STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2041

Thomas Sullivan,
as guardian and conservator for Marc L. Beeman,
Appellant,

vs.

Randy F. Boggio,
Respondent.

Filed September 3, 2019
Affirmed
Reyes, Judge

St. Louis County District Court
File No. 69DU-CV-17-607

James W. Balmer, Falsani, Balmer, Peterson & Balmer, Duluth, Minnesota (for appellant)

Paul C. Peterson, William L. Davidson, João C.J.G. de Medeiros, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Tracy M. Smith, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant challenges the district court's summary-judgment dismissal of his legal-malpractice claim against respondent, arguing that (1) the claim is not barred by collateral

estoppel and (2) respondent owed appellant a duty of care. Respondent cross-appeals, arguing that appellant's action is barred by the statute of limitations. We affirm.

FACTS

In 2009, Marc Beeman and his then-wife Cheryl Beeman brought a medical-malpractice suit in connection with an injury that Mr. Beeman suffered after a medical procedure. In May 2010, the probate court appointed Ms. Beeman as Mr. Beeman's guardian and conservator. The Beemans later obtained a settlement, which the probate court approved. The probate court allowed $309,500 of the settlement to be set aside for the Beemans to purchase a home in joint tenancy to better suit Mr. Beeman's needs. Ms. Beeman retained respondent and cross-appellant, attorney Randy F. Boggio, to represent her for the establishment of a special-needs trust. Mr. Beeman had separate counsel. The probate court established the special-needs trust in January 2011, funded the trust with the rest of the settlement, and appointed Ms. Beeman as trustee.

In 2014, the Beemans separated. The probate court discharged Ms. Beeman as guardian and conservator and appointed appellant and cross-respondent, Thomas Sullivan, as the successor guardian, conservator, and trustee for the special-needs trust. The Beemans dissolved their marriage and agreed to release all claims between them, including claims related to the special-needs trust and the conservatorship. As part of the divorce settlement, Ms. Beeman received $60,000 from the sale of the house.

Sullivan, on behalf of Mr. Beeman, filed suit against Boggio, claiming $60,000 in damages as a result of Ms. Beeman obtaining a share of the proceeds from the sale of the home. Sullivan also claimed that Ms. Beeman converted $27,500 of the special-needs trust

to herself. Sullivan claimed that Boggio improperly advised the Beemans to purchase the home in joint tenancy instead of advising them to purchase it as a trust asset.

Boggio moved for summary judgment, which the district court initially denied to allow for further discovery. After discovery, Boggio again moved for summary judgment. The district court granted the motion on the grounds that Sullivan's action was an impermissible collateral attack on the probate court orders and that Boggio owed no duty of care to Mr. Beeman. This appeal follows.

D E C I S I O N

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P 56.01. "We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We view the evidence in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[T]here is no genuine issue of material fact . . . when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue." *Id.* at 71. For summary judgment, the nonmoving party may not rely upon mere averments in the pleadings or unsupported allegations, but must come forward with specific facts to

satisfy its burden. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

As an initial matter, Sullivan contends that the district court lacked authority to revise its prior summary-judgment order. But a district court is not firmly bound by its own prior decisions and has discretion to reconsider, clarify, modify, and even reverse its own prior rulings. *Emp'rs Nat. Ins. Co. v. Breaux*, 516 N.W.2d 188, 191 (Minn. App. 1994), *review dismissed* (Minn. Sept. 16, 1994). The district court initially denied Boggio's summary-judgment motion to allow for discovery based on the potential for fraud or misrepresentation on the probate court although it found Sullivan's evidence "to be extremely weak." After discovery, however, the district court found Sullivan's evidence to be "non-existent." The district court determined that Sullivan "rest[ed] solely on averments" and granted Boggio's second motion for summary judgment. The district court did not err by entering summary judgment following further development of the record.

I. Summary judgment is proper because Sullivan's legal-malpractice claim is an impermissible collateral attack on the probate court's orders.

Sullivan argues that this matter cannot be barred by collateral estoppel because the probate court matter is completely different from the present legal-malpractice matter. Sullivan's argument is misguided.

Neither party raised the issue of collateral estoppel to the district court. And the district court did not determine that Sullivan's claim is barred by collateral estoppel. The district court concluded that Sullivan's action was an impermissible *collateral attack* on the probate proceedings, based on *Stumer v. Hibbing Gen. Hosp.*, 65 N.W.2d 609 (Minn.

1954). Because we do not consider matters not argued to and considered by the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), Sullivan's collateral-estoppel argument is forfeited.

Sullivan contends that whether this argument "is characterized as collateral estoppel or impermissible collateral attack is unimportant." But these are two distinct doctrines. A collateral attack is an "attack on a judgment entered in a different proceeding." *Bode v. Minn. Dept. of Nat. Resources*, 612 N.W.2d 862, 866 (Minn. 2000) (citing *Black's Law Dictionary* 472 (7th ed. 1999). Collateral estoppel prohibits a party from relitigating issues that have already been adjudicated. *Barth v. Stenwick*, 761 N.W.2d 502, 507 (Minn. App. 2009).

The only argument Sullivan advances that this is not an impermissible collateral attack is that it "is a tort action against an attorney who was not a party to the probate proceeding involving issues never raised in those probate proceedings." An assignment of error based on "mere assertion" and unsupported by argument or authority is not properly before this court. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Sullivan's collateral-attack argument is also forfeited.

