DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MARK P. STOPA,

Appellant,

v.

KEVIN C. CANNON, PETER R. McGRATH, and
PETER R. McGRATH, P.A.,

Appellees.

No. 2D20-3035

December 15, 2021

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Pinellas County; Patricia A. Muscarella, Judge.

Mark P. Stopa, pro se.

Peter R. McGrath of Peter R. McGrath, P.A., Orlando, for Appellees.

LaROSE, Judge.

Mark P. Stopa, pro se, appeals an interlocutory order denying his motion to disqualify opposing counsel, Peter R. McGrath and his law firm (collectively, "Attorney McGrath"). We have jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(E) (authorizing appeals of nonfinal

orders "grant[ing] or deny[ing] a motion to disqualify counsel").[1] Because Mr. Stopa lacked standing to seek disqualification, we affirm.

Background

Mr. Stopa claims that he and Kevin C. Cannon had a years-long business relationship flipping real estate. *See generally Flipping, Black's Law Dictionary* 757 (10th ed. 2009) (defining "flipping" as "[t]he legitimate practice of buying something, such as goods, real estate, or securities, at a low price and quickly reselling at a higher price"). This appeal originates from one such deal. Apparently, the deal went awry, leading to acrimony and, eventually, litigation.

Mr. Stopa and Mr. Cannon identified a waterfront property for purchase. Mr. Stopa tells us that he and Mr. Cannon agreed that Mr. Stopa would advance the $500,000 purchase price. Later, Mr. Stopa allegedly reconsidered and requested return of his $500,000.

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[1] Mr. Stopa initiated this action as a petition for writ of certiorari. Rule 9.130(a)(3)(E), however, is the better fit. Thus, we convert Mr. Stopa's petition to an appeal from a nonfinal appealable order. *See* Fla. R. App. P. 9.040(c) ("If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought . . . .").

Mr. Cannon resisted, promising, instead, to refund the money from the future resale proceeds. Allegedly, Mr. Stopa reluctantly agreed.

To make a long story short, Mr. Stopa claims that he never received his money. Attorney McGrath allegedly conspired with Mr. Cannon to have the funds secreted to a limited liability company controlled by Mr. Cannon.

Mr. Stopa sued Attorney McGrath and Mr. Cannon. Attorney McGrath, on behalf of Mr. Cannon, filed a "Notice of Limited Appearance" for the "sole purpose of determining whether, if at all, the Court has acquired, and/or Mr. Cannon has waived, jurisdiction over his person."

Mr. Stopa moved to disqualify Attorney McGrath from representing Mr. Cannon, arguing that because the lawsuit names the pair as codefendants and joint tortfeasors, the limited representation is forbidden under Florida law. The trial court denied the motion without prejudice to Mr. Stopa raising the issue again "as th[e] case proceeds on the merits."

Analysis

We review orders on motions to disqualify counsel for an abuse of discretion. *See Kaplan v. Divosta Homes, L.P.*, 20 So. 3d

459, 461 (Fla. 2d DCA 2009). Under this standard, Mr. Stopa bears a difficult burden. *See Moriber v. Dreiling*, 95 So. 3d 449, 453 (Fla. 3d DCA 2012) ("On motions to disqualify, this standard is especially difficult to meet because the disqualification of counsel is left to the sound discretion of the trial court, as long as such discretion is exercised within the confines of the applicable law and the trial court's express or implied findings are supported by competent substantial evidence." (citing *Applied Digit. Sols., Inc. v. Vasa*, 941 So. 2d 404, 408 (Fla. 4th DCA 2006))). This is so because "[d]isqualification of a party's counsel is an extraordinary remedy and should be resorted to sparingly." *Vick v. Bailey*, 777 So. 2d 1005, 1007 (Fla. 2d DCA 2000) (citing *Carnival Corp. v. Romero*, 710 So. 2d 690 (Fla. 5th DCA 1998)).

Unquestionably, "disqualification impinges on a party's right to employ a lawyer of choice . . . . Since the remedy of disqualification strikes at the heart of one of the most important associational rights, it must be employed only in extremely limited circumstances." *Coral Reef of Key Biscayne Devs., Inc v. Lloyd's Underwriters at London*, 911 So. 2d 155, 157 (Fla. 3d DCA 2005) (citations omitted). We must also take care to guard against the use

of disqualification motions for iniquitous strategic purposes. *See Applied Digit. Sols., Inc.*, 941 So. 2d at 407 ("Motions for disqualification are generally viewed with skepticism because disqualification of counsel impinges on a party's right to employ a lawyer of choice, and such motions are often interposed for tactical purposes.").

