STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0112

Steven Lee Mittelstaedt, et al.,
Appellants,

vs.

Maxim Management, LLC,
Defendant,

William H. Henney,
Respondent,

John W. Prosser,
Defendant.

Filed August 14, 2023
Reversed and remanded
Segal, Chief Judge

St. Louis County District Court
File No. 69VI-CV-17-451

Charles J. Lloyd, Adam C. Hagedorn, Livgard, Lloyd & Christel PLLP, Minneapolis, Minnesota (for appellants)

William H. Henney, Chanhassen, Minnesota (self-represented respondent)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant Steven Lee Mittelstaedt sued respondent-attorney William H. Henney alleging breach of fiduciary duty as part of a multi-claim lawsuit involving a business dispute. In the claim against Henney, Mittelstaedt alleged that he and Henney had an attorney-client relationship and that Henney breached fiduciary duties owed to Mittelstaedt by failing to disclose Henney's financial and business interest in a lease agreement involving Mittelstaedt's business and by drafting an agreement that was objectively unfair to Mittelstaedt.

This case has already been before the Minnesota Supreme Court and is now back before us on Mittelstaedt's appeal from the district court's second judgment dismissing his claim against Henney. The current judgment is based on the district court's determination that expert testimony is necessary to establish a prima facie case on the first two elements of Mittelstaedt's breach-of-fiduciary-duty legal-malpractice claim (the fiduciary-duty claim)—the existence of an attorney-client relationship and a breach of the standard of conduct established by that relationship. Based on that determination, the district court dismissed the claim against Henney because Mittelstaedt did not provide an expert affidavit to establish a prima facie case on those elements as required by Minn. Stat. § 544.42 (2022).

The district court, however, applied an incorrect legal standard in assessing whether expert testimony is required. The standard applied by the district court—the medical-malpractice standard—was expressly rejected by the Minnesota Supreme Court in the prior appeal of this case. *Mittelstaedt v. Henney*, 969 N.W.2d 634, 640 (Minn. 2022)

(*Mittelstaedt II*). Applying the correct legal standard to the particular facts presented here, we conclude that expert testimony is not required to establish a prima facie case concerning the first two elements of the fiduciary-duty claim. We therefore reverse the dismissal and remand the case to the district court.

FACTS

This dispute arises out of various business dealings between the parties and their business entities. Mittelstaedt runs a trucking operation. He owns multiple businesses related to that operation, including Wide Open Services LLC and appellant Iron Range Repair & Storage LLC. In February 2012, Mittelstaedt entered into two leases with Beacon Bank, which owned a property in Virginia, Minnesota (the Virginia property) where Mittelstaedt relocated his trucking operation and home.[1] Both leases contained an option to purchase and an acknowledgement that Mittelstaedt made payments to obtain the options. The two option payments totaled $60,000 and were put into an escrow account.

After Mittelstaedt relocated to the Virginia property, the sole customer of Mittelstaedt's trucking operation filed for bankruptcy and shut down its operations. As a result, Mittelstaedt was unable to make the lease payments. Beacon Bank informed Mittelstaedt that it had a buyer approved to purchase the Virginia property and offered to return the option payments if he cooperated with the sale, but Mittelstaedt felt that he had invested too much in the property and still hoped to eventually purchase it.

[1] The Virginia property is part residential and part commercial; one of the leases covered the residential portion of the property and the other lease covered the commercial portion.

In an effort to remain on the Virginia property, Mittelstaedt asked John Prosser to purchase the property from Beacon Bank and then continue leasing it to Mittelstaedt with an option to purchase. Mittelstaedt originally met Prosser at a trade show for custom vehicles around 2008. After meeting, the two became friends and "did quite a bit of business together." Around 2010, Prosser introduced Mittelstaedt to Henney, his attorney. According to Mittelstaedt, Henney subsequently provided legal advice to him and his businesses regarding an insurance claim and Mittelstaedt's divorce.

