STATE OF MINNESOTA

IN SUPREME COURT

A20-0573

Court of Appeals — Hudson, J.

Steven Lee Mittelstaedt, et al.,

Appellants,

vs.

William H. Henney, et al.,

Respondents.

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Office of Appellate Courts

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

William H. Henney, Minnetonka, Minnesota, for respondents.

S Y L L A B U S

1. The expert-affidavit requirement in Minnesota Statutes section 544.42 generally applies to breach-of-fiduciary-duty claims against attorneys, which are a type of malpractice action and distinct from negligence.

2. Whether 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, in accordance with Minnesota Statutes section 544.42, subd. 2.

Reversed and remanded.

O P I N I O N

HUDSON, Justice.

The question presented in this case is whether Minnesota Statutes section 544.42, which requires the service of certain expert-disclosure affidavits, applies to breach-of-fiduciary-duty claims against attorneys. The district court dismissed appellant Mittelstaedt's breach-of-fiduciary-duty claim against respondent Henney, an attorney, on summary judgment, finding Mittelstaedt failed to show that Henney took unfair advantage of their professional relationship or that the terms of their dealings were unfair. The court of appeals affirmed on different grounds, concluding that summary judgment was appropriate because Mittelstaedt did not provide the expert-disclosure affidavits required by section 544.42. We hold that section 544.42 does apply to breach-of-fiduciary-duty claims. Because the court of appeals erred in its analysis for determining whether experts were required in this case, however, we reverse and remand to the court of appeals to consider the grounds originally raised on appeal.

FACTS

Appellant Steven Mittelstaedt, owner of Iron Range Repair & Storage LLC and Wide Open Services LLC, developed a business relationship with defendant John Prosser, owner of defendant Prosser Holdings, LLC. Prosser later introduced Mittelstaedt to his attorney, respondent William Henney. Henney went on to provide legal advice in some capacity to Mittelstaedt regarding an insurance claim and his divorce. Henney and Prosser also co-own Maxim Management, LLC ("Maxim").

In February of 2012, Mittelstaedt relocated his trucking operation to a part-residential and part-commercial property in Virginia, Minnesota. Beacon Bank owned the property and leased it to Mittelstaedt with an option to purchase. When Mittelstaedt fell behind on his lease payments, he asked Prosser to buy the property and lease it to him with an option to purchase. Prosser agreed and, in March of 2015, signed a purchase agreement with Beacon Bank. Prosser and Henney created Maxim to own and manage the Virginia property as equal partners. As part of the arrangement, Mittelstaedt and his former wife conveyed an adjacent property to Maxim.

The resulting lease agreement became effective between Maxim (Prosser and Henney) and Wide Open Services (Mittelstaedt) in April of 2015. Henney drafted all the related documents and signed on behalf of Maxim; Mittelstaedt signed on behalf of his company. During the same period, Mittelstaedt began a joint venture with Prosser to buy, repair, and sell used trucks and trailers.

By late 2015, Mittelstaedt struggled to make his rent payments to Maxim. He and Prosser agreed to enter a second lease agreement beginning on January 1, 2016 reducing his monthly rent. Unlike the prior lease, the second lease agreement did not contain an option to purchase. Mittelstaedt believed his share of the profits from the joint venture satisfied the lower monthly rent payment and, as a result, he stopped making payments. Prosser, by contrast, believed Mittelstaedt was in default on the lease agreement.

Maxim brought an eviction action against Mittelstaedt and his company in May of 2017. In response, Mittelstaedt sued Prosser, Henney, and Maxim, alleging fraud, breach of fiduciary duty, and breach of contract. In his claims against Henney, Mittelstaedt alleged

that Henney had been acting as his attorney in other matters and failed to disclose that he was Maxim's part-owner. Against Prosser and Maxim, Mittelstaedt alleged they failed to credit him for his fair share of the joint venture's profits and breached their fiduciary duty to disclose Henney's involvement with Maxim.

The eviction action and Mittelstaedt's lawsuit were consolidated. Henney moved for summary judgment on the breach-of-fiduciary-duty claim, summary judgment or dismissal on the fraud claim for failure to plead fraud with particularity, and for judgment on the pleadings. As part of his summary-judgment motion, Henney argued briefly that Mittelstaedt had not complied with the expert-affidavit requirement in Minnesota Statutes section 544.42.

The district court did not address the expert-affidavit issue, but it granted Henney's motion for summary judgment. It found that Mittelstaedt was represented by separate counsel and failed to show that Henney took "unfair advantage" of their relationship or that their business dealings were unfair to him. It also found, however, that Mittelstaedt presented evidence sufficient to create a question of fact regarding whether there was an attorney-client relationship between himself and Henney. Mittelstaedt appealed, arguing that the district court erred on the merits of its summary-judgment decision.