Finally, even on the merits, Sullivan's argument fails. If a probate court has jurisdiction over a matter, its rulings are not subject to collateral attacks. *Bengtson v. Setterberg*, 35 N.W.2d 623, 629 (Minn. 1949). This rule applies to probate court orders involving conservatorships and guardianships. *Greer v. Prof'l Fid. Inc.*, 792 N.W.2d 120, 127 (Minn. App. 2011). In *Stumer*, the plaintiff brought an action against the attorneys involved in his probate proceedings alleging fraud and seeking to recover attorney fees. 65

N.W.2d at 610-11. The supreme court held that the malpractice action was an impermissible collateral attack on the probate action because the plaintiff completely ignored the judgment and decree of the probate court and sought recovery of specific sums of money allowed to the defendants by the probate decree. *Id.* at 612.

Here, Sullivan seeks damages based on the purchase of the marital home in joint tenancy, rather than by the trust, an action approved by the probate court. He also claims damages from the accounting Ms. Beeman provided as trustee, which the probate court also approved. As in *Stumer*, Sullivan is impermissibly seeking recovery of funds based on actions that were specifically approved by the probate court. The district court appropriately granted summary judgment on Sullivan's legal-malpractice claim.

II. Summary judgment is appropriate because Boggio did not have an attorney-client relationship with Mr. Beeman.

Sullivan argues that Boggio owed a duty of care to Mr. Beeman because Mr. Beeman was an intended beneficiary of his services. He also contends that it was foreseeable that Boggio's negligence could harm Mr. Beeman. We disagree.

In order to establish a claim for legal malpractice, a plaintiff must demonstrate (1) an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that those acts proximately caused his damages; and (4) that, but for the attorney's conduct, the plaintiff would have been successful in his action. *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn. 2018). An attorney is only liable for malpractice to a person with whom the attorney shares an attorney-client relationship. *Marker v. Greenberg*, 313 N.W.2d 4, 5 (Minn. 1981).

One exception is that a third party may bring a legal-malpractice action against an attorney when the third party is a direct and intended beneficiary of the lawyer's services. *Id.* A third-party may bring a legal-malpractice action when the client's sole purpose is to benefit the third party directly and the attorney's negligence caused the beneficiary to suffer a loss. *Admiral Merch. Motor Freight, Inc. v. O'Connor & Hannan*, 494 N.W.2d 261, 266 (Minn. 1992). The requirement that the transaction must directly benefit the third party "serves to prevent nonclients who receive incidental benefits from the representation" from bringing malpractice claims. *McIntosh Cty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 547 (Minn. 2008). Further, the attorney must be aware that the client's intent is to benefit the third party. *Id.* at 548. This exception is "very limited," and, especially in probate proceedings, "this stringent restriction is a necessity to prevent a myriad of causes of action." *Marker*, 313 N.W.2d at 5. Beneficiaries of a trust cannot sue the trustee's attorney because they are only "incidental beneficiaries" of the attorney's services. *Goldberger v. Kaplan, Strangis and Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. App. 1994) (citation omitted), *review denied* (Minn. Sept. 28, 1995).

We note that Sullivan fails to analyze how Mr. Beeman meets the third-party-beneficiary exception under the relevant caselaw above. Accordingly, this argument is forfeited. *Schoepke*, 187 N.W.2d at 135. Nonetheless, his argument fails on the merits.

The district court granted summary judgment on this issue because no evidence indicated that Mr. Beeman was a direct and intended beneficiary of Boggio's attorney-client relationship with Ms. Beeman. In the guardianship and conservatorship proceedings, a court-appointed attorney, Michael Lien, represented Mr. Beeman, and Jennifer Carey

represented Ms. Beeman. When the probate court approved the settlement on December 7, 2010, Lien continued to represent Mr. Beeman. Boggio filed a certificate of representation on December 10, 2010, identifying himself as co-counsel with Carey for Ms. Beeman. Boggio asserts that Ms. Beeman retained him for the sole purpose of representing her as trustee of the special-needs trust, which Mr. Beeman does not dispute.

Even viewing the facts in the light most favorable to Sullivan, we conclude there is no issue of fact as to whether Mr. Beeman was a direct and intended beneficiary of Boggio and Ms. Beeman's attorney-client relationship. Ms. Beeman retained Boggio to represent her interests as trustee of the special-needs trust. The record does not indicate that Ms. Beeman retained Boggio solely to benefit Mr. Beeman. While Mr. Beeman may have received incidental benefits from Boggio's representation of Ms. Beeman, this is insufficient to meet the third-party-beneficiary exception. *See Goldberger*, 534 N.W.2d at 739.[1]

Because either of the above issues is dispositive of the entire appeal, we decline to address Boggio's argument on cross-appeal.

Affirmed.

[1] The second part of the third-party-beneficiary analysis is to consider the *Lucas* factors, which includes considering the foreseeability of harm to Mr. Beeman, among other factors. *Marker*, 313 N.W.2d at 5. But because Mr. Beeman is not a direct and intended beneficiary, we need not consider these factors. *See McIntosh*, 745 N.W.2d at 549 (declining to apply *Lucas* factors when respondents failed to show that they were direct and intended beneficiaries).