

REL: September 13, 2019

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

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**Antoinette Belle, as personal representative of the Estate
of Edith Louise Mitchell, deceased**

v.

Dennis E. Goldasich, Jr., et al.

**Appeal from Mobile Circuit Court
(CV-18-42)**

MITCHELL, Justice.

This is a legal-malpractice case that stems from a medical-malpractice action. Antoinette Belle, as personal representative of the estate of Edith Louise Mitchell,

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deceased, sued various health-care providers that treated Mitchell while she was hospitalized in April 2009. Belle eventually reached settlements with all of those health-care providers except two physicians. The trial court entered a summary judgment against Belle and in favor of the two physicians, bringing the medical-malpractice action to a close.

Belle then filed a legal-malpractice case against four attorneys and three law firms that had represented her at varying times in the medical-malpractice action, alleging that they had been negligent in representing her. Belle later brought an additional claim of fraudulent concealment. The attorneys and law firms denied the allegations against them, arguing that Belle's claims were untimely and that they had no factual or legal basis. The trial court agreed and entered judgments in favor of the attorneys and law firms. Belle appeals. We affirm the judgments.

Facts and Procedural History

On April 23, 2009, Mitchell was transported by ambulance to a Mobile hospital after complaining of chest pain.

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Mitchell was admitted to the hospital and was treated over the next seven days. On April 30, 2009, she passed away.

On April 29, 2011, Belle, the court-appointed personal representative of Mitchell's estate, filed a complaint in the Mobile Circuit Court alleging that the hospital, nurses, and physicians that had treated Mitchell in the week before her death had provided her with substandard care that proximately caused her death. Belle claimed that those health-care providers had breached the applicable standards of care by failing to ensure that Mitchell was given her corticosteroid medication while she was hospitalized, even though they had been given notice that Mitchell had been taking that prescription medication for approximately 11 years. The complaint further alleged that the health-care providers failed to timely recognize Mitchell's symptoms of withdrawal from the corticosteroid and her dehydration and that those failures hastened the organ failure that ultimately caused her death.

Belle's complaint was prepared and signed by Dennis E. Goldasich, Jr., and Victoria Dye, attorneys who were at the time affiliated with Fischer, Goldasich & Aughtman, LLC, a

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Birmingham law firm ("the Fischer firm"). Goldasich subsequently left the Fischer firm and started Goldasich & Associates, LLC ("the Goldasich firm"), taking Belle's case with him. Goldasich properly notified the trial court at the time he separated from the Fischer firm that he and the Goldasich firm would thereafter be Belle's counsel of record. Because Dye remained at the Fischer firm, she asked the trial court to allow her to withdraw from the case. In October 2011, Dye's motion to withdraw was granted, and it is undisputed that Dye and the Fischer firm had no involvement in Belle's case after that time. In April 2012, J. Allan Brown of J. Allan Brown, LLC, a Mobile law firm ("the Brown firm"), filed a notice of appearance indicating that he would also be representing Belle in the medical-malpractice action. In May 2015, Brown's associate, Joseph F. McGowin IV, filed his own notice of appearance on behalf of Belle.

In January 2013, Belle reached a settlement with the hospital and its nurses and agreed to dismiss them from the case, leaving only her claims against two physicians to be resolved. Those claims proceeded toward trial, and in March 2015 Belle's expert witness, Dr. Ednan Bajwa, was deposed.

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During his deposition, Dr. Bajwa testified that Mitchell's death had been caused by the failure of the two physicians to diagnose and treat a urinary-tract infection from which Mitchell was suffering when she was hospitalized. Dr. Bajwa testified that the untreated urinary-tract infection eventually became septic and caused Mitchell's death.

The two physicians thereafter moved the trial court to exclude Dr. Bajwa's testimony about Mitchell's alleged urinary-tract infection because Belle's complaint did not assert a claim based on the failure to diagnose and treat such an infection. On August 3, 2015, Belle filed an amended complaint in which she asserted for the first time that the two physicians had failed to diagnose and treat Mitchell's urinary-tract infection and that this negligence had proximately caused Mitchell's death. On August 18, 2015, the trial court denied the two physicians' motion to exclude Dr. Bajwa's testimony.