In March 2015, Prosser purchased the Virginia property from Beacon Bank. Prosser then assigned the property to Maxim Management LLC—a company that he and Henney created to own and manage the Virginia property as equal partners. The following month, Maxim Management leased the property to Mittelstaedt's company, Wide Open Services. Henney represented Prosser during the lease negotiations and drafted the lease and all related documents; Mittelstaedt was represented by separate counsel. Henney did not disclose to Mittelstaedt or his counsel that Henney was a 50% owner of Maxim Management. Henney signed the lease on behalf of Maxim Management and Mittelstaedt signed and personally guaranteed the lease on behalf of Wide Open Services. The lease contained an option to purchase, which Mittelstaedt claims to have paid $25,000 to obtain. Additionally, as part of the agreement, Mittelstaedt and his now former wife conveyed an adjacent property to Maxim Management. Around this time, Mittelstaedt and Prosser also established a joint business venture in which Mittelstaedt repaired used trucks and Prosser then resold them.

By the end of 2015, Mittelstaedt struggled to make the payments due under the lease and sought to renegotiate. The result was a second lease, which became effective in January 2016. Henney again signed the lease on behalf of Maxim Management and Mittelstaedt again signed and personally guaranteed the lease, but this time on behalf of Iron Range Repair & Storage. The second lease lowered the monthly rent but, allegedly unbeknownst to Mittelstaedt, did not contain an option to purchase. Mittelstaedt believed that his share of the profits from the joint venture satisfied the lower rent due under the second lease, and as a result stopped making rent payments. Prosser, however, asserted that Mittelstaedt was in default.

Maxim Management subsequently brought an eviction action against Mittelstaedt and Iron Range Repair & Storage. In response, Mittelstaedt sued Maxim Management, Henney, and Prosser.[2] Mittelstaedt alleged a breach-of-fiduciary-duty claim against both Henney and Prosser, two claims of fraud related to the lease agreements for the Virginia property, and two claims related to payments that Mittelstaedt alleged he was owed as part of the joint venture.

Henney, as counsel for himself, Prosser, and Maxim Management, moved for summary judgment. The district court granted the motion for summary judgment in part and dismissed the fiduciary-duty claim against Henney and the two fraud claims. As a

[2] The complaint also alleged claims against Prosser Holdings LLC, a company owned by Prosser that may have been involved in the joint venture. All of the claims filed against Prosser Holdings also named Prosser as a defendant and are not at issue on appeal; for simplicity, we refer only to Prosser when summarizing those claims.

result, three claims remained: the breach-of-fiduciary-duty claim against Prosser and the two claims related to the joint venture between Prosser and Mittelstaedt.

The district court consolidated Mittelstaedt's remaining claims with the eviction action and held a court trial. Following trial, the district court determined that (1) Mittelstaedt and Prosser "may have breached their fiduciary duties to each other, [but] neither party has proved any damages flowing from that breach aside from [damages related the joint venture]"; (2) Mittelstaedt was owed $275,328.28 from the joint venture; and (3) Mittelstaedt and Iron Range Repair & Storage were not in default of the second lease at the time the eviction action was filed, but did owe $272,421 under the terms of the lease. The district court then offset the amounts and awarded Mittelstaedt and Iron Range Repair & Storage $2,907.28 in damages. Mittelstaedt appealed.

Mittelstaedt I – The Initial Court of Appeals Opinion

On appeal, Mittelstaedt argued, as relevant here, that the district court erred in granting summary judgment on the fiduciary-duty claim against Henney.[3] This court affirmed, but on a different ground than the district court. The district court granted summary judgment based on the determinations that Mittelstaedt was represented by separate counsel during the negotiation of the first lease, did not offer material evidence that "Henney took unfair advantage of [the parties'] professional relationship," and generally "failed to provide a factual basis for [the] claim against Defendant Henney." This

[3] Mittelstaedt also raised arguments related to the dismissal of the fraud claims and various findings from the court trial. This court rejected those arguments and the supreme court denied review on those issues. Accordingly, only the fiduciary-duty claim against Henney remains at issue.

court did not reach the merits of the decision, but instead determined that summary judgment was proper because Mittelstaedt was required to file expert affidavits under Minn. Stat. § 544.42 but failed to do so. *Mittelstaedt v. Henney*, 954 N.W.2d 852 (Minn. App. 2021) (*Mittelstaedt I*), *rev'd*, 969 N.W.2d 634 (Minn. 2022).

