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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHERYL SAM, and CARLEEN SAM, Individually and on behalf of
themselves and their respective Bankruptcy estates, LAWRENCE,
WARFIELD, *Plaintiffs/Appellants*,

v.

THE LEDBETTER LAW FIRM PLC, an Arizona professional limited
Liability company; STATE FARM FIRE AND CASUALTY COMPANY, an
Illinois corporation, *Defendants/Appellees*.

No. 1 CA-CV 20-0581
FILED 8-24-2021

Appeal from the Superior Court in Yavapai County
No. V1300CV201880096
The Honorable Christopher L. Kottke, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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Co-counsel for Plaintiffs/Appellants

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By Richard S. Plattner
Co-counsel for Plaintiffs/Appellants

Snell & Wilmer LLP, Phoenix
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Counsel for Defendant/Appellee Ledbetter

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By David M. Bell, Cara Lynn Christian
Counsel for Defendant/Appellee State Farm

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 Lawrence Warfield, trustee for Cheryl Sam’s and Carleen Sam’s bankruptcy estates, appeals the trial court’s granting The Ledbetter Law Firm’s motion for summary judgment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In October 2009, Carleen Sam borrowed Cheryl Sam’s car (collectively, the “Sams”), and was in a car accident on Navajo tribal land with the Tabaha family, who sustained injuries. The Arizona Health Care Cost Containment System (“AHCCCS”) paid the medical bills incurred to treat the Tabaha family and AHCCCS acquired a lien against any tort recovery for the amount of those medical bills. In October 2011, the Tabaha family filed a personal injury tort action against the Sams in the Navajo Nation District Court. The Sams were insured by State Farm, which retained The Ledbetter Law Firm (“Ledbetter”) to represent them. The Tabaha family made multiple offers to settle the case for the policy limits but none of them assured a release of AHCCCS’s liens on any damages the Tabaha family might receive. This was important to Ledbetter because it believed that the Sams would remain liable for AHCCCS’s medical liens. To address this concern, Ledbetter submitted a settlement offer to the Tabaha family for the \$30,000 policy limits in January 2014 that required AHCCCS to release the liens. The Tabaha family rejected Ledbetter’s settlement offer. In October 2014, State Farm submitted a separate settlement offer to the Tabaha family for the \$30,000 policy limits, which was also rejected by the Tabaha family.

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¶3 In November 2015, days before trial, Ledbetter recommended that the Sams declare bankruptcy. Ledbetter contacted a law firm to represent the Sams in filing an emergency bankruptcy petition. The Sams traveled to Flagstaff, filed their voluntary bankruptcy petitions, and obtained a stay of the trial with the Tabaha family. Because of the bankruptcy filings, the Navajo Nation District Court vacated the trial. The Tabaha family's claims against the Sams were listed on the Sams' bankruptcy schedules as creditor claims for an unknown amount. In March 2016, the bankruptcy court discharged the Sams' personal liability for pre-bankruptcy debts. A few weeks later, the Tabahas filed proof of claims in the bankruptcy court totaling \$2.1 million. Cheryl Sam bought some of her personal property back from her bankruptcy estate for \$2,250. Carleen Sam forfeited \$1,001.37 from her tax return to pay creditors.

¶4 Warfield sued State Farm and Ledbetter alleging breach of contract, breach of the implied covenant of good faith and fair dealing, aiding and abetting bad faith, legal malpractice, and punitive damages. This Court affirmed the dismissal of Warfield's breach of the implied covenant of good faith and fair dealing claim against State Farm and the dismissal of Warfield's aiding and abetting bad faith claim against Ledbetter but reversed the dismissal of Warfield's legal malpractice and punitive damages claims against Ledbetter. *Warfield for Cheryl Sam & Carleen Sam Bankr. Estates v. Ledbetter Law Firm PLC*, 1 CA-CV 18-0636, 2019 WL 6215905, at *3 ¶ 11 n.4 (App. Nov. 21, 2019) (mem. dec.), *rev. den.* (May 27, 2020). The parties stipulated to the dismissal of the breach of contract claim with prejudice.