It is not entirely clear from the record what transpired over the next 17 months, but on February 1, 2017, Belle's case was transferred to a new judge. That same day, Brown, McGowin, and the Brown firm moved to withdraw from the case,

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and on February 6, 2017, the trial court granted their motion. On March 29, 2017, the two physicians moved the trial court again to exclude Dr. Bajwa's testimony about a urinary-tract infection. The two physicians also moved the trial court to enter a partial summary judgment in their favor on Belle's claim asserting that Mitchell's death was caused by an untreated urinary-tract infection. The physicians argued that the claim was not brought until August 2015 -- after the expiration of the two-year statute of limitations that governs medical-malpractice actions -- and that the claim did not relate back to the original complaint and was thus not permissible under Rule 15(c), Ala. R. Civ. P. While those motions were pending, Edward Johnson and Donald Stewart with Stewart & Stewart, P.C., filed notices of appearance on behalf of Belle. Goldasich and the Goldasich firm thereafter moved to withdraw from the case, and on April 17, 2017, they were permitted to do so, leaving only Johnson and Stewart as Belle's attorneys of record. At the time Goldasich and the Goldasich firm were allowed to withdraw, the claim based on allegations of an untreated urinary-tract infection had been

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successfully lodged and the physicians' motion for a partial summary judgment was pending.

On July 19, 2017, three months after Goldasich and the Goldasich firm had withdrawn, the trial court entered a partial summary judgment in favor of the two physicians on Belle's claim alleging that they had failed to diagnose and treat Mitchell's urinary-tract infection. The trial court held that the claim did not relate back to the original complaint and was therefore barred by the two-year statute of limitations. Belle thereafter petitioned this Court, pursuant to Rule 5, Ala. R. App. P., for permission to file an immediate appeal of the trial court's judgment. In October 2017, this Court unanimously denied her petition. The two physicians subsequently moved the trial court to enter a summary judgment in their favor on the remaining claims asserted against them by Belle. In February 2018, the trial court granted the motion of the two physicians and entered a final judgment in their favor. Belle did not appeal that judgment.

On December 5, 2017, Belle sued Goldasich and the Goldasich firm, Dye and the Fischer firm, and Brown, McGowin,

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and the Brown firm (hereinafter referred to collectively as "the attorney defendants"), alleging that they had negligently failed to assert a claim against the two physicians for failing to diagnose and treat Mitchell's urinary-tract infection before the statute of limitations for that claim expired. The attorney defendants thereafter moved the trial court to enter judgments in their favor, arguing that Belle's claims were untimely under the Alabama Legal Services Liability Act, § 6-5-570 et seq., Ala. Code 1975 ("the ALSLA"), which by its terms governs all actions in Alabama in which an attorney or law firm is alleged to have breached the standard of care in the provision of legal services.¹ See Sessions v. Espy, 854 So. 2d 515, 522 (Ala. 2002) ("From these Code sections [§§ 6-5-572 and 6-5-573, Ala. Code 1975], it is clear that the ALSLA applies to all actions against 'legal service providers' alleging a breach of their duties in providing legal services."). The attorney defendants

¹The attorney defendants aligned themselves into three groups before the trial court: 1) Goldasich and the Goldasich firm; 2) Dye and the Fischer firm; and 3) Brown, McGowin, and the Brown firm. Each group was represented by its own counsel and filed its own pleadings and motions. These groupings have continued on appeal, but because the groups' arguments largely overlap, we refer to the groups collectively throughout this opinion.

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specifically argued that Belle's claims were barred by § 6-5-574(a), Ala. Code 1975, which provides:

"All legal service liability actions against a legal service provider must be commenced within two years after the act or omission or failure giving rise to the claim, and not afterwards; provided, that if the cause of action is not discovered and could not reasonably have been discovered within such period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; provided, further, that in no event may the action be commenced more than four years after such act or omission or failure"

See also Cockrell v. Pruitt, 214 So. 3d 324, 330 (Ala. 2016) (explaining that § 6-5-574(a) "sets forth a two-year statute of limitations and four-year statute of repose for legal-malpractice claims"). The attorney defendants argued that both the alleged negligent act that was the basis of Belle's legal-malpractice claim (the filing of a deficient complaint) and Belle's alleged injury (the running of the statute of limitations applicable to her medical-malpractice claim) occurred in April 2011. Thus, they argued, Belle's December 2017 complaint, which asserted a legal-malpractice claim based on events occurring in April 2011, was outside the ALSLA's

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two-year statute of limitations and four-year statute of repose.