Under Minn. Stat. § 544.42, subd. 2, when "expert testimony is to be used by a party to establish a prima facie case [of negligence or malpractice against a professional], the party must" serve the opposing party with an affidavit of expert review that complies with certain statutory requirements. When an expert affidavit is required for a claim and the party does not satisfy the requirements of Minn. Stat. § 544.42, the district court must, upon motion, dismiss the claim. Minn. Stat. § 544.42, subd. 6. This court explained that the statute "generally requires expert testimony to establish a prima facie case of legal malpractice." *Mittelstaedt I*, 954 N.W.2d at 860. We reasoned that the expert-affidavit requirement set forth in the statute is applicable to a breach-of-fiduciary-duty claim against an attorney because such a claim is equivalent to a legal-malpractice claim. *Id.* at 860-61. Citing *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 191 (Minn. 1990), this court commented that "attorney-misconduct cases that do not require expert testimony are 'rare and exceptional.'" *Id.* at 863. Finally, this court concluded that, "because this is not a rare case that does not require expert testimony," Mittelstaedt's failure to provide an expert affidavit under Minn. Stat. § 544.42 was fatal to his claim and, on that basis, affirmed the entry of summary judgment against Mittelstaedt on the fiduciary-duty claim. *Id.*

Mittelstaedt II – Opinion of the Minnesota Supreme Court

The Minnesota Supreme Court granted review and reversed the decision of this court on the expert-affidavit issue. *Mittelstaedt II*, 969 N.W.2d at 641. The supreme court held that "[t]he expert-affidavit requirement in Minnesota Statutes section 544.42 generally applies to breach-of-fiduciary-duty claims against attorneys," but "[w]hether expert testimony is required to support a breach-of-fiduciary-duty claim against an attorney in a particular case is a threshold issue to be determined by the district court on a case-by-case basis." *Id.* at 636. The supreme court further determined that this court did not apply the "ordinary case-by-case analysis" when addressing whether expert testimony was necessary, but rather applied a more stringent standard that applies in medical-malpractice claims. *Id.* at 640. The supreme court explained:

> The court of appeals erred by applying the medical-malpractice presumption we articulated in *Sorenson v. St. Paul Ramsey Medical Ctr.*, 457 N.W.2d 188 (Minn. 1990), rather than an ordinary case-by-case analysis to determine that experts were required here. In *Sorenson*, we held that only the "rare" or "exceptional" case would not require expert testimony, given the complex and scientific nature of facts in *medical-malpractice* cases. Because the same considerations do not necessarily appear as frequently in malpractice claims against *lawyers*, the more stringent *Sorensen* test has limited applicability to a legal malpractice case. Instead, courts must decide on an ordinary case-by-case basis whether expert affidavits are required.

Id. at 640-41 (footnote omitted) (quotation and citations omitted).

The supreme court reversed and remanded to this court to consider the district court's summary-judgment decision on the merits. The supreme court instructed this court that should it determine that summary judgment was not proper on the merits, then the

matter should "be remanded to the district court for further proceedings, including a decision as to whether an expert affidavit is necessary in this case." *Id.* at 641.

Mittelstaedt III – Court of Appeals Opinion on Remand from the Supreme Court

On remand from the supreme court, this court reversed the district court's grant of summary judgment in favor of Henney. *Mittelstaedt v. Henney*, No. A20-0573, 2022 WL 2297639 (Minn. App. June 27, 2022) (*Mittelstaedt III*). This court determined that "the district court erroneously placed the burden of proof on Mittelstaedt to prove Henney was frank and fair with him" and therefore erred in granting summary judgment on the merits. *Id.* at *3. Consistent with the direction from the supreme court, this court then remanded the matter to the district court to reconsider the expert-affidavit issue and noted that the district court could reconsider the motion for summary judgment in light of the proper burden of proof and guidance from *Mittelstaedt II* and *III*.