The Florida Supreme Court has explained the factors courts must examine in "conflict-of-interest cases" involving the disqualification of opposing counsel:

> [O]ne seeking to disqualify opposing counsel [i]s required to show that (1) an attorney-client relationship existed, thereby giving rise to an irrefutable presumption that confidences were disclosed during the relationship, and (2) the matter in which the law firm subsequently represented the interest adverse to the former client was the same or substantially related to the matter in which it represented the former client.

State Farm Mut. Auto. Ins. Co. v. K.A.W., 575 So. 2d 630, 633 (Fla. 1991) (first citing *Ford v. Piper Aircraft Corp.*, 436 So. 2d 305, 305 (Fla. 5th DCA 1983); and then citing *Sears, Roebuck & Co. v. Stansbury*, 374 So. 2d 1051, 1051 (Fla. 5th DCA 1979)).

Mr. Stopa's motion failed the first *K.A.W.* factor; he cannot show the existence of a client-lawyer relationship between him and

Attorney McGrath. Thus, Mr. Stopa lacks standing. *See THI Holdings, LLC v. Shattuck*, 93 So. 3d 419, 424 (Fla. 2d DCA 2012) ("[A] party . . . does not have standing to seek disqualification where . . . there is no privity of contract between the attorney and the party claiming a conflict of interest." (first omission in original) (quoting *Cont'l Cas. Co. v. Przewoznik*, 55 So. 3d 690, 691 (Fla. 3d DCA 2011))); *see also Anderson Trucking Serv., Inc. v. Gibson*, 884 So. 2d 1046, 1050-51 (Fla. 5th DCA 2004) (concluding that a party did not have standing to seek to disqualify opposing counsel who had never previously represented that party); *cf. Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1081 n.2 (Fla. 2d DCA 2009) ("Ordinarily, standing is a threshold issue that should be disposed of before addressing the merits of the case.").

In *THI Holdings, LLC*, 93 So. 3d at 421, the personal representative of an estate sued a nursing home and various other defendants for negligence. The estate opposed the pro hac vice admission of the nursing home's counsel because counsel had previously represented two of the other named defendants. *Id.* We were unpersuaded:

> [A]s a matter of undisputed fact, there [was] no privity between the Estate and [the nursing home's counsel]. And while there is a limited exception to this standing rule for parties who "stand in the shoes" of a former client, *see* [*K.A.W.*, 575 So. 2d at 632-33], the Estate cannot demonstrate that it has any shoes whatsoever in which to stand to seek disqualification of [the nursing home's counsel]. Thus, even if potential conflicts of interest were properly considered by the trial court in making a pro hac vice admission determination, the Estate had no standing to raise those conflicts and thus could not use them as a basis to seek the denial of [the nursing home counsel]'s admission.

Id. at 424.

Our record reflects that Mr. Stopa lacked privity or, for that matter, a previous attorney-client relationship with Attorney McGrath. *See State v. Rabin*, 495 So. 2d 257, 260 (Fla. 3d DCA 1986) ("The burden of establishing the existence of an attorney-client relationship rests with the claimant."); *see also K.A.W.*, 575 So. 2d at 633 (holding that once the party seeking disqualification establishes the existence of an attorney-client relationship, that party must then show that the matter in which the law firm subsequently represented the interest adverse to the former client is the same matter or substantially related to the matter in which it represented the former client).

As in *THI Holdings, LLC*, the potential conflict, here, is between Mr. Cannon and Attorney McGrath. Mr. Stopa has no dog in that fight. Indeed, if Mr. Cannon wants Attorney McGrath's continued legal services despite a purported conflict, Mr. Stopa has not explained how he, Mr. Stopa, is harmed. *See K.A.W.*, 575 So. 2d at 632 ("The purpose of the requirement that an attorney maintain client confidences is twofold. It advances the interests of the client by encouraging a free flow of information and the development of trust essential to an attorney-client relationship. However, it also serves a second purpose fundamental to a fair adversary system. Our legal system cannot function fairly or effectively if an attorney has an informational advantage in the form of confidences gained during a former representation of his client's current opponent." (citations omitted)). Because Mr. Stopa lacks standing to seek disqualification of Attorney McGrath, his efforts to do so fail. *See id.*; *see also Anderson Trucking Serv.*, 884 So. 2d at 1050-51 (concluding that a party lacked standing to seek disqualification of opposing counsel who had never previously represented that party).

