concluded that Kokenis had not stated a plausible claim of malpractice in the first count because of a lack of proximate causation; it dismissed that count with prejudice. The court permitted the second count to stand, and it dismissed the third with leave to replead. Kokenis moved for reconsideration of the ruling on the first count. When that motion was denied, she voluntarily dismissed the second count and agreed not to amend her complaint, thereby resolving the third count. She is appealing both the dismissal of count one and the denial of her motion to reconsider that ruling.

We ordered preliminary briefing on the questions whether the district court's judgment was final and whether the appeal was timely. *Kokenis v. Kurywczak*, No. 22-2154 (7th Cir. Jul. 5, 2022). The parties explained, correctly, that there was a final appealable decision once Kokenis relinquished the second and third claims, and her notice of appeal was timely based on when her motion to reconsider was filed. We then ordered the parties to proceed to merits briefing.

II

On appeal, Kokenis challenges only the dismissal of her first claim, which concerned her former attorneys' use of the expert report in probate court. But, as a threshold issue, she contends that documents outside the complaint submitted by the defendants—that is, the filings in the probate case—cannot be considered at the motion-to-dismiss stage. See FED. R. CIV. P. 12(d). But at times—and this is one of them—such documents can be considered for limited purposes. "This court has been relatively liberal in its approach" to considering outside documents when they are central to the complaint. *Hecker v. Deere & Co.*, 556 F.3d 575, 582 (7th Cir. 2009); see also FED. R. CIV. P. 10(c) ("copy of written instrument that is an exhibit to a pleading is a part of the pleading for all purposes"). Kokenis's claim turns entirely on events that occurred in the probate case, and she refers to those proceedings throughout her complaint. She has not raised any serious challenge to whether these events occurred—no claim that the transcripts were tampered with, or that they fail accurately to report what the judge

said. The documents are a matter of public record, see *Estate of James J. Kokenis*, No. 2016 P 003676 (Ill. Cir. Ct. Jun. 13, 2016), available at https://casesearch.cookcounty clerkofcourt.org/ProbateDocketSearchAPI.aspx; *Kokenis v. Lavelle Law*, 2017 L 002785 (Ill. Cir. Ct. Jan. 1, 2018), available at https://casesearch.cookcountyclerkofcourt.org /CivilCaseSearchAPI.aspx. Their authenticity cannot reasonably be questioned. See *Mueller v. Apple Leisure Corp.*, 880 F.3d 890, 895 (7th Cir. 2018); *Geinosky*, 675 F.3d at 745 n.1. That is all that matters for present purposes; we need not, and do not, assess whether the judge ruled wisely or in accordance with state law.

On the merits, Kokenis contends that, contrary to the district court's conclusion that her own conduct in the probate case caused her damages, she stated a plausible claim that her former attorneys caused her injury. She contends that by filing the expert report in the probate matter, allegedly against her instructions, her attorneys cost her more than $200,000 in sanctions and other expenses. But she misses the point when she focuses so exclusively on that one action. Given the posture of the case, we accept that she was the one who gave them the phony report, and that she warned them not to use it without her okay. But it is indisputable that the probate court did not consider that to be the last relevant act. She does not dispute the historical facts that the probate court also said that she intentionally and knowingly refused to acknowledge that her challenge to the signature was false, that her misconduct continued for an 18-month period, and that she refused for months to acknowledge these facts.

We assess *de novo* whether Kokenis has stated a claim on which relief can be granted. See *UFT Com. Fin., LLC v. Fisher*, 991 F.3d 854, 857 (7th Cir. 2021). To survive a motion to dismiss, she needed plausibly to allege that misconduct committed by her former attorneys injured her. *Id.*; *Stevens v. McGuireWoods LLP*, 43 N.E.3d 923, 927 (Ill. 2015). People in federal court do not need to plead "elements" or facts, but they do need to present a story that holds together in a way that gives adequate notice to the defendants. *Auto Driveaway Franchise Sys., LLC v. Auto Driveaway Richmond, LLC*, 928 F.3d 670, 675 (7th Cir. 2019); *Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 848 (7th Cir. 2017). If the pleading includes facts that definitively show that the defendants cannot be held responsible, then the plaintiff has pleaded herself out of court. See *Shott v. Katz*, 829 F.3d 494, 497 (7th Cir. 2016).

Kokenis failed to state a malpractice claim because the pleadings, together with the uncontested materials from the probate action, show that her independent misconduct in the probate case caused her injuries. Put formally, it was an intervening event that broke whatever causal chain her lawyers started when they submitted the misleading expert report. Kokenis insists that the whole sequence would never have

begun if her lawyers had heeded her warning not to use the report. (For that matter, nothing would have happened if she had not commissioned the report to begin with, knowing full well that her signature was not forged.) But no sanctions were imposed until after her deposition, and at that time the probate judge left no doubt that the sanction addressed her persistent refusal to *drop* that argument, not anything that her lawyers did more than a year earlier.

Even taking into account the generous standard that applies to Rule 12(b)(6) motions, Kokenis cannot prevail. As the probate judge concluded, Kokenis "refused to acknowledge that her false statement [concerning the settlement's validity] was knowing and intentional," and this "resulted in additional discovery, cost, and delay to the underlying case." In sum, the defendants' submission of the report did not proximately cause her loss. See *Governmental Interinsurance Exch. v. Judge*, 850 N.E.2d 183, 199 (Ill. 2006) (failure to perfect appeal not proximate cause where malpractice plaintiff would have lost underlying case as a matter of law).

The defendants also argue that Kokenis loses as a matter of law because she committed fraud on the probate court. As a matter of public policy, Illinois law does not permit an intentional wrongdoer to recover damages for her wrongful actions. *E.g.*, *Goldstein v. Lustig*, 507 N.E.2d 164, 170 (Ill. App. Ct. 1987). Kokenis knowingly filed false pleadings and provided false testimony in a deposition in violation of Illinois Supreme Court Rules. See ILL. S. CT. R. 137; *Ittersagen v. Advocate Health & Hosps. Corp.*, 186 N.E.3d 378, 385 (Ill. 2021). (Kokenis argues that Rule 137 applies only to attorneys, but she is wrong. It authorizes sanctions on a "represented party"; moreover, fraud on the probate court could bar recovery in this suit even if the sanctionable conduct largely occurred by Kokenis's former attorneys. See ILL. S. CT. R. 137; *Goldstein*, 507 N.E.2d at 170.) The defendants, however, did not raise this argument until their response to Kokenis's motion to reconsider, and waiting until such a motion to raise new legal theories is discouraged. See *Cehovic-Dixneuf v. Wong*, 895 F.3d 927, 932 (7th Cir. 2018). In reviewing a dismissal on the pleadings, we can affirm on any basis permitted by the record, but only if the losing party had a fair opportunity to contest that ground in the district court. *Burke v. Boeing Co.*, 42 F.4th 716, 723 (7th Cir. 2022). That is not the case here.

Another point we flag, but do not reach, relates to the troublesome comity questions that would arise if the federal courts were to step in and interfere with a state court's decision to sanction a litigant. Even if we could somehow find a potential claim in her federal pleadings, a host of comity-based doctrines would almost certainly compel us either to dismiss this action or to stay our hand.

We AFFIRM the judgment of the district court.