Although no party argued that Minnesota Statutes section 544.42 was an important issue on appeal, the court of appeals nevertheless took up the issue. *See Mittelstaedt v. Henney*, 954 N.W.2d 852, 859 (Minn. App. 2020). It concluded that because breach-of-fiduciary-duty claims have the same elements as legal malpractice, the statute's affidavit requirement should apply. *Id.* at 859–62. It further reasoned that a "back door" to trial

without expert disclosures would open if the statute did not apply to breach-of-fiduciary-duty claims. *Id.* at 862. And it concluded that this was not the "rare" claim where expert affidavits were unnecessary. *Id.* at 863. Because Mittelstaedt did not submit expert affidavits, the court of appeals affirmed summary judgment. The court of appeals did not otherwise address the merits of the district court's decision on summary judgment.

We granted Mittelstaedt's petition for review of the expert-affidavit issue.

ANALYSIS

We review a grant of summary judgment de novo. *Hensen v. Uptown Drink*, *LLC*, 922 N.W.2d 185, 190 (Minn. 2019). Whether the expert affidavit statute applies to breach-of-fiduciary-duty claims is a question of statutory interpretation, which we also review de novo. *See Phone Recovery Services, LLC v. Qwest Corporation*, 919 N.W.2d 315, 319 (Minn. 2018).

The parties disagree over the applicability of Minnesota Statutes section 544.42, which requires that plaintiffs provide two expert-disclosure affidavits "in an action against a professional alleging negligence or malpractice in rendering a professional service where expert testimony is to be used by a party to establish a prima facie case." Minn. Stat. § 544.42, subd. 2 (2020). Noncompliance "results, upon motion, in mandatory dismissal of each cause of action with prejudice." Minn. Stat. § 544.42, subd. 6 (2020). Henney argues the statute's categories of "negligence or malpractice" encompass a wide range of claims and, as a result, the statute applies to breach-of-fiduciary-duty claims against an attorney. Minn. Stat. § 544.42, subd. 2. Mittelstaedt argues that the statute only applies to a breach-of-fiduciary-duty claim when it derives from a negligence action, rather than

intentional conduct. He also argues that the statute only covers claims in which the attorney was the attorney "rendering a professional service," *id.*, as opposed to conduct regarding a business transaction.

I.

For the following reasons, we conclude that Minnesota Statutes section 544.42 can apply to breach-of-fiduciary-duty claims against attorneys if the statute's other requirements are met.

Whether the statute's affidavit requirement applies to breach-of-fiduciary-duty claims against attorneys is an issue of statutory interpretation. The purpose of statutory interpretation is to determine the Legislature's intent. *Christenson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). We first look at the "plain and ordinary meaning" of the statute's language to determine whether it is ambiguous. *Id.* at 536–37. A statute is ambiguous if it is "subject to more than one reasonable interpretation." *Id.* at 537. If the statute is "plain and unambiguous," we will "not engage in any further construction." *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). But if the statute is ambiguous, we will consider other factors to determine the Legislature's intent. *See* Minn. Stat. § 645.16(1)–(8) (2020). We interpret statutes "so as to give effect to each word and phrase," and we may consult dictionary definitions to determine a word's plain meaning. *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016).

The statute requires expert affidavits in "negligence or malpractice" actions. Minn. Stat. § 544.42, subd. 2. The court of appeals concluded the statute applied to breach-of-fiduciary-duty claims against attorneys because they are essentially *negligence* claims. But

we have long held that professional negligence and breach of fiduciary duty are distinct claims. *Perl v. St. Paul Fire and Marine Ins. Co.*, 345 N.W.2d 209, 213 (Minn. 1984). Professional-negligence claims allege an attorney breached their standard of *care*, whereas breach-of-fiduciary-duty claims concern a standard of *conduct*. *Id.* The standard of conduct obligates the attorney to "represent the client with undivided loyalty, to preserve the client's confidences, and to disclose any material matters bearing upon the representation of those matters." *Rice v. Perl*, 320 N.W.2d 407, 410 (Minn. 1982) (citation omitted). In contrast, "reasonableness" is the touchstone for the standard of care, under which "[a]ttorneys have a duty 'to exercise that degree of care and skill that is reasonable under the circumstances, considering the nature of the undertaking.' " *Jerry's Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 817 (quoting *Prawer .v Essling*, 282 N.W.2d 493, 495 (Minn. 1979)). Therefore, the court of appeals erred in concluding the two causes of action share identical elements. And unlike professional-negligence claims, breach-of-fiduciary-duty claims can lead to equitable remedies, such as fee forfeiture or disgorgement. *See Davis v. Swedish American Bank*, 81 N.W. 210, 212–13 (Minn. 1899) (establishing fee forfeiture as a remedy for breach of fiduciary duty); *see also Gilchrist v. Perl*, 387 N.W.2d 412 (Minn. 1986).