In March 2018, Belle filed an amended complaint in which she asserted two separate counts. The first count alleged that Goldasich and the Goldasich firm, and Dye and the Fischer firm, had breached the standard of care by failing in the April 2011 complaint "to allege facts sufficient to indicate a transaction or occurrence upon which a subsequent amended complaint could relate back to the filing of the original complaint under Rule 15(c)." Belle's second count alleged that all the attorney defendants except Dye had breached the standard of care by concealing or otherwise failing to inform Belle that she had a potential legal-malpractice claim against those of the attorney defendants who had prepared the April 2011 complaint because that complaint was so inartfully drafted that a subsequently asserted claim based on Dr. Bajwa's expert opinion could not relate back to it.

The attorney defendants thereafter renewed their motions, reiterating that Belle's claims were untimely and therefore barred by § 6-5-574(a). They also argued that her second count had no factual or legal basis because the trial court

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allowed Belle to amend her initial complaint to assert a claim against the two physicians based on Dr. Bajwa's untreated-urinary-tract-infection theory, and that claim was viable at all times while they represented Belle. Thus, the attorney defendants argued, Belle had no potential legal-malpractice claim based on the drafting of the April 2011 complaint while they represented her and they could not have breached the standard of care by failing to inform her of a potential claim she did not actually have. On June 11, 2018, the trial court entered three orders granting the attorney defendants' motions and entering judgments in their favor. On July 23, 2018, Belle filed her notice of appeal to this Court.

Standard of Review

The attorney defendants filed separate motions asking the trial court to enter judgments in their favor. Goldasich and the Goldasich firm asked the trial court to enter a judgment for them on the pleadings, while Dye and the Fischer firm, and Brown, McGowin, and the Brown firm, asked the trial court to dismiss Belle's claims. All those motions, however, made similar arguments, and some of those motions even expressly

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adopted and incorporated the arguments asserted by the other attorney defendants in their motions.

In ruling in favor of the attorney defendants, the trial court entered a separate order on each motion. Thus, one order granted a motion for a judgment on the pleadings and two of the orders granted motions to dismiss. Regardless of the distinction in the form of the judgments entered by the trial court, the only questions before this Court are questions of law. Therefore, all the judgments are subject to the same de novo standard of review. See Walter Energy, Inc. v. Audley Capital Advisors LLP, 176 So. 3d 821, 825 (Ala. 2015) (explaining that "we review the sufficiency of [the plaintiff's] complaint de novo" when reviewing a trial court's order granting a motion to dismiss); Ex parte Capstone Bldg. Corp., 96 So. 3d 77, 81 (Ala. 2012) ("The question presented is a pure question of law subject to de novo review by this Court."); Universal Underwriters Ins. Co. v. Thompson, 776 So. 2d 81, 82 (Ala. 2000) ("A judgment on the pleadings is subject to a de novo review.").

Scope of the Appeal

Before undertaking a substantive legal analysis, it is important to clarify what has been presented for appeal. Belle's notice of appeal did not expressly indicate that she was appealing only the judgments entered against her on the second count, but she has now effectively conceded that the claim asserted in her first count -- based on the alleged negligent drafting of the April 2011 medical-malpractice complaint -- is time-barred by the statute of repose in § 6-5-574(a).

The applicable statute of repose provides that "in no event" may a legal-malpractice action "be commenced more than four years after" the act, omission, or failure "giving rise to the claim." § 6-5-574(a). See also Ex parte Seabol, 782 So. 2d 212, 214 (Ala. 2000) ("Section 6-5-574(a) further provides that any action filed beyond the two-year limit 'must be filed within four years of the wrongful act or omission, regardless of whether the client has suffered damage.'" (quoting Ex parte Panell, 756 So. 2d 862, 867 (Ala. 1999))). The attorney defendants argued to the trial court, and now argue to this Court, that the statute of repose bars the claim

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asserted by Belle in count one because she did not initiate her legal-malpractice action until December 2017, more than six years after the April 2011 complaint was drafted and filed. Their argument appears to be meritorious, but we ultimately do not need to make that determination because Belle has made no effort on appeal to explain why the statute of repose should not apply to this claim.