Following remand, the district court determined that expert testimony is required to establish a prima facie case on the first two elements of the fiduciary-duty claim against Henney and that Mittelstaedt was therefore required to file an expert affidavit under Minn. Stat. § 544.42. The district court reasoned:

> The jury in this case will be asked to determine complex questions regarding the formation of an attorney client relationship, the termination of that relationship, what disclosures an attorney must [make] to his or her client, and how those disclosures should be made. These questions require testimony concerning the standard of care and rules of professional conduct which are not familiar to the lay person.

The district court consequently dismissed the claim and granted summary judgment in favor of Henney based on Mittelstaedt's failure to comply with the expert-affidavit requirement in Minn. Stat. § 544.42.

DECISION

Mittelstaedt argues that the district court applied the wrong legal standard and erred in determining that expert testimony is required to establish a prima facie case of breach of fiduciary duty. He maintains that the district court's dismissal of his claim for failure to file an expert affidavit under Minn. Stat. § 544.42 was erroneous.

Before addressing the merits of the appeal, we must first resolve the parties' dispute over the applicable standard of review. Mittelstaedt contends that the district court's decision should be reviewed de novo, but Henney argues that abuse of discretion is the correct standard. The supreme court's opinion in *Guzick v. Kimball*, 869 N.W.2d 42 (Minn. 2015), offers guidance on this issue. In *Guzick*, the supreme court explained:

> We review a district court's dismissal of an action for procedural irregularities under an abuse of discretion standard. But to the extent the dismissal involves interpreting Minn. Stat. § 544.42 (2014), we apply de novo review. Further, whether expert testimony is required to establish a prima facie case is a question of law that we review de novo.

869 N.W.2d at 46-47 (footnote omitted) (quotation and citations omitted). Here, the district court's decision turns on the determination that expert testimony—and therefore an expert affidavit—is required. Per *Guzick*, this presents a question of law that we review de novo.

Turning now to the merits, we agree with Mittelstaedt that the district court applied the wrong legal standard—a standard specifically rejected by the supreme court in

Mittelstaedt II—in assessing whether an expert affidavit is required in this case by Minn. Stat. § 544.42.[4] The district court cited *Sorenson* and applied the medical-malpractice standard, stating that the "issue in this case, as argued based upon guidance from the higher courts, is does this particular set of facts require . . . expert affidavits or is it the 'rare and exceptional' case that does not require disclosure." In reversing this court's initial opinion, the supreme court held that it was error to apply "the medical-malpractice presumption . . . articulated in *Sorenson*" in a legal-malpractice case. *Mittelstaedt II*, 969 N.W.2d at 640. The district court thus erred by applying an incorrect legal standard. We also conclude that the district court erred in concluding that expert testimony was required under the facts of this case on the first two elements of the fiduciary-duty claim.

Section 544.42 applies "where expert testimony is to be used by a party to establish a prima facie case." Minn. Stat. § 544.42, subd. 2. Whether Minn. Stat. § 544.42 applies "is a threshold issue for the district court to decide by examining each element of the prima facie case of malpractice." *Mittelstaedt II*, 969 N.W.2d at 640 (quotation omitted). Here, the elements of the breach-of-fiduciary-duty claim against Henney are "(1) the existence of an attorney-client relationship, which establishes a standard of conduct, i.e., the duty; (2) a breach by the attorney of one or more of the fundamental obligations owed to the

[4] In this regard, we also note that Henney persisted in using the wrong legal standard—the *Sorenson* standard rejected in *Mittelstaedt II*—not only before the district court on remand from *Mittelstaedt III*, but in his briefing and oral argument to this court. We admonish Henney to correct this error in further proceedings in this matter.

