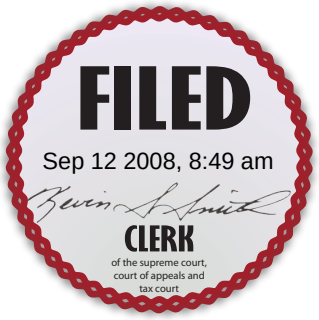

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IN THE
COURT OF APPEALS OF INDIANA

EARL LEE RUSSELBURG,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 82A01-0803-CV-131
	)	
IVAN A. ARNAEZ and	)	
JOHN D. CLOUSE,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-0601-MI-33

September 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Earl Lee Russelburg appeals the trial court's judgment in favor of Ivan Arnaez and John Clouse following a bench trial. Russelburg presents a single issue for our review, namely, whether the trial court's judgment is contrary to law.

We affirm.

FACTS AND PROCEDURAL HISTORY

In Russelburg v. Arnaez, No. 82A05-0611-CV-682 (Ind. Ct. App. 2007), trans. denied, we stated the facts and procedural history as follows:

> In 1986, Russelburg was convicted of Criminal Recklessness, three counts of Attempted Murder, and Robbery following a jury trial. The trial court sentenced Russelburg to a total executed sentence of 146 years. On direct appeal, our supreme court affirmed his convictions and sentence. See Russelburg v. State, 529 N.E.2d 1193 (Ind. 1988).
>
> On February 10, 2005, Russelburg retained the services of Arnaez and Clouse to file a motion to reduce sentence. Russelburg directed his attorney-in-fact, Greg Newswanger, to pay the retainer using Russelburg's funds. During a hearing on Russelburg's motion, the Prosecutor objected to the motion to reduce sentence, and the trial court denied the motion. On direct appeal, this court affirmed the denial of the motion to reduce sentence. See Russelburg v. State, No. 82A01-0504-CR-181 (Ind. Ct. App. October 20, 2005) ["Russelburg I"].
>
> On January 18, 2006, Russelburg filed a complaint against Arnaez and Clouse alleging legal malpractice. Arnaez and Clouse filed a motion for summary judgment alleging that Russelburg did not pay his own attorney's fees and, therefore, that he did not have standing to sue. The trial court granted the summary judgment motion in favor of Arnaez and Clouse.

On appeal from the trial court's grant of summary judgment, we held that summary judgment was inappropriate because Russelburg had standing to sue. On

remand, following a bench trial, the trial court entered judgment in favor of Arnaez and Clouse.[1] This appeal ensued.

DISCUSSION AND DECISION

Russelburg contends that the trial court's judgment is "clearly erroneous." A party who had the burden of proof at trial appeals from a negative judgment and will prevail only if it establishes that the judgment is contrary to law. Helmuth v. Distance Learning Sys. Ind., Inc., 837 N.E.2d 1085, 1089 (Ind. Ct. App. 2005). A judgment is contrary to law when the evidence is without conflict and all reasonable inferences to be drawn from the evidence lead to only one conclusion, but the trial court reached a different conclusion. Id. When a trial court enters a general judgment, as is the case here,[2] the judgment will be affirmed if it can be sustained upon any legal theory consistent with the evidence. Id. "In making this determination, we neither reweigh the evidence nor judge the credibility of witnesses." Id. "Rather, we consider only the evidence most favorable to the judgment together with all reasonable inferences to be drawn therefrom." Id.

Initially, we note that the parties frame their arguments on appeal as though the trial court granted Arnaez and Clouse's motion for judgment on the evidence. The basis for that motion was Russelburg's failure to present expert testimony in support of his

[1] At the close of Russelburg's case, Arnaez and Clouse moved for judgment on the evidence, and the trial court took that motion under advisement.

[2] Russelburg contends that the trial court entered findings and conclusions and asks that we apply a Trial Rule 52(A) standard of review. But our review of the trial court's judgment entry reveals that it is, in essence, a general judgment. The trial court did not make any factual findings or conclusions thereon. Rather, in its judgment, the trial court merely notes that Russelburg did not present expert testimony at trial or otherwise satisfy his burden of proof.

legal malpractice claim. Expert testimony is usually required in a legal malpractice action to establish the standard of care by which the defendant attorney's conduct is measured. Oxley v. Lenn, 819 N.E.2d 851, 856 (Ind. Ct. App. 2004). "There is no need for expert testimony when the question is one within the common knowledge of the community as a whole or when 'an attorney's negligence is so grossly apparent that a layperson would have no difficulty in appraising it.'" Hacker v. Holland, 570 N.E.2d 951, 953 n.2 (Ind. Ct. App. 1991).

Here, the record does not show whether the trial court expressly ruled on that motion, but in Paragraph 1 of its Judgment Entry the trial court implies that Russelburg was required to present expert testimony in support of his claim. The alleged negligence committed by Arnaez and Clouse, namely, that they should not have filed an appeal on Russelburg's behalf, is not, by any means, "so grossly apparent that a layperson would have no difficulty in appraising it." See id. And whether the appeal should have been filed, and what issues should have been raised, is not within the common knowledge of the community as a whole. See id. Indeed, the particulars of appellate practice are not within the common knowledge of a large segment of the legal community. Accordingly, to the extent that the trial court concluded that Russelburg was required to present expert testimony, there was no error.

To prove a legal malpractice claim, a plaintiff-client must show (1) employment of an attorney (duty); (2) failure by the attorney to exercise ordinary skill and knowledge (breach); (3) proximate cause (causation); and (4) loss to the plaintiff (damages). Douglas v. Monroe, 743 N.E.2d 1181, 1184 (Ind. Ct. App. 2001). Here, the trial court

found that Russelburg had not sustained his burden of proof on his legal malpractice claim. On appeal, Russelburg contends that the evidence is sufficient to prove his claim. But Russelburg's contentions amount to a request that we reweigh the evidence, which we will not do. See id. The trial court, as the trier of fact, was entitled to find Russelburg's evidence not credible. The trial court did not err when it entered judgment in favor of Arnaez and Clouse.

Affirmed.

ROBB, J., and MAY, J., concur.