In Fogarty v. Southworth, 953 So. 2d 1225 (Ala. 2006), this Court explained:

"When an appellant confronts an issue below that the appellee contends warrants a judgment in its favor and the trial court's order does not specify a basis for its ruling, the omission of any argument on appeal as to that issue in the appellant's principal brief constitutes a waiver with respect to the issue."

Id. at 1232. The attorney defendants asked the trial court to enter judgments in their favor on count one of Belle's amended complaint based on, among other things, the statute of repose. The trial court granted their motions without explaining its rationale, and Belle has failed to address in her brief to this Court what effect the statute of repose has on count one of her amended complaint. Accordingly, we conclude that she has waived any arguments on this issue and has effectively

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abandoned count one. See also Freeman v. Holyfield, 179 So. 3d 101, 105 (Ala. 2015) (holding that the appellant waived any argument that the trial court erred by holding one of his claims to be time-barred because he presented no argument on that issue).

We thus focus our analysis on count two of Belle's amended complaint, which alleges that the attorney defendants fraudulently concealed Belle's potential legal-malpractice claim against the drafters of the April 2011 complaint once Dr. Bajwa gave his deposition.

Discussion

Count two of Belle's amended complaint is denominated as a concealment claim and is in the nature of a fraudulent-suppression claim. In Coilplus-Alabama, Inc. v. Vann, 53 So. 3d 898 (Ala. 2010), this Court explained that for a plaintiff to prevail in a legal-malpractice action based on a claim of fraudulent suppression, the plaintiff must establish the following elements:

"(1) [T]he defendant had a duty to disclose an existing material fact; (2) the defendant concealed or suppressed that material fact; (3) the defendant's suppression induced the plaintiff to act or refrain from acting; and (4) the plaintiff suffered actual damage as a proximate result.

Freightliner, LLC v. Whatley Contract Carriers, LLC, 932 So. 2d 883, 891 (Ala. 2005). "'[A]n action for suppression will lie only if the defendant actually knows the fact alleged to be suppressed.'" Cook's Pest Control, Inc. v. Rebar, 28 So. 3d 716, 726 (Ala. 2009) (quoting McGarry v. Flournoy, 624 So. 2d 1359, 1362 (Ala. 1993))."

Id. at 909 (emphasis added). The attorney defendants argue that Belle cannot prevail on her claim because it is undisputed that they had no knowledge of the supposed fact they allegedly suppressed -- that Belle had a potential legal-malpractice claim against the attorneys who drafted the April 2011 complaint -- while they represented her because she did not, in fact, have such a claim. After reviewing the relevant facts and the chronology of the medical-malpractice action, we agree with the attorney defendants. We examine below each of the attorney-defendant groups, in the order in which they withdrew from the medical-malpractice action.

A. Dye and the Fischer firm

The first of the attorney defendants to withdraw from Belle's case were Dye and the Fischer firm. Their involvement in the medical-malpractice action ended in October 2011 when Goldasich left the Fischer firm, taking Belle's case with him. Notably, this was well before the alleged deficiencies in the

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April 2011 complaint came to light in Dr. Bajwa's March 2015 deposition. Accordingly, it is undisputed that Dye and the Fischer firm could not have had any knowledge that the April 2011 complaint was deficient or that Belle might have a legal-malpractice claim against its drafters during the time they represented Belle. In the reply brief Belle has filed on appeal, she acknowledges as much and concedes that Dye and the Fischer firm have no liability for the claims she asserted against them in count two of her amended complaint.

B. Brown, McGowin, and the Brown firm

The next of the attorney defendants to withdraw from Belle's case were Brown, McGowin, and the Brown firm in February 2017. They represented Belle after Dr. Bajwa's March 2015 testimony introduced a theory regarding the cause of Mitchell's death that did not have an express basis in the April 2011 complaint. If Dr. Bajwa's deposition testimony did not apprise them that there might be a deficiency in the April 2011 complaint, the two physicians' subsequent motion to exclude Dr. Bajwa's testimony certainly would have done so. Based on that awareness, Belle amended her April 2011 complaint in August 2015 specifically to assert a medical-

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malpractice claim based on Dr. Bajwa's testimony. That same month, the trial court denied the physicians' motion to exclude Dr. Bajwa's testimony.