Mr. Stopa cites various authorities to support his argument. He urges that the alleged conflict between Mr. Cannon and Attorney

McGrath is so egregious that it cannot be waived and, accordingly, Attorney McGrath must be disqualified. *See Fla. Bar v. Brown,* 978 So. 2d 107 (Fla. 2008)*; Fla. Bar v. Feige,* 596 So. 2d 433 (Fla. 1992)*; Fla. Bar v. Ward,* 472 So. 2d 1159 (Fla. 1985). Mr. Stopa's reliance on these cases is misplaced. Each involved Bar disciplinary proceedings, not motions to disqualify counsel.

In *Feige*, 596 So. 2d at 434, an attorney represented himself and his client in a suit by his client's ex-husband for the return of alimony payments made after Mr. Feige's client had remarried. Mr. Feige had not represented the client in the divorce proceedings but was aware of the provision in the couple's marital settlement agreement requiring the ex-husband to pay alimony until the ex-wife, Mr. Feige's client, died or remarried. *Id.* His client was aware of the conflict in Mr. Feige's representing himself and her and agreed to waive the conflict. However, the Florida Supreme Court concluded that Mr. Feige had "defrauded" the ex-husband of thousands of dollars and held that the conflict was the type that could not be waived and suspended him for two years. *Id.* at 435.

In *Ward*, 472 So. 2d at 1159-60, an attorney was suspended from practicing law for thirty days after preparing a fraudulent no-

lien affidavit on behalf of the sellers that failed to disclose a pending appeal in a foreclosure action. This duplicity was compounded when Mr. Ward subsequently represented himself and the sellers in an action brought by the buyers. *Id.* at 1162 ("Mr. Ward's appearance as the attorney for himself, his client, . . . and Mr. Ward's professional association constitutes so fundamental a conflict of interest that the conduct could not be condoned even with disclosure to [the client].")

In *Brown*, 978 So. 2d at 113-14, a Florida attorney was suspended for ninety days for multiple violations of the rules of professional conduct, where she had a conflict of interest in representing both a driver and passenger on speeding and license suspension charges and the passenger on a charge of being a felon in possession of firearm found in the vehicle's center console.

In each disciplinary proceeding, the attorney, in one way or another, flouted the Rules Regulating the Florida Bar, engaged in ongoing conflicts of interest with an existing or prior client, perpetrated a fraud, or failed to behave with candor toward the tribunal. The attorneys represented clients on the substantive merits of their cases while the attorneys' allegiances lay elsewhere.

And, of course, their actions adversely affected their ability to practice law in Florida.

Ours is not a disciplinary case examining Attorney McGrath's fitness to practice law. Additionally, Mr. Cannon has engaged Attorney McGrath for a limited purpose. Personal jurisdiction has not been established. The merits of the dispute are yet to be reached.[2] Because Mr. Stopa's Bar discipline cases are distinguishable, his contention that precedent demands disqualification is wrong. In fact, the *Ward* court recognized the risk that arises in situations similar to that here between Mr. Cannon and Attorney McGrath:

> We would note that respondent's representation of himself and of his client . . . arises from circumstances not uncommon in the practice of law. Situations can and do arise in which attorney and client are jointly sued on matters growing out of the representation and, despite the fundamental conflict of interest inherent in such a

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[2] Attorney McGrath's limited representation on this preliminary matter does not seem to "clearly . . . call in question the fair or efficient administration of justice." *Comment to R. Regulating Fla. Bar 4-1.7* ("Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question."). Mr. Stopa makes no compelling argument to the contrary.

> case, the client [may] insist[] that the attorney continue in representation as long as possible.

Ward, 472 So. 2d at 1162.

Despite any conflict of interest that may exist between Mr. Cannon and Attorney McGrath, Mr. Stopa is a stranger to their attorney-client relationship. Their issue is of no concern to Mr. Stopa.

Conclusion

Mr. Stopa lacks standing to seek disqualification of Attorney McGrath. We affirm the trial court's order.

Affirmed.

NORTHCUTT and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.