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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
January 17, 2023 Session

CARLTON B. PARKS v. ADAM U. HOLLAND

Appeal from the Circuit Court for Hamilton County
No. 19-C-1440 William B. Acree, Senior Judge

No. E2021-01506-COA-R3-CV

This case arose from a legal malpractice action filed against a lawyer who had represented the plaintiff in an employment discrimination and wrongful termination action. The plaintiff provided no expert testimony to support his claims against the lawyer. Determining that the plaintiff had not presented proof to support his claim and that the defendant had presented evidence to negate an essential element of the plaintiff's claim, the trial court granted summary judgment in favor of the defendant. Discerning no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KRISTI M. DAVIS, JJ., joined.

Carlton B. Parks, Chattanooga, Tennessee, Pro Se Appellant.

William E. Godbold and Andrew J. Godbold, Chattanooga, Tennessee, for the appellee, Adam U. Holland.

OPINION

Background

The plaintiff, Carlton B. Parks ("Plaintiff"), worked for approximately ten months as a security guard at Murray Guard, Inc. ("Murray Guard"). Murray Guard contracted with the Tennessee Valley Authority ("TVA") to provide security services at its locations. After Plaintiff's termination from employment with Murray Guard, the defendant, Adam

U. Holland (“Defendant”), represented Plaintiff in an employment discrimination and wrongful termination action against his former employer, Murray Guard. The legal services agreement entered into by the parties in January 2015 provides as follows:

At this time, the scope of our representation will involve prosecution of the claims arising from your discharge from employment with Murray Guard, Inc. If you require additional services or this matter expands beyond the foregoing, we will need to negotiate a modification of this agreement as necessary.

In the underlying employment action, Defendant successfully represented Plaintiff against Murray Guard’s summary judgment motion. Two mediations occurred during the proceedings. The first mediation ended without settlement. The parties mediated a second time in December 2018, in which Plaintiff accepted a settlement of \$75,000. At the conclusion of the second mediation, Plaintiff signed the confidential mediated settlement agreement in which he agreed that the settlement was a “full and final settlement” of all the claims he had against Murray Guard. Plaintiff now claims that Defendant ignored repeated requests that the matter go to trial. Plaintiff alleges that while meeting with Defendant the day before mediation, Defendant agreed that they would not settle for anything less than “mid to high six figures.” According to Defendant, however, Plaintiff was aware that the \$75,000 lump sum was a compromise and settlement of all his claims for damages, and he had knowingly and freely entered into the settlement agreement.

Plaintiff had lost his health insurance upon his termination from employment with Murray Guard and, after the settlement agreement, was diagnosed with end-stage renal disease. According to Plaintiff, he is now permanently disabled due to the lack of preventative medical care. He alleges that if Defendant had factored in medical insurance coverage as instructed, his permanent life-threatening medical condition could have been prevented. Defendant, however, states in his affidavit that he had advised Plaintiff that Murray Guard was not offering reinstatement of his employment or making further concessions on lost past or future benefits, including health insurance.

Plaintiff had initiated an Equal Employment Opportunity complaint against TVA prior to retaining Defendant as counsel. Plaintiff was self-represented during those proceedings. Defendant presented an email from Plaintiff in January 2019, wherein Plaintiff stated as follows: “Thanks for being honest with me concerning you have no interest in pursuing any claims against TVA (I can respect that). I will be reaching out to other Attorney’s[sic] concerning TVA. . . .” Defendant stated that Plaintiff had expressed agreement with Defendant’s decision not to file suit against TVA in the state court action. In his response to Defendant’s statement of facts, Plaintiff stated that Defendant had been unclear about filing suit against TVA for four years and finally informed him he would not file the action in January 2019. After being unsuccessful with his EEO complaint against TVA, Plaintiff filed a *pro se* action in federal court against the president and CEO of TVA,

as well as other employees of TVA, which still was pending at the time of the Trial Court's judgment in this action.

Plaintiff filed this legal malpractice suit against Defendant in December 2019 in the Hamilton County Circuit Court ("Trial Court"). Plaintiff stated in his complaint that this action involves legal malpractice, negligence, professional negligence, gross negligence, reckless negligence, breach of contract, breach of duty, and breach of fiduciary duty. Plaintiff alleged that he had consistently informed Defendant that any settlement agreement in the employment action needed to factor in "the loss of his medical insurance benefits; 401k retirement benefits; back pay; front pay; emotional distress; and other entitled damages" but that Defendant had willfully and negligently failed to consider those factors. Plaintiff further stated in his complaint that he was *de facto* employed by the Tennessee Valley Authority and that Defendant had "allowed [the] statute of limitations to expire on claims associated with a de-facto employer" without informing Plaintiff of his right to sue them. According to Plaintiff, Defendant's professional negligence caused injury to Plaintiff, both financially and with medical impairment due to Plaintiff's lack of medical insurance. Defendant filed an answer, denying all substantive allegations against him. According to Defendant's answer, Plaintiff was pleased with his settlement in the underlying employment case and acknowledged his satisfaction both during and after the mediation.

In November 2020, Plaintiff filed a motion to amend his complaint. Defendant filed an objection to Plaintiff's motion to amend, asking that the motion be denied due to undue delay. The Trial Court granted Plaintiff's motion to amend the complaint on the condition that Plaintiff make himself available for a supplemental deposition. Plaintiff filed his amended complaint with the Trial Court, wherein he listed his legal causes of action as follows: legal malpractice, negligence, gross negligence, professional negligence, negligent representation, negligent misrepresentation, intentional misrepresentation, fraudulent misrepresentation, fraudulent concealment, fraudulent representation, breach of contract, breach of duty, breach of fiduciary duty, and intentional infliction of emotional distress. Defendant subsequently filed an answer to the amended complaint, denying the substantive allegations against him.

The Trial Court previously had