

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WINDSOR-LAURELWOOD CENTER
BEHAVIORAL MEDICINE,

Plaintiff,

-vs-

WALLER LANDSEN DORTCH &
DAVIS, et al.,

Defendants.

: CASE NO. 1:13 CV 00098

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: ORDER ADOPTING THE
: MAGISTRATE JUDGE'S REPORT AND
: RECOMMENDATION AND GRANTING
: THE DEFENDANT'S MOTION TO
: DISMISS
:
:

UNITED STATES DISTRICT JUDGE LESLEY WELLS

The plaintiff Windsor-Laurelwood Center for Behavioral Medicine filed this legal malpractice action against defendants Waller Lansden Dortch & Davis, LLP ("the Waller Firm"), attorney W. Judd Peak, and attorney Mark Peters. In the first amended complaint, the plaintiff alleges that the defendants, who had previously represented the plaintiff in an employment discrimination case, are liable for fraud and legal malpractice. The plaintiff seeks compensatory and punitive damages. The defendants filed a motion

to dismiss the claim of fraud and the demand for punitive damages. The motion was referred to United States Magistrate Judge Kenneth S. McHargh for a Report and Recommendation. The Magistrate Judge's Report and Recommendation, which is now before this Court, advises that the defendants' motion to dismiss be granted.

The Magistrate Judge rejected the defendants' argument that the plaintiff failed to adequately plead "justifiable reliance," a necessary element of fraud, but he concluded that the fraud claim should nonetheless be dismissed. First, because the plaintiff's allegations of fraud come in relation to actions taken within the scope of the defendants' legal representation of the plaintiff, the fraud claim is duplicative of, and therefore subsumed by, the plaintiff's legal malpractice claim. In the absence of allegations of fraud that are distinct from the malpractice claim, the Magistrate Judge reasoned that under Ohio law the fraud claim must be dismissed. Further, the Magistrate Judge concluded, the plaintiff did not state a plausible fraud claim against defendant Peak, because Mr. Peak did not author the emails upon which the fraud claim is based. The Magistrate Judge also determined that the plaintiff did not state a plausible claim for punitive damages, because the plaintiff failed to allege facts to show the defendants acted with actual malice. The Magistrate Judge accordingly recommended granting the defendants' motion to dismiss.

The plaintiff and the defendants respectively filed timely objections to the Magistrate Judge's Report and Recommendation. This Court has considered *de novo* those portions of the Report and Recommendation to which the parties object, pursuant to Local Rule 72.3(b) and 28 U.S.C. § 636(b)(1). Finding the parties' objections to be without merit and the Report and Recommendation to be without error, the Court

accepts the Magistrate Judge's recommendations. The Report and Recommendation is accordingly adopted in its entirety, and the defendants' motion to dismiss granted.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

Date: April 22 2015