¶5 On remand, Warfield moved for summary judgment on damages for legal malpractice, arguing that the Sams' bankruptcies did not eliminate the Sams' debt to the Tabahas and that the Sams had suffered non-economic damages. Ledbetter moved for summary judgment on Warfield's legal malpractice claim arguing that Warfield, on behalf of the Sams, had suffered no damages. The trial court granted Ledbetter's motion without explanation. Warfield timely appealed.

DISCUSSION

¶6 Warfield argues that the trial court erred by granting Ledbetter summary judgment. He contends that the Sams suffered \$2.1 million in damages because Ledbetter forced the Sams into bankruptcy when the bankruptcies did not extinguish the debt that the Sams owed the Tabahas. "We review de novo a grant of summary judgment, viewing the facts and reasonable inferences in the light most favorable to the non-

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prevailing party.” *BMO Harris Bank, N.A. v. Wildwood Creek Ranch, LLC*, 236 Ariz. 363, 365 ¶ 7 (2015). A plaintiff asserting a legal malpractice claim must prove “the existence of a duty, breach of duty, that the defendant’s negligence was the actual and proximate cause of injury, and the ‘nature and extent’ of damages.” *Glaze v. Larsen*, 207 Ariz. 26, 29 ¶ 12 (2004). Even when a plaintiff discovers actual negligence, the plaintiff cannot pursue a legal malpractice action if he has sustained no damages. *Amfac Distribution Corp. v. Miller*, 138 Ariz. 152, 154 (1983).

¶7 The Sams’ legal malpractice claim did not accrue because no final judgment was entered against them. A legal malpractice claim in Arizona accrues only when the appellate process in the underlying litigation is completed by the issuance of a mandate, *Joel Erik Thompson, Ltd. v. Holder*, 192 Ariz. 348, 349 ¶ 2 (App. 1998), when the parties to the underlying litigation enter into a binding settlement agreement, *Althaus v. Cornelio*, 203 Ariz. 597, 600, ¶¶ 11–12 (App. 2002), or when the right to appeal is waived, *see Amfac Distribution Corp.*, 138 Ariz. at 154. The Arizona Supreme Court reiterated in *Taylor v. State Farm Mut. Auto Ins. Co.*, that a legal malpractice action “does not accrue until such time as the judgment in the underlying action becomes final.” 185 Ariz. 174, 178–79 (1996).

¶8 The underlying litigation here was not resolved by a final judgment, a settlement agreement, or by a mandate following appeal. Not only was no judgment entered against the Sams for \$2.1 million, no trial ever occurred. So even though the Tabahas alleged that they had suffered \$2.1 million dollars in damages as a result of the traffic accident, the Sams suffered no damages. As such, no cause of action for legal malpractice accrued and no legal malpractice claim became part of the Sams’ bankruptcy estate.

¶9 Warfield argues that even when a debt is discharged in bankruptcy, the debt is still part of the bankruptcy estate, and a legal malpractice claim can be pursued for that debt. But in the cases Warfield relies on to support his argument, a judgment was entered against the debtor for the amount owed. *See Stanley v. Trinchard*, 500 F.3d 411 418–19 (5th Cir. 2007) (plaintiff’s legal malpractice claim accrued when the judgment entered against him became final); *Camp v. St. Paul Fire & Marine Ins. Co.*, 616 So. 2d 12, 14 (Fla. 1993) (plaintiff obtained judgment that became part of debtor’s bankruptcy estate); *see also Tate v. Hernandez*, 280 S.W.3d 534, 538 (Tex. App. 2009) (plaintiff obtained a judgment for certain medical bills that were discharged in bankruptcy). None of these cases are analogous to the case here because no judgment was entered against the Sams.