client under that standard of conduct; (3) causation; and (4) damages."[5] *Id.* "If any element demands expert testimony, the statute's affidavit requirement applies." *Id.*

As the next step in our analysis, we review the standard for applying the expert-affidavit provision of Minn. Stat. § 544.42 in the context of a legal-malpractice claim. In *Guzick*, which is cited with approval in *Mittelstaedt II*, the supreme court clarified that the general rule that expert testimony is a prerequisite for proceeding with a medical-malpractice case is not applicable in cases alleging legal malpractice because "complex issues of science or technology are generally not found in legal malpractice cases." 869 N.W.2d at 50 (quotation omitted). The court explained that, "[i]nstead of relying on a general rule, we analyze whether the facts needed . . . are within an area of common knowledge and lay comprehension such that they can be adequately evaluated by a jury in the absence of an expert." *Id.* The supreme court reinforced that concept in *Mittelstaedt II*, noting that the more stringent standard articulated in *Sorenson*—that it is "only the 'rare' or 'exceptional' case [that] would not require expert testimony . . . in *medical-malpractice* cases"—"has limited applicability to a legal malpractice case." 969 N.W.2d at 640 (quoting *Sorenson*, 457 N.W.2d at 191) (other quotation omitted). Thus, under the holding of *Mittelstaedt II*, we must determine, under the particular facts of this case, whether the

[5] As we stated in *Mittelstaedt I*, because Mittelstaedt's claim involves a transactional matter, the fourth element "reads 'that but for the defendant's conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained.'" *Mittelstaedt I*, 954 N.W.2d at 860 n.8 (quoting *Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff & Hobbs, Ltd.*, 783 N.W.2d 733, 738 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010)).

existence of an attorney-client relationship and breach of that relationship "can be evaluated adequately by a jury in the absence of expert testimony." *Id.* (quotation omitted).

We begin by addressing the proof necessary to establish the existence of an attorney-client relationship. Caselaw provides that "[t]he existence of an attorney-client relationship is usually a question of fact dependent upon the communications and circumstances." *In re Paul W. Abbott Co.*, 767 N.W.2d 14, 18 (Minn. 2009) (quotation omitted). The existence of "[a]n attorney-client relationship may be established under either a contract or a tort theory." *Id.* "Under a contract theory, an agreement must be shown based on the circumstances, relationship, and conduct of the parties." *Id.* (quotation omitted). And, "[u]nder a tort theory, a relationship exists when a person seeks and receives legal advice from an attorney in circumstances in which a reasonable person would rely on the advice." *Id.* (quotation omitted). The tort theory thus specifically relies on a "reasonable person" standard and focuses on the perspective of the alleged client—not the perspective of what an expert on the topic of attorney-client relationships would understand.

In this regard, it is important to note that Minn. Stat. § 544.42 applies only to establishing a prima facie case, not a court's assessment of the likelihood of success on the merits. As generally understood, "[a] person can establish a prima facie case by introducing enough evidence to create a jury question." 11 Peter N. Thompson, *Minnesota Practice* § 301.01 (4th ed. 2012). Here, the district court already ruled, in response to Henney's December 2017 motion for summary judgment, that Mittelstaedt provided sufficient evidence—without expert testimony—to create a genuine issue of material fact on the existence of both an attorney-client relationship and Henney's alleged failure to

disclose his one-half ownership in Maxim Management. Specifically, the district court stated:

> In the present case, [Mittelstaedt has] provided sufficient evidence to create a fact question regarding whether or not there was an attorney client relationship between Defendant Henney and [Mittelstaedt], both before and after the signing of the lease; whether there continued to be an influence from that relationship at the time the parties entered into the leasing agreement; and whether Defendant Henney completely disclosed his interest in Maxim Management.

Thus, the district court has already determined that Mittelstaedt has made out a prima facie case on both elements—without reliance on expert testimony.

