IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SAMY F. BISHAI, M.D. AND
SAMY F. BISHAI, M.D., P.C.,

Appellants,

v. Case No. 5D19-447

THE HEALTH LAW FIRM, P.A.
AND GEORGE F. INDEST III,

Appellees.
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Opinion filed March 27, 2020

Appeal from the Circuit Court
for Seminole County,
Donna L. McIntosh, Judge.

Joseph E. Parrish, of Parrish & Goodman,
PLLC, Tampa, for Appellants.

George F. Indest lll, Lance O. Leider, and
Amanda I. Forbes, of The Health Law Firm,
P.A., Altamonte Springs, for Appellees.

COHEN, J.

Samy F. Bishai, M.D., and Samy F. Bishai, M.D., P.C. ("Bishai PC") (collectively, "Appellants"), appeal the trial court's order striking two counts of their counterclaim against The Health Law Firm, P.A., and George F. Indest III (collectively, "Appellees").

Appellants employed The Health Law Firm to represent Bishai in three separate proceedings instituted by the Department of Health ("DOH").[1] Indest, the owner of The Health Law Firm, assigned the case to an associate, who undertook the representation of Bishai. Following a hearing, the administrative law judge in the DOH proceedings recommended that the Florida Board of Medicine revoke Bishai's medical license. The Florida Board of Medicine adopted the recommendation over Bishai's exceptions. Bishai, represented by a different law firm, appealed the order revoking his license.[2]

During the pendency of that appeal, The Health Law Firm sued Appellants to collect attorney's fees. Appellants answered and raised a counterclaim alleging four counts of legal malpractice: (1) Bishai PC against The Health Law Firm, (2) Bishai PC against Indest, individually, (3) Bishai against The Health Law Firm, and (4) Bishai against Indest, individually.[3]

Appellees moved to strike the counterclaim as a sham and noticed that motion, along with four other motions, for hearing on the trial court's motion calendar, each for 15 minutes. Following the hearing, the trial court struck the two counts of Appellants' counterclaim related to Indest's individual liability for legal malpractice, finding that Bishai was represented only by Indest's associate in the DOH proceedings, not Indest. Accordingly, it ruled that Indest could not be individually liable. The two legal malpractice counts against The Health Law Firm remain pending.

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[1] Bishai PC was not a party to these proceedings.

[2] The First District Court of Appeal per curiam affirmed Bishai's appeal. See Bishai v. Dep't of Health, 252 So. 3d 1180 (Fla. 1st DCA 2018).

[3] Notably, Indest was not a party to The Health Law Firm's action for attorney's fees.

Appellants present a narrow issue for appeal: Whether the trial court erred in striking the two counts against Indest because the hearing on Appellees' motion to strike Appellants' counterclaim as a sham was not noticed as an evidentiary hearing.

We decline to announce a rule that requires every evidentiary hearing be specifically noticed as such. Generally, the evidentiary nature of a hearing is obvious to the parties. Indeed, that was the basis on which the trial court overruled Bishai's objection to the hearing. The trial court reasoned that because Florida Rule of Civil Procedure 1.150 mandates evidentiary hearings on motions to strike sham pleadings, Bishai should have been on notice of the evidentiary nature of the hearing.

However, the procedural history of this case leads us to follow Herranz v. Siam, 2 So. 3d 1105 (Fla. 3d DCA 2009), which is strikingly similar to the facts at issue. In Herranz, the defendant set his motion to strike the complaint as a sham on the trial court's motion calendar without any indication that it would be an evidentiary hearing. Id. at 1107. Likewise, in the instant case, Appellees set their motion for hearing on the trial court's motion calendar without any indication that it was an evidentiary hearing.[4] As the Third District Court of Appeal did in Herranz, we find that the manner in which Appellees noticed the hearing on their motion to strike the counterclaim as a sham violated Appellants' due

[4] Logistically, the parties would be unable to conduct an evidentiary hearing on Appellees' motion to strike pleading as a sham within the noticed fifteen-minute timeframe. While the allowance of short evidentiary hearings at motion calendar varies from judge to judge, most opposing attorneys would not expect that instead of hearing five motions, almost the entirety of the seventy-five-minute hearing would be utilized on just the motion to strike.

process rights.[5] Id. at 1106. Accordingly, we reverse the trial court's order striking Appellants' counterclaim counts against Indest and remand.

REVERSED AND REMANDED.

WALLIS and EDWARDS, JJ., concur.

[5] We note that although the retainer agreement between the parties purports to retain The Health Law Firm, it was signed by Indest individually. Even if Indest had not individually signed the agreement, a professional service corporation does not always provide insulation from personal liability. § 621.07, Fla. Stat. (2017). It may be more appropriate to allow discovery and to address Indest's potential liability at a summary judgment hearing. Other issues, such as the statute of limitations and whether Appellants were procedurally able to bring a counterclaim against Indest, may be appropriately addressed prior to a summary judgment hearing.