S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ROBERT REYNOLDS, JR,

Plaintiff-Appellant,

V

FREDERICK J. BLACKMOND,

Defendant-Appellee.

UNPUBLISHED
January 27, 2004

No. 243303
Ingham Circuit Court
LC No. 01-093036-NM

Before: O'Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right an order dismissing with prejudice his claim for legal malpractice against defendant, his trial attorney in a criminal case against plaintiff. We affirm.

Plaintiff first argues that the lower court committed error requiring reversal by granting defendant's motion for summary disposition when defendant failed to affirmatively plead collateral estoppel under MCR 2.116(C)(7). A challenge of summary disposition is reviewed de novo. *Terrien v Zwit* 467 Mich 56, 61; 648 NW2d 602 (2002).

Although the trial court erred in considering defendant's claim of collateral estoppel under MCR 2.116(C)(7) because it was not timely raised, the court properly granted defendant's motion for summary disposition under MCR 2.116(C)(10). "This Court ordinarily affirms a trial court's decision if it reached the right result, even for the wrong reasons." *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000), citing *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

A motion for summary disposition based on MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). That motion should be granted if there are no genuine issues of material fact. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Once a party asserts in a motion for summary disposition that there are no genuine issues of material fact in dispute, the nonmoving party "may not rest upon mere allegations or denials, but must proffer evidence of specific facts showing that there is a genuine issue for trial." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002); MCR 2.116(G)(4). Additionally, evidence offered "can be considered only to the extent that it is substantively admissible." *Id*. Here, plaintiff provided no additional evidence for this Court to review, but rather, merely restated his complaint.

Plaintiff also failed to articulate which elements of legal malpractice were at issue. See *Alterman v Provizer, Eisenberg, Lichtenstein, & Pearlman, P.C.*, 195 Mich App 422, 427; 491 NW2d 868 (1992), citing *Schlumm v Terrence J O'Hagan, PC*, 173 Mich App 345, 359; 433 NW2d 839 (1988). Presumably, plaintiff alleges that defendant was the proximate cause of his injury – his conviction. In that case, plaintiff "must show that but for the attorney's alleged malpractice, he would have been successful in the underlying action." *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). However, the record reveals that this Court held that plaintiff did not establish the elements of ineffective assistance of counsel. *People v Reynolds*, unpublished opinion per curiam of the Court of Appeals, issued March 9, 2001 (Docket No. 218214). Therefore, it is a logical inference that plaintiff's underlying injury – his conviction – was not because of counsel's assistance. The trial court properly dismissed the claim.

Next, plaintiff argues that the trial court abused its discretion when it declined to grant plaintiff's motion to stay proceedings pending federal review. We disagree. An abuse of discretion in a civil case is found "when the result is 'so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.'" *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000) (citation omitted).

Disposition of a state claim does not necessarily decide the federal claim because "state conclusions of law may not be given binding weight on habeas." *Butler v McKellar*, 494 US 407, 428 n 10; 110 S Ct 1212; 108 L Ed 2d 347 (1990) (citation omitted). And "state court findings of fact are not binding, but are entitled only to a presumption of correctness" with respect to federal issues. *Martin v Foltz*, 773 F2d 711, 716 (CA 6, 1985); *Butler, supra*.[1] Because plaintiff's state legal malpractice claim is not binding on his federal habeas corpus claim, the trial court did not abuse its discretion in denying a stay of proceedings.

Plaintiff next argues that the trial court erred by not appointing counsel to represent him in this civil action asserting that defendant committed malpractice in defendant's representation of plaintiff in his criminal case. Again, we disagree. When constitutional issues are raised, our review is de novo. *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997), citing *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 623; 552 NW2d 657 (1996). The constitutional guarantee of counsel does not necessarily extend to civil suits. *Lassiter v Dep't of Social Services*, 452 US 18, 36-37; 101 S Ct 2153; 68 L Ed 2d 640 (1981). The due process right to appointed counsel is triggered by an indigent party's fundamental interest in physical liberty, not by the civil or criminal nature of proceeding. *Id.* In the present case, plaintiff's suit was based on monetary damages, not physical liberty; therefore, the lower court properly denied the motion to appoint counsel.

Plaintiff next argues that he should recover the jury fees he paid because his case did not reach trial; however, plaintiff failed to cite any authority to support this claim. "[T]his Court will not search for authority to support a party's position, and the failure to cite authority in support

---

[1] Compare 28 USC § 2254(e)(1) ("determination of a *factual* issue made by a State court shall be presumed to be correct" [emphasis added]).

of an issue results in its being deemed abandoned on appeal." *Flint City Council v State of Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002), citing *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995). Therefore, this issue is waived.

Finally, plaintiff argues that the trial court improperly held a hearing on defendant's motion for summary disposition without plaintiff being present. Again, plaintiff cites no legal authority for his position that the proceedings were improper, and the issue has been waived. *Flint City Council, supra*. In any event, the trial court had discretion under MCR 2.119(E)(3) to dispense with or limit oral argument on defendant's motion if it "was fully apprised of the parties' positions, by way of the parties' briefs, before rendering a decision." *Fast Air, Inc v Knight*, 235 Mich App 541, 550; 599 NW2d 489 (1999). We review the trial court's decision in this regard for an abuse of discretion. *Id.*; see also *American Transmission, Inc v Channel 7 of Detroit*, 239 Mich App 695, 709; 609 NW2d 607 (2000). In the present case, plaintiff submitted a brief opposing the motion for summary disposition and provided the court with a copy of his habeas corpus brief; thus, the trial court was fully apprised of the issues and although plaintiff was not present during the hearing, the trial court did not abuse its discretion in deciding the motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray