

STATE OF MICHIGAN
COURT OF APPEALS

KEITH TAYLOR,

Plaintiff-Appellant,

v

ANDREW KOCHANOWSKI, SOMMERS
SCHWARTZ, P.C., JEFFREY A. PINE,
MICHAEL H. BANIAK, and BANIAK, PINE &
GANNON, P.C.,

Defendants-Appellees.

UNPUBLISHED

July 8, 2010

No. 289660

Wayne Circuit Court

LC No. 07-708724-NM

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motions for summary disposition and dismissing plaintiff's claims for legal malpractice, breach of fiduciary duty, and fraud. We affirm.

In 1989, plaintiff obtained a patent for a lighted rearview mirror.¹ The mirror housing allowed a lighted turn signal within it to be visible to oncoming traffic. In 1997, plaintiff approached Chrysler Corporation with his idea. Plaintiff was referred to Chrysler Corporation's parts supplier, Reitter & Schefenacker USA, LP ("Reitter"), and participated in negotiations with Reitter's president, Phil Warburton, but no agreement was reached. In 1999, after Daimler-Benz AG acquired Chrysler Corporation and formed DaimlerChrysler, plaintiff again met with Warburton and was informed that Reitter was already manufacturing lighted rearview mirrors for Mercedes automobiles. Plaintiff thereafter retained defendants to pursue a patent infringement claim on his behalf against both DaimlerChrysler and Reitter. Defendants eventually filed a lawsuit in federal district court. Following discovery, defendants recommended that plaintiff voluntarily dismiss Reitter, without prejudice, which plaintiff agreed to do. The case continued

¹ Although plaintiff's invention is described as a rearview mirror, it is designed for placement on the sides of a vehicle.

against DaimlerChrysler. After conducting a *Markman*² hearing, the federal court found that DaimlerChrysler's mirror assembly did not literally infringe on plaintiff's patent and, accordingly, granted DaimlerChrysler's motion for summary judgment. *Taylor v DaimlerChrysler AG*, 295 F Supp 2d 729 (ED Mich, 2003), rec den 313 F Supp 2d 703 (ED Mich, 2004), aff'd 124 Fed Appx 661 (CA Fed, 2005).

Plaintiff subsequently filed this action against defendants, alleging claims for legal malpractice related to defendants' advice to voluntarily dismiss Reitter from the federal patent infringement action and the adequacy of defendants' presentation of the patent infringement claim against DaimlerChrysler. Plaintiff also asserted claims for breach of fiduciary duty and fraud. The trial court determined that defendants were entitled to summary disposition on grounds of collateral estoppel, the attorney-judgment rule, failure to allege a claim for breach of fiduciary duty independent of the legal malpractice claim, and failure to establish a prime facie case of fraud.

This Court reviews a trial court's summary disposition decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10).

Summary disposition is appropriate under MCR 2.116(C)(7) when collateral estoppel operates to bar a claim. The following standards apply to a motion under MCR 2.116(C)(7):

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hosps & Health Servs of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

Whether a party is collaterally estopped from challenging an issue addressed in a prior proceeding also involves a question of law, which is reviewed de novo. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's complaint by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All well-pleaded factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). The motion should be granted only if the claims are so

² *Markman v Westview Instruments, Inc.*, 52 F3d 967, 979 (CA Fed, 1995), aff'd 517 US 370, 384; 116 S Ct 1384; 134 L Ed 2d 577 (1996).

clearly unenforceable as a matter of law that no factual development could justify recovery. *Patterson*, 447 Mich at 432.

A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

I. COLLATERAL ESTOPPEL

The trial court determined that in light of the federal court's determination that the mirror assemblies in question did not infringe on plaintiff's patent, plaintiff was collaterally estopped from prevailing on his claim that defendants committed malpractice by agreeing to voluntarily dismiss Reitter from the patent infringement action without prejudice.

Collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior matter. *Horn*, 216 Mich App at 62. "To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel." *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994). Further, the ultimate issue in the second case must be the same as that in the first proceeding. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The doctrine requires that the same parties must have had a full opportunity to litigate the issue in the prior proceeding and there must be mutuality of estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995). However, where collateral estoppel is being asserted defensively against a party who has already had a full and fair opportunity to litigate the issue, mutuality is not required. *Monat v State Farm Ins Co*, 469 Mich 679, 691-692, 695; 677 NW2d 843 (2004).

The elements of a legal malpractice claim are: "(1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of an injury; and (4) the fact and extent of the injury alleged." *Manzo v Petrella & Petrella & Assoc, PC*, 261 Mich App 705, 712; 683 NW2d 699 (2004).

In order to establish proximate cause, a plaintiff must show that a defendant's action was a cause in fact of the claimed injury. Hence, a plaintiff must show that, but for an attorney's alleged malpractice, the plaintiff would have been successful in the underlying suit. This is the "suit within a suit" requirement in legal malpractice cases. [*Id.*]

Here, it was appropriate for the trial court to allow defendants to defensively rely on collateral estoppel. To prove his claim for malpractice, plaintiff was required to show that, but for defendants' alleged negligence in agreeing to voluntarily dismiss Reitter, he would have prevailed on his patent infringement claim against Reitter. Thus, it would be necessary to show that the mirror assemblies in question infringed on plaintiff's patent. However, that issue was fully litigated in connection with plaintiff's separate claim against DaimlerChrysler.

We disagree with plaintiff's argument that he did not have a full and fair opportunity to litigate this claim because defendants did not properly present his claim for patent infringement. Plaintiff argues that defendants did not properly argue the meaning of the term "translucent housing" in the federal case. In this regard, plaintiff relies on an affidavit from Kenneth Kohn, who helped plaintiff prepare his patent application, in support of his contention that a different outcome might have been possible in the federal patent infringement action if defendants had addressed the meaning of the term "translucent housing" in his patent application. However, the construction of that term was specifically addressed by the federal court and that court did consider the meaning asserted by plaintiffs. *Taylor*, 295 F Supp 2d at 739-743; *Taylor*, 313 F Supp 2d at 705-707. Furthermore, the federal court's decision rejecting plaintiff's patent infringement claim was not based solely on the construction of "translucent housing." The federal court reviewed five elements of plaintiff's patent application, only one of which involved the construction of "translucent housing." *Taylor*, 295 F Supp 2d at 738. The court additionally found that there was no infringement because DaimlerChrysler's mirror assembly allowed for incident light to pass through the wall and the closed end of the assembly, whereas plaintiff's design prevented incident light from passing through. *Id.* at 744-746. Accordingly, because the federal court found that at least one other element or limitation of plaintiff's patent was not shared with DaimlerChrysler's mirror assembly, a different definition of "translucent housing" would not have changed the outcome of plaintiff's underlying case. Thus, plaintiff cannot relitigate the issue of the voluntary dismissal, as he is collaterally estopped from arguing the merits of the case within the case.

This same result follows to the extent plaintiff argues that defendants were also negligent for not advising him of the limitations period for further pursuing any claim against Reitter.³ Because plaintiff cannot establish that there was any infringement, he cannot establish that defendants' alleged malpractice proximately caused any injury. Additionally, we reject plaintiff's claim that there can be no collateral estoppel where his common law claims of unjust enrichment and commercial appropriation were not fully litigated because these claims were preempted by his patent law claim. Plaintiff's claims against Reitter were based on providing Reitter a "copy of my patent and photos of a prototype I had developed using the technology in the patent." When a patent is granted, the patent holder's property right in the trade secret ceases prospectively. *Scharmer v Carrolton Mfg Co*, 525 F2d 95, 99 (CA 6, 1975). This is because when "a trade secret is patented there is no further right to secrecy. The patent is a legal disclosure with the right to a limited, temporary monopoly granted as the reward for disclosure." *Id.* Thus, plaintiff's patent preempted any claim to commercial appropriation and, because the unjust enrichment claim is simply a derivative of his commercial misappropriation, it must also fail from preemption. See *Waner v Ford Motor Co*, 331 F3d 851, 856-857 (CA Fed, 2003). Because the common law claims were preempted, the fact that they were not actually litigated is irrelevant to the application of collateral estoppel. The claims were essentially subsumed by the existence of the patent, and we have held that plaintiff is collaterally estopped from relitigating

³ We note that plaintiff's briefing does not set forth the actual limitations period or explain if, when, or how his opportunity to refile against Reitter was extinguished.

that claim. Accordingly, plaintiff must also be collaterally estopped from attempting to litigate the preempted common law claims.⁴

II. THE ATTORNEY-JUDGMENT RULE

The trial court ruled that plaintiff's legal malpractice claim related to defendants' recommendation to dismiss Reitter from the underlying lawsuit was also subject to summary disposition under the attorney-judgment rule, because there was evidence that Reitter did not manufacture the questionable mirror assemblies and defendants' decision to voluntarily dismiss Reitter in this circumstance avoided plaintiff's exposure to possible sanctions. The trial court also ruled that plaintiff's common law claims should be dismissed under the attorney-judgment rule.

The attorney-judgment rule is discussed in *Mitchell v Dougherty*, 249 Mich App 668, 677-679; 644 NW2d 391 (2002), as follows:

To determine whether defendant attorneys were negligent in this case we must first examine the duty they owed plaintiffs. An attorney has an implied duty to exercise reasonable skill, care, discretion, and judgment in representing a client. *Simko v Blake*, 448 Mich 648, 655-656; 532 NW2d 842 (1995). Further, an attorney is obligated to act as an attorney of ordinary learning, judgment, or skill would under the same or similar circumstances. *Id.* at 656. However, an attorney is not a guarantor of the most favorable possible outcome, nor must an attorney exercise extraordinary diligence or act beyond the knowledge, skill, and ability ordinarily possessed by members of the legal profession. *Id.* Further, "where an attorney acts in good faith and in honest belief that his acts and omissions are well founded in law and are in the best interest of [the] client, [the attorney] is not answerable for mere errors in judgment." *Id.* at 658.

Here, plaintiffs allege that defendant attorneys were negligent in failing to file a medical malpractice action against Oakwood. It is important to note that this alleged failure was not mere oversight or the result of poor case management, but rather was an affirmative decision on the part of defendant attorneys not to pursue the action. According to defendant attorneys, they investigated plaintiffs' claims against Oakwood and determined, in their professional opinion, that the case was not worth pursuing.

Plaintiffs do not dispute whether defendant attorneys conducted an investigation into the merits of their case. Instead, plaintiffs argue that defendant attorneys' determination that the case against Oakwood was not worth pursuing is

⁴ Assuming that we are incorrect and collateral estoppel does not apply because the claims were not litigated, we would reach the same conclusion, because the preemption of the claims means that there were no claims to litigate. Thus, there can be no attorney malpractice in the failure to litigate claims that do not exist.

clearly negligent because plaintiffs' counsel in this legal malpractice action was able to locate more than one expert who would testify that the treatment Cara Mitchell received at Oakwood constituted medical malpractice. Further, plaintiffs stress that there were issues of fact regarding whether Cara was given an excessive dosage of the incorrect medication. However, the critical question here is not whether plaintiffs would have ultimately prevailed on their medical malpractice claim. Rather, the issue is whether defendant attorneys exercised reasonable skill, care, discretion, and judgment when they determined that plaintiffs' claim was not worth pursuing. *Simko, supra* at 655-656.

Here, the attorneys' opinion on the merit of plaintiffs' case was influenced in part by the attorneys' inability to locate an expert physician who would support plaintiffs' claim that Oakwood's treatment of Cara Mitchell was negligent. In addition, defendant attorneys point to the inherent conflicts in the evidence regarding whether Cara received either an incorrect medication or an incorrect dosage. Plaintiffs admitted that defendant attorneys informed them of their decision to file a complaint against Family First Clinic only and their reasons for not naming Oakwood in the suit.

Although it is true that plaintiffs' present counsel was able to obtain the affidavits of experts supporting plaintiffs' medical malpractice claim, this evidence does not negate the fact that defendant attorneys sought the opinion of an expert and received an opinion that was not favorable. The necessity of obtaining the testimony of an expert physician to support allegations of medical malpractice is codified in MCL 600.2912d and MCL 600.2169, and factual disputes without an expert opinion are insufficient to initiate, let alone maintain, a medical malpractice action. Given the high standard for pursuing medical malpractice claims in this jurisdiction, we cannot fault defendant attorneys' reluctance to bring a malpractice action where they were unable to obtain the supportive testimony of a physician.

Plaintiffs present no evidence that the measures that defendant attorneys took in investigating plaintiffs' claims were less than an attorney of ordinary learning, judgment, or skill would have done under the same or similar circumstances. *Simko, supra*. In essence, plaintiffs allege that defendant attorneys erred in their judgment that plaintiffs' medical malpractice claim against Oakwood was without merit. Although "gross" errors in judgment can be actionable, *Basic Food [Indus, Inc v Grant]*, 107 Mich App 685, 694; 310 NW2d 26 (1981)], mere errors in judgment by attorneys acting in good faith are not. *Simko, supra* at 658. Plaintiffs presented no evidence that defendant attorneys' determination that the case was not worth pursuing was anything other than an honest belief well founded in the law and in the best interest of their clients. *Simko, supra* at 694. Although there may be a question of fact regarding the merit of plaintiffs' medical malpractice action, we decline to create precedent whereby an attorney is obligated to file suit whenever there is some scintilla of evidence supporting the client's claim.

In this case, like *Mitchell*, there has been no showing that defendants did not properly investigate the claim against Reitter before advising plaintiff to dismiss it without prejudice, or that defendants' exercise of judgment was not in good faith. The recommendation was made because there was very strong evidence that plaintiff would not be able to establish a claim against Reitter and could be liable for sanctions if Reitter was not dismissed. The recommendation was made in plaintiff's best interests. The fact that plaintiff was not able to prevail on his claim against the only remaining party, DaimlerChrysler, further shows that defendants' advice was reasonable.

Although plaintiff argues that a lawyer may be liable for "gross" errors in judgment, *Mitchell*, 249 Mich App at 679, plaintiff has not shown any conduct by defendants that arises to this level. He appears to rely solely on the fact that Reitter's European parent company was making translucent mirrors to argue that his patent infringement claim had merit. However, evidence in the federal case indicated that Reitter's European parent corporation had developed a similar mirror assembly two years before plaintiff met with Warburton to discuss his patent and, as noted above, the federal court found on several grounds that the same mirror assembly did not infringe on plaintiff's patent.

III. BREACH OF FIDUCIARY DUTY

Plaintiff next argues that he properly pleaded a separate claim for breach of fiduciary duty in addition to his malpractice claim. The trial court dismissed this claim because it found that it was actually a claim for legal malpractice, with a different title. We agree.

"[A] fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another." *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 43; 698 NW2d 900 (2005). When a fiduciary relationship exists, it is the fiduciary's duty to act for the benefit of the principal on matters within the scope of the relationship. *Id.* Whether a duty exists is a question of law for the court. *Id.*

A complaint must be reviewed as a whole to determine the focal point of the claim. *Aldred v O'Hara-Bruce*, 184 Mich App 488, 490; 458 NW2d 671 (1990). Where an alleged duty arises out of an attorney-client relationship, a claim for breach of that duty "is one for malpractice and malpractice only." *Barnard v Dilley*, 134 Mich App 375, 378-379; 350 NW2d 887 (1984).

Here, plaintiff's breach of fiduciary duty claim is based on the following allegations:

55. Defendants all owed the fiduciary duties of loyalty, good faith, and fair and vigorous representation to Plaintiff, including the duty to exercise due care and diligence in the pursuit of Plaintiff's claims against Reitter.

56. Defendants' breaches of their fiduciary duties to Plaintiff include, but are not limited to, making material misrepresentations to Plaintiff as to whether Reitter manufactured certain lighted rearview mirrors, pressuring Plaintiff to dismiss Reitter from the case, abandoning the common law claims against Reitter, failing to advise Plaintiff of his common law claims against Reitter for stealing

his lighted rearview mirror concept, discouraging Plaintiff from pursuing his common law claims against Reitter, and allowing Reitter to be dismissed from the suit.

59. As a direct and proximate result of Defendants' breaches of their fiduciary duties Plaintiff has suffered damages.

These allegations all relate to defendants' representation of plaintiff in the underlying lawsuit. Plaintiff has not alleged that defendants breached any duties that arise outside the attorney-client relationship. Thus, plaintiff's allegations only state a claim for legal malpractice. Therefore, the trial court properly granted summary disposition with respect to plaintiff's breach of fiduciary duty claim.

IV. FRAUD

The trial court dismissed plaintiff's fraud claim because plaintiff failed to "show any falsehoods or material misrepresentations to set forth a prima facie case of fraud."

Although a fraud claim arising out of an attorney-client relationship is distinct from a malpractice claim, *Brownell v Garber*, 199 Mich App 519, 532; 503 NW2d 81 (1993), we agree with the trial court that plaintiff failed to establish a prima facie case of fraud.

The elements of a cause of action for fraud are:

"(1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to a recovery." [*Id.* at 533 (citation omitted).]

In his second amended complaint, plaintiff made the following relevant allegations in support of his claim for fraud:

61. Defendant Kochanowski made material misrepresentations to Plaintiff by pressuring Plaintiff to dismiss Reitter from the case, by stating in his letter to Plaintiff that he had no reason to doubt the Warburton affidavit, and by telling Plaintiff that it would be in Plaintiff's interest to dismiss his claims against Reitter.