In April 2016, the trial court granted a motion filed by Belle seeking leave to file a second amended complaint that included the previously added claim against the two physicians based on Dr. Bajwa's theory of causation. Thus, for all that appears, any deficiency that might have existed in the April 2011 complaint was cured no later than April 2016 when the trial court allowed Belle to file an amended complaint asserting a claim based on Dr. Bajwa's testimony about an untreated urinary-tract infection. Belle could not have asserted a legal-malpractice claim based on deficiencies in the April 2011 complaint after that time because there were no longer any deficiencies in that complaint.² It necessarily follows that Brown, McGowin, and the Brown firm could not have known that Belle had a potential legal-malpractice claim when she did not, in fact, have such a claim.

²We further note that, even if Belle had immediately asserted a legal-malpractice claim against the drafters of the April 2011 complaint following Dr. Bajwa's deposition, and even if that claim was held to be timely, it would nevertheless have been rendered moot once the trial court allowed the amended complaint.

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None of these facts had changed in February 2017 when Brown, McGowin, and the Brown firm withdrew from Belle's case. At that time, Belle's amended complaint asserted a claim of medical-malpractice based on the physicians' alleged failure to diagnose and treat Mitchell's urinary-tract infection, and the case was presumably moving toward a trial. Brown, McGowin, and the Brown firm could not have told Belle that she had a legal-malpractice claim against the drafters of the original April 2011 complaint while they represented her because, in fact, she did not have such a claim. To the best of Brown, McGowin, and the Brown firm's knowledge, Belle had not suffered any injury from the allegedly deficient April 2011 complaint because the trial court had allowed the amendment. The legal-malpractice claim asserted against Brown, McGowin, and the Brown firm in count two of Belle's complaint accordingly fails and was properly dismissed by the trial court.

C. Goldasich and the Goldasich firm

The remaining attorney defendants, Goldasich and the Goldasich firm, did not withdraw from Belle's case until April 2017. Like Brown, McGowin, and the Brown firm, they also

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represented Belle after Dr. Bajwa introduced a new theory of causation in March 2015, and much of the analysis in the immediately preceding section applies to them as well. Most significantly, when Goldasich and the Goldasich firm withdrew in April 2017, Belle's medical-malpractice claim based on the untreated urinary-tract infection was pending and viable, and Goldasich and the Goldasich firm would have had no basis upon which to inform Belle that she had a legal-malpractice claim against the drafters of the April 2011 complaint.

The circumstances of Goldasich and the Goldasich firm's withdrawal were, however, different in one respect. On March 29, 2017, while Goldasich and the Goldasich firm were still representing Belle, the two physicians filed a motion requesting a partial summary judgment on Belle's claim that Mitchell's death was caused by an untreated urinary-tract infection. This motion was pending at the time of Goldasich and the Goldasich firm's withdrawal from the case. But the mere possibility that the trial court might reverse its previous decision and hold that the urinary-tract-infection claim was untimely provides no basis upon which to conclude that Goldasich and the Goldasich firm should have informed

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Belle that she had a potential legal-malpractice claim against the drafters of the April 2011 complaint. The critical fact is that the trial court had allowed Belle to amend her complaint to assert a claim based on Dr. Bajwa's urinary-tract-infection theory, and that claim was pending at all times until after Goldasich and the Goldasich firm withdrew from the case. Accordingly, Goldasich and the Goldasich firm could not have informed Belle that she had a legal-malpractice claim when the physicians filed their partial-summary-judgment motion in March 2017 because there was, in fact, no basis on which to assert such a claim at that time. Goldasich and the Goldasich firm, therefore, did not breach the standard of care by not informing Belle that she had a potential legal-malpractice claim against the drafters of the April 2011 complaint, and the judgment on the pleadings entered by the trial court in their favor was proper.

Conclusion

Belle sued the attorney defendants alleging that they breached the standard of care while they represented her in a medical-malpractice action. Belle specifically asserted that some of the attorney defendants had been negligent in the

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drafting of her medical-malpractice complaint and that some of the attorney defendants had breached the standard of care by failing to apprise her of that negligence. The trial court concluded that all the attorney defendants were entitled to judgments in their favor, and, for the reasons discussed above, the judgments were proper. Accordingly, those judgments are hereby affirmed.

AFFIRMED.

Wise, Sellers, and Stewart, JJ., concur.

Parker, C.J., and Bolin, Shaw, Bryan, and Mendheim, JJ., concur in the result.