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¶10 Warfield nevertheless argues that “it is irrelevant that the Tabaha claims have not yet been reduced to a judgment” because the bankruptcy code defines a claim as a “right to payment, whether or not such right is reduced to judgment[.]” See 11 U.S.C. § 101(5)(A). But Arizona law governs “whether a cause of action accrued to the debtor as of the commencement of the bankruptcy case.” See *In re Segerstrom*, 247 F.3d 218, 224 (5th Cir. 2001). And a legal malpractice claim in Arizona accrues only when the appellate process in the underlying litigation is completed by the issuance of a mandate, *Joel Erik Thompson, Ltd.*, 192 Ariz. at 349 ¶ 2, when the parties to the underlying litigation enter into a binding settlement agreement, *Althaus*, 203 Ariz. at 600, ¶¶ 11–12, or when the right to appeal is waived, *Amfac Distribution Corp.*, 138 Ariz. at 154. None of these situations apply here.

¶11 Warfield argues next that Cheryl Sam suffered \$2,250 in personal damages because she bought some of her property back from the bankruptcy estate. Likewise, Warfield argues that Carleen Sam suffered \$1,001.37 in personal damages because she forfeited part of her tax return to pay creditors. Like the \$2.1 million dollar proof of claims filed by the Tabahas, the Sams’ personal damages occurred after they petitioned for bankruptcy. As a result, the Sams’ personal damages accrued post-petition and are not part of the bankruptcy estate. See *Amfac Distribution Corp.*, 138 Ariz. at 154; see also *In re Witko*, 374 F.3d at 1044. The Sams’ legal malpractice claim for these personal damages, therefore, lies with the Sams and not Warfield. See *In re Holstein*, 321 B.R. at 235 (a cause of action that accrues after the bankruptcy case commences lies with the debtor).

¶12 Warfield argues last that the Sams suffered non-economic damages including stress, anxiety, humiliation, and emotional damages because of Ledbetter’s conduct. He contends that this is not a simple negligence case, and that Ledbetter intentionally bankrupted its own clients to avoid a legal malpractice claim. “Simple legal malpractice resulting in pecuniary loss which in turn causes emotional upset, even with physical symptoms, will not support a claim for damages for emotional distress.” *Reed v. Mitchell & Timbanard, P.C.*, 183 Ariz. 313, 318 (App. 1995). Emotional distress damages, however, are recoverable “if the attorney’s conduct involves fraud, intentional conduct, a willful fiduciary breach or physical contact.” *Id.* at 319.

¶13 Non-economic damages are not recoverable in this case. Contrary to Warfield’s allegation that Ledbetter forced its clients into bankruptcy, the Sams petitioned for voluntary bankruptcy and “the Sams had exclusive authority to accept or reject Ledbetter’s and the bankruptcy

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attorney's advice." *Warfield for Cheryl Sam & Carleen Sam Bankr. Estates*, 2019 WL 6215905, at *3 ¶ 11. Therefore, Ledbetter's conduct did not rise to the level to make non-economic damages recoverable in this case and no genuine issue of material fact supports an award of non-economic damages.

¶14 Even if non-economic damages were recoverable in this case, Warfield did not provide evidence that the Sams suffered the alleged non-economic damages. In his partial summary judgment motion, Warfield alleged that the Sams suffered non-economic damages, "including the stress and anxiety of having the threat of an excess verdict hanging over their heads for years, the humiliation of having filed bankruptcy, the loss of bankruptcy potential for years to come, and the emotional damages from being betrayed by those they should most be able to trust – their lawyers." Aside from this allegation, however, Warfield did not provide any evidence in his statement of facts or exhibits that the Sams suffered from stress, anxiety, or humiliation. No genuine issue of fact exists that the Sams suffered non-economic damages. The trial court properly granted Ledbetter summary judgment.

CONCLUSION

¶15 For the foregoing reasons, we affirm. Ledbetter requests its attorneys' fees incurred on appeal pursuant to A.R.S. § 12-341.01. Ledbetter is not entitled to its attorneys' fees, however, because a legal malpractice action does not arise out of contract for purposes of that statute. *See Barmat v. John and Jane Doe Partners A-D*, 155 Ariz. 519, 524 (1987).



AMY M. WOOD • Clerk of the Court
FILED: AA