The statute's language—that it applies to "negligence or *malpractice*" allegations—nevertheless encompasses breach-of-fiduciary-duty claims. Minn. Stat. § 544.42, subd. 2 (emphasis added). "Malpractice" is a category that includes multiple legal theories for recovery against professionals, including professional negligence, breach of fiduciary duty, and breach of contract. *See* Ronald E. Mallen, 1 Legal Malpractice § 1:2 (2021)

("[Malpractice] encompasses any professional misconduct whether attributable to a breach of the standard of care or of the fiduciary obligations."); *see also Jerry's Enters., Inc.*, 711 N.W.2d at 816 (including negligence and breach of contract within the category of malpractice). Accordingly, the statute's expert-affidavit requirement for cases involving "negligence or *malpractice*" unambiguously applies to breach-of-fiduciary-duty claims when the statute's other requirements are met.[1]

II.

The expert-affidavit requirement in Minnesota Statutes section 544.42 applies only "where expert testimony is to be used by a party to establish a prima facie case." Minn. Stat. § 544.42, subd. 2. Whether the statute applies to a case is a threshold issue for the district court to decide by examining "each element of the prima facie case of malpractice." *Guzick v. Kimball*, 869 N.W.2d 42, 48–49 (Minn. 2015); *Hill v. Okay Const. Co.*, 252 N.W.2d 107, 116 (Minn. 1977). The elements of a legal malpractice breach-of-fiduciary-duty claim 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

[1] We also disagree with Mittelstaedt's argument that the statute's affidavit requirement does not apply to breach-of-fiduciary-duty claims stemming from intentional conduct. Nothing in the statute suggests distinguishing between the intentional or unintentional nature of alleged malpractice. The fact that the statute includes both negligence (which is only unintentional) and malpractice (which might not be) further suggests that at least some claims based on intentional acts are included. The extent to which the allegedly breaching conduct was intentional may, however, factor into the case-by-case analysis of whether a specific case requires expert testimony. Mittelstaedt further tried to distinguish between professional services and business transactions. But we do not find his argument persuasive because the nature of being a fiduciary will almost certainly involve rendering professional services.

of the fundamental obligations owed to the client under that standard of conduct; (3) causation; and (4) damages. *See Hansen v. U.S. Bank Nat'l Assoc.*, 934 N.W.2d 319, 327 (Minn. 2019) ("A breach of fiduciary duty claim consists of four elements: duty, breach, causation, and damages"). 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. *See Colstad v. Levine*, 67 N.W.2d 648, 654 (Minn. 1954). If any element demands expert testimony, the statute's affidavit requirement applies. And although the standard of conduct applicable in a breach-of-fiduciary-duty claim is distinct from the standard of care at issue in a claim of professional negligence, the same general principle as to expert testimony applies to each standard. Generally, the "duty and breach elements of malpractice . . . must be established by expert testimony."[2] *Guzick*, 869 N.W.2d at 49 (quoting *Hill*, 252 N.W.2d at 116). An exception applies, however, "where the conduct can be evaluated adequately by a jury in the absence of expert testimony." *Guzick*, 869 N.W.2d at 49 (quotation omitted). Significantly, whether it is an attorney-negligence claim or breach-of-fiduciary-duty claim, whether the exception applies is "determined on a case-by-case basis." *Id.* at 48–49.

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),

[2] In contexts where the malpractice case involved negligence, we have referred to these elements as "the acts constituting negligence," *Guzick*, 869 N.W.2d at 49, but different principles rooted in professional ethics and responsibilities are present in the breach-of-fiduciary-duty context.

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. *Id.* at 191; *see also Tousignant v. St. Louis Cty.*, 615 N.W.2d 53, 58 (Minn. 2000). 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." *Guzick*, 869 N.W.2d at 50. Instead, courts must decide on an ordinary case-by-case basis whether expert affidavits are required.[3]

In this case, the district court, which is to make the initial determination whether expert affidavits are required in a particular case, did not address the issue. Even if it had, it would not have had the benefit of our opinion on the subject. Instead, the district court decided the summary-judgment motion on its merits. On remand, the court of appeals should consider the other grounds raised on appeal, specifically whether the district court's ruling on the merits of the summary judgment motion was erroneous. If the court of appeals concludes summary judgment was proper without reaching the expert affidavit issue, the case will be concluded. But if the court of appeals holds that summary judgment

[3] In *Colstad*, we held that the "strict rules of fiduciary conduct cast upon the *attorney* the burden of proving that he has been absolutely frank and fair with his client and has taken no advantage of the confidence arising from such professional relation." 67 N.W.2d at 654 (emphasis added). *Colstad* remains good law and is consistent with this opinion. Requiring plaintiffs to produce affidavits at the outset of litigation to show a prima facie case neither changes nor contradicts the attorney's ultimate burden to prove that they discharged their duties appropriately. *See* Minn. Stat. § 544.42, subd. 2(1)–(2).

was not proper, the case will be remanded to the district court for further proceedings, including a decision as to whether an expert affidavit is necessary in this case.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the court of appeals for further consideration consistent with this opinion.

Reversed and remanded.