To determine whether a jury can adequately evaluate those two elements—the existence of an attorney-client relationship and breach of the standard of conduct owed by an attorney to a client—we are to look to the particular facts and circumstances of this case. *Mittelstaedt II*, 969 N.W.2d at 640. Here, Mittelstaedt has brought forward evidence that Henney represented one of Mittelstaedt's companies—Wide Open Services—in an insurance case, emails from Henney regarding a money judgment for Wide Open Services in a different case, and various emails regarding Henney's alleged representation of Mittelstaedt in connection with Mittelstaedt's divorce. With respect to the lease transactions, Mittelstaedt had his own counsel during negotiations for the first lease but not for the second lease—the lease that omitted the option to purchase. These facts and circumstances do not seem overly complicated or outside the reach of a jury to "evaluate[] adequately . . . in the absence of expert testimony." *Id.*

We reach the same conclusion with regard to the claimed breach—Henney's failure to disclose that he was a 50% owner of Maxim Management and had a financial interest in the lease agreement. To the extent that an attorney-client relationship existed between Henney and Mittelstaedt, the duty to disclose a financial interest in the lease arising out of something as obvious as a 50% ownership interest is a straightforward obligation, easily grasped by a jury. As the supreme court noted in *Mittelstaedt II*: "The fundamental obligations attorneys owe their clients are the duty of candor, the duty to disclose material facts, and the duty to put the client's interests ahead of the attorney's interests." 969 N.W.2d at 640.

The district court, in ruling to the contrary, surmised that expert testimony would be necessary to explain the rules of professional conduct. The applicable rule, however, is not that complicated. Minnesota Rules of Professional Conduct 1.8(a), concerning a lawyer's obligations to a current client when a lawyer has a financial interest in a business transaction, provides:

> A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
>
> (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
>
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
>
> (3) the client gives informed consent, in a document signed by the client separate from the transaction documents, to the essential terms of the transaction and the lawyer's role

> in the transaction, including whether the lawyer is representing the client in the transaction.

This rule sets out clear guidance and would be well within the grasp of a jury to understand and to apply.[6] We thus conclude that an expert affidavit is not required under the facts and circumstances of this case to establish the second element of Mittelstaedt's legal malpractice claim—whether Henney breached a duty of disclosure.

In sum, we disagree with the district court's determination that expert testimony, and therefore an expert affidavit, is required by Minn. Stat. § 544.42 to establish a prima facie case on the first two elements of Mittelstaedt's claim—the existence of an attorney-client relationship and a breach of the standard of conduct by failing to disclose Henney's ownership interest in Maxim. We therefore reverse the district court's determination on those two elements. Because it appears that the district court did not address whether expert testimony is required by Minn. Stat. § 544.42 on the remaining two elements—causation and damages—we remand to the district court to address those elements.[7] As the supreme court explained in *Mittelstaedt II*, whether Minn. Stat. § 544.42 applies "is a *threshold issue for the district court* to decide by examining each element of the prima facie case of

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[6] In citing to the rules of professional conduct, we do not suggest that a violation of the rules necessarily establishes a breach of a lawyer's fiduciary duties. *See L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 380 (Minn. 1989) (advising that the rules "are intended to discipline attorneys, not provide a basis for civil liability"). But the rules nonetheless provide guidance concerning a lawyer's obligations.

[7] As we have noted above, because Mittelstaedt's claim alleges malpractice in a transaction, not litigation, the fourth element of the malpractice cause of action is modified to read "that but for the defendant's conduct, the plaintiff would have obtained a more favorable result in the underlying transaction than the result obtained." *Mittelstaedt I*, 954 N.W.2d at 860 n.8 (quotation omitted).

malpractice." *Mittelstaedt II*, 969 N.W.2d at 640 (emphasis added) (quotation omitted). We caution the district court on remand, however, that it must apply the legal standard set out in *Mittelstaedt II* in making this evaluation, not the "rare and exceptional" standard for medical-malpractice claims set out in *Sorenson*.

The district court's grant of summary judgment in favor of Henney dated December 19, 2022, is reversed, and we remand for further proceedings consistent with *Mittelstaedt II*, *III*, and this opinion.

Reversed and remanded.