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JOSEPH J. NOTOPOULOS *v.* STATEWIDE GRIEVANCE COMMITTEE
(AC 24702)

Foti, Schaller and Dranginis, Js.

Argued April 22—officially released October 5, 2004

(Appeal from Superior Court, judicial district of New Britain, Murray, J.)

Joseph J. Notopoulos, pro se, the appellant (plaintiff).

Christopher L. Slack, assistant bar counsel, for the appellee (defendant).

Opinion

FOTI, J. The plaintiff, Joseph J. Notopoulos, appeals from the judgment of the trial court dismissing in part his appeal from the reprimand issued to him by the defendant, the statewide grievance committee (committee). The committee had affirmed the decision of its reviewing committee, reprimanding the plaintiff for violating rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct. On appeal to this court, the plaintiff claims that the trial court improperly (1) concluded that there was clear and convincing evidence that he violated rule 8.2 (a), (2) concluded that there was clear and convincing evidence that he violated rule 8.4 (4) and (3) applied General Statues § 45a-63 to him. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our disposition of the plaintiff's appeal. The plaintiff, an attorney, filed an application with the Probate Court for the district of West Hartford seeking appointment as the conservator of his mother's estate and person. The court, *Berman, J.*, appointed the plaintiff as conservator of his mother's estate, Denny Fuller as conservator of her person and Carolyn Levine to investigate her care and financial assets. The plaintiff had many disagreements with Judge Berman, including a disagreement regarding the fees of Levine and Fuller and one regarding a do not resuscitate order issued to Fuller. On May 29, 1999, the plaintiff's mother died, and the plaintiff and his brother were appointed coexecutors of her estate. Thereafter, the plaintiff claimed that he did not receive timely notice of the probate decree closing his mother's estate. The plaintiff wrote a letter to Renee Bradley, a member of the court staff, and sent copies of this letter to his brother and his mother's physician.[1]

Bradley forwarded this letter to Judge Berman, who then filed a complaint with the committee, claiming that the plaintiff "attacked [him] and [his] court in a fashion that violates the spirit and letter of the Rules of Professional Conduct." The matter was referred to the grievance panel for the Hartford-New Britain judicial district, which found probable cause that the plaintiff violated rules 3.5, 8.2 and 8.4 of the Rules of Professional Conduct. At a hearing conducted by a reviewing committee, the plaintiff testified and presented evidence, but Judge Berman did not attend, and the committee did not present any additional evidence or call any witnesses. On February 22, 2002, the reviewing committee issued a decision reprimanding the plaintiff, finding, by clear and convincing evidence, that he violated rules 3.5 (3), 8.2 (a) and 8.4 (4) of the Rules of Professional Conduct. On April 18, 2002, this decision was affirmed by the entire committee.

On May 6, 2002, the plaintiff appealed the committee's decision to the Superior Court. In its memorandum of decision dated September 24, 2003, the court sustained

the plaintiff's appeal as to rule 3.5 (3), but dismissed his appeal as to rules 8.2 (a) and 8.4 (4). This appeal followed.

"At the outset, we note that in reviewing a decision of the statewide grievance committee to issue a reprimand, neither the trial court nor this court takes on the function of a fact finder. Rather, our role is limited to reviewing the record to determine if the facts as found are supported by the evidence contained within the record and whether the conclusions that follow are legally and logically correct. . . . Additionally, in a grievance proceeding, the standard of proof applicable in determining whether an attorney has violated the [Rules] of Professional [Conduct] is clear and convincing evidence." (Internal quotation marks omitted.) *Somers* v. *Statewide Grievance Committee*, 245 Conn. 277, 290, 715 A.2d 712 (1998).

I

The plaintiff first claims that the court improperly concluded that there was clear and convincing evidence that he violated rule 8.2 (a) of the Rules of Professional Conduct. Specifically, the plaintiff argues that (1) the committee did not submit any evidence at the hearing and, therefore, it did not meet its burden of proving by clear and convincing evidence that he violated rule 8.2 (a) and (2) rule 8.2 (a) is inapplicable because the plaintiff was not acting in his professional capacity as an attorney when he wrote the letter. We do not agree.

A

The plaintiff first argues that he provided adequate evidence in support of his statements that Judge Berman extorted funds, and that, because this was the only evidence in the record, the committee failed to prove, by clear and convincing evidence, that he violated rule 8.2 (a) of the Rules of Professional Conduct. We do not agree.