62. These statements were false. Defendants had already successfully defeated Reitter's motion to dismiss on the very issue of whether Reitter made the mirrors in question. Defendant Kochanowski therefore falsely represented to Plaintiff that Reitter did not make the mirrors and therefore should not be a party to the case.

63. At the time Defendant Kochanowski made the statements concerning the Warburton affidavit and dismissal of Reitter to Plaintiff, Defendant knew the statements were false, or made the statements recklessly, without knowledge of their truth and as a positive assertion. Defendants had already argued Reitter's motion to dismiss, which centered on Reitter's claims that they did not make the mirrors. Defendant Kochanowski, therefore, has an understanding of Reitter's claims, and access to evidence of who made the mirrors. Despite this, Defendant made a materially misleading statement to Plaintiff in order to pressure Plaintiff to dismiss Reitter from the case.

64. Defendant Kochanowski made the misrepresentations with the clear intention that Plaintiff would act on them by dismissing Reitter from the case.

65. Plaintiff relied on Defendant's statements regarding Reitter's manufacture of the mirrors, and on Defendant's statements pressuring Plaintiff to agree to dismiss Reitter from the case.

66. Plaintiff suffered damages as a result of his reliance on Defendant's statements. Plaintiff's claims against Reitter were dismissed as a result, and the claims are now time-barred.

67. Defendant Kochanowski was, at all relevant times, employed by Defendant Sommers Schwartz as an attorney, and Defendant Sommers Schwartz is therefore also liable for the fraud alleged above.

68. Defendants Baniak, Pine, and Baniak Pine, upon information and belief, knew that Plaintiff agreed to dismiss Reitter from the suit based upon material misrepresentations made to him by Defendant Kochanowski. Despite this, the Baniak Pine Defendants allowed the dismissal to occur, did nothing to correct the misrepresentation, and omitted to tell Plaintiff about the misrepresentation, despite a duty to do so.

69. Plaintiff suffered Damages [sic] as a result of his reliance upon Defendants [sic] material misrepresentations and omissions. In particular, Plaintiff was damaged by Reitter's dismissal from the case; by his belief, based on Defendants [sic] statements and omissions, that he had no valid claims against Reitter; and by his resulting inability to pursue his common law claims against Reitter.

Plaintiff's fraud claim is premised on the contention that he was wrongly persuaded to dismiss Reitter from the federal case because, contrary to Warburton's affidavit and sworn testimony, there was evidence that Reitter had manufactured the mirrors in question, namely that the mirrors had the letters "rs" stamped on them.

Plaintiff's allegations are without merit because, as referenced above, two years earlier Reitter's German parent corporation had developed and sought a German patent for a similar mirror assembly. Plaintiff has not shown that the factual basis for defendants' advice to dismiss Reitter was inaccurate. Indeed, plaintiff does not even appear to dispute that it was Reitter's

European parent corporation that had been manufacturing the mirror assemblies, which explained the “rs” stamp on the mirrors. There was no reason why defendants could not rely on the affidavit and uncontradicted sworn testimony to recommend that plaintiff voluntarily dismiss Reitter from the lawsuit. In sum, there was no genuine issue of material fact that defendants made any misrepresentations when advising plaintiff to dismiss Reitter from the federal lawsuit. Therefore, the trial court did not err in dismissing plaintiff’s claim for fraud.

V. DISCOVERY

Plaintiff lastly argues that summary disposition was premature because discovery had not been completed. We disagree.

Ordinarily, summary disposition is inappropriate before the completion of discovery on a disputed issue unless further discovery does not stand a fair chance of uncovering additional factual support for the opposing party’s position. *VanVorous v Burmeister*, 262 Mich App 467, 476-477; 687 NW2d 132 (2004). If a party believes that summary disposition is premature because discovery has not been completed, that party must at least assert that a dispute exists and support the allegation with some independent evidence. *Davis v Detroit*, 269 Mich App 376, 379-380; 711 NW2d 462 (2005). A party is not entitled to discovery based on mere conjecture; otherwise discovery would be just a “fishing expedition.” *Id.* at 380.

In this case, plaintiff has not shown how additional discovery would support his claim. He relies solely on Kenneth Kohn’s affidavit for his position that defendants failed to properly articulate his patent infringement claim, but as previously discussed, the federal court’s decision indicates that it fully considered plaintiff’s position that the term “translucent housing” should be more broadly construed. Plaintiff has not presented any basis for concluding that further discovery would uncover additional factual support for his position.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Pat M. Donofrio