We begin by noting that the plaintiff incorrectly states that the evidence he presented at the hearing was the only evidence in the record. While the plaintiff was the only party to present evidence or to testify at the hearing, that does not make his evidence the only evidence in the record, nor does it preclude the committee's finding that there was clear and convincing evidence of the plaintiff's violation of rule 8.2 (a). Specifically, the plaintiff failed to note that the committee already had in the record evidence in support of its decision, including the grievance complaint with the plaintiff's answer, the plaintiff's letter to Judge Berman, Judge Berman's letter to the committee and documents from the probate proceedings upon which the plaintiff based the allegations contained in his letter. Furthermore, we note that the committee, as the fact finder, was free to weigh the plaintiff's evidence and to determine the credibility of his testimony; it was not required to accept

it as the truth. We conclude therefore that the plaintiff's contention that the committee failed to meet its burden of proof is incorrect.

We next conclude that the court did not improperly conclude that there was clear and convincing evidence that the plaintiff violated rule 8.2 (a). Rule 8.2 (a) provides in relevant part: ''A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . .'' Because the committee reasonably could have found that the statements contained in the plaintiff's letter were false in violation of rule 8.2 (a), the plaintiff must now provide evidence of an objective, reasonable belief that his statements were true.[2] See *Burton* v. *Mottolese*, 267 Conn. 1, 49–52, 835 A.2d 998 (2003), cert. denied, U.S. , 124 S. Ct. 2422, 158 L. Ed. 2d 983 (2004). The plaintiff has not met that burden.

The plaintiff provided no factual basis for the statements contained in his letter. His sole argument on appeal is that, at the hearing, he presented evidence of Judge Berman's extortion of money for Levine, who the plaintiff claims was not legally entitled to the funds. Specifically, the plaintiff argues that his evidence proves that Judge Berman ''personally'' profited from this transaction by extracting $150 from Levine's fee as a probate fee. The plaintiff's argument is wholly conclusory and finds no support in the record. Evidence of extracting a probate fee does not prove that Judge Berman personally took these funds. The plaintiff failed to provide any evidence in support of his statement that Judge Berman extorted funds. Consequently, the court reasonably could have concluded that the plaintiff's statements were either knowingly false or made with reckless disregard as to their truth or falsity. Accordingly, the court did not improperly conclude that there was clear and convincing evidence that the plaintiff violated rule 8.2 (a).

B

The plaintiff next claims that the committee improperly applied rule 8.2 (a) to him because he was acting in his individual capacity as a pro se party when he wrote the letter and not in his professional capacity as an attorney. We do not agree.

''The Rules of Professional Conduct bind attorneys to uphold the law and to act in accordance with high standards in both their personal and professional lives.'' *Statewide Grievance Committee* v. *Egbarin*, 61 Conn. App. 445, 450, 767 A.2d 732, cert. denied, 255 Conn. 949, 769 A.2d 64 (2001); see also *Statewide Grievance Committee* v. *Shluger*, 230 Conn. 668, 679, 646 A.2d 781 (1994); Rules of Professional Conduct, Preamble. A rule is applicable solely to attorneys acting in their professional capacity, however, where the language of the

rule or its relevant commentary clearly suggests it. See *Somers* v. *Statewide Grievance Committee*, supra, 245 Conn. 287–88; *Pinsky* v. *Statewide Grievance Committee*, 216 Conn. 228, 236, 578 A.2d 1075 (1990) (by its express terms, rule 4.2 of Rules of Professional Conduct, which proscribes communication between attorney and represented party, applies only when attorney is representing client). Because there is no indication that rule 8.2 (a), either in its language or commentary, is applicable solely to an attorney acting in his or her professional capacity, we cannot conclude that the court improperly applied it to the plaintiff.[3]

II

The plaintiff next claims that the court improperly concluded that there was clear and convincing evidence that he violated rule 8.4 (4), which prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice. Specifically, the plaintiff argues that there was never any ''administration of justice'' involved in this matter. We decline to address the plaintiff's claim because we are not required to review claims that are inadequately briefed. The plaintiff's argument is based on nothing more than mere assertion devoid of any authoritative support or real analysis. ''Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly.'' (Internal quotation marks omitted.) *State* v. *Anderson*, 67 Conn. App. 436, 441 n.8, 787 A.2d 601 (2001). For these reasons, we decline to review the plaintiff's claim.

III

Lastly, the plaintiff claims that § 45a-63, which provides for the discipline of probate judges for improper conduct, did not require him to bring his complaints about Judge Berman before the Council on Probate Judicial Conduct.[4] Specifically, the plaintiff claims that § 45a-63 violates his first amendment right to free speech. Because the plaintiff did not properly preserve his claim, we decline to review it.

''It is well established that generally this court will not review claims that were not properly preserved in the trial court. . . . [The plaintiff] may prevail on a claim of constitutional error not preserved at trial, however, if [he] satisfies the four part standard set forth in *State* v. *Golding*, [213 Conn. 233, 239–40, 567 A.2d 823 (1989)].'' (Internal quotation marks omitted.) *State* v. *Laracuente*, 57 Conn. App. 91, 93–94, 749 A.2d 34, cert. denied, 253 Conn. 923, 754 A.2d 798 (2000); see also Practice Book § 60-5. The plaintiff, however, does not ask this court to review his claim pursuant to *Golding* or the plain error doctrine. See Practice Book § 60-5. ''The [plaintiff's] failure to address the four prongs of *Golding* amounts to an inadequate briefing of the issue and results in the unpreserved claim being deemed

abandoned.'' (Internal quotation marks omitted.) *State* v. *Laracuente*, supra, 94. For these reasons, we decline to review the plaintiff's unpreserved claim.

The judgment is affirmed.

In this opinion DRANGINIS, J., concurred.

[1] The letter states in relevant part: ''Having come face-to-face during conservator proceedings with the rampant financial conflicts of interest that presently afflict the West Hartford Probate Court, I found it prudent to completely distribute the assets of this estate at the earliest practicable moment . . . . Consequently, the assets of this estate have long ago been placed far beyond the venal and avaricious reach of the House of Berman-Levine, where those assets shall forever so remain. . . .

''It is hardly surprising that Mr. Berman is now some [five and one-half] months derelict in his obligation to execute Form PC-263 and close out this estate given the litany of abuses of his office that this family has been compelled to abide.

''Representative but hardly all-inclusive of these abuses is his reprehensible extortion from the [plaintiff], without legal authority, of money for his crony Mrs. Levine on January 25, 1999 resorting to threats to impose upon the undersigned a substantial conservator's cash bond or to dispatch a psychiatrist to our residence to examine my mother and bill the estate, giving no consideration to Medicare fraud since that entity would ultimately absorb the bill; his reckless and irresponsible interference with and impairment of the physician-patient relationship through this endorsement of Mrs. Levine's sleazy, financially motivated and medically discredited attacks on my late mother and my physician who is held in high esteem by his professional peers in the local medical community; his arrogant and contemptuous issuance of a decree in February 1999, which had to be amended at legal expense to this family, granting Mr. Fuller carte blanche authority to terminate my mother's life; and his placement of the financial greed of his cronies above my mother's best interest and welfare with utter contempt for applicable requirements of the Connecticut General Statues to act in her best interest.

* * *

''Because Mr. Berman has become not merely an embarrassment to this community but a demonstrated financial predator of its incapacitated and often dying elderly whose interests he is charged with the protection, in my capacity of a registered West Hartford elector, I am herewith demanding that he submit his resignation immediately rather than wait until compelled to do so next year by his advanced age that has seemingly impaired his ability to conduct his office with the integrity and competence that this community, including its physicians, may rightfully expect and demand.''

[2] The dissent argues that the committee did not meet its burden of proving, by clear and convincing evidence, that the statements contained in the plaintiff's letter were false in violation of rule 8.2 (a), thereby preventing the burden from shifting to the plaintiff to prove that he had an objective, reasonable belief that these statements were, in fact, true. Specifically, the dissent argues that ''[t]he panel assumed, without having considered enough evidence to know, that the plaintiff's statements were false or reckless and thereby found a violation based on mere assumption, rather than on clear and convincing evidence.'' While we agree with the dissent regarding the appropriate shift of burden in this situation, we respectfully disagree with its conclusion that the committee did not meet its burden of proving, by clear and convincing evidence, the falsity of the plaintiff's statements. We conclude that the committee had before it evidence of the falsity of the plaintiff's statements adequate to shift the burden to the plaintiff to prove that he had an objective, reasonable belief that his statements were true. Specifically, we conclude that from Judge Berman's letter to the committee, which stated, inter alia, that the plaintiff ''personally attacked [him] and [his] court in a fashion that violates the spirit and letter of the Rules of Professional Conduct,'' the committee could reasonably have concluded that Judge Berman believed the statements to be false. From this evidence, the committee reasonably could have concluded that the plaintiff's statements were, in fact, false and, therefore, in violation of rule 8.2 (a). As a result, we conclude that the burden now rests with the plaintiff to prove that he had an objective, reasonable belief that his statements were true.

[3] We further note that even if we assume, arguendo, that rule 8.2 (a) applies only to attorneys acting in their professional capacity, it appears

that the plaintiff was acting in such a capacity when he wrote the letter. Specifically, we note that the letter at issue was written on the plaintiff's professional letterhead, which contained his name, address, phone number and, in capital letters, ''ATTORNEY AT LAW.''

[4] The court, in its memorandum of decision, cited to § 45a-63 merely as a recommendation for a proper means by which the plaintiff could make his accusations against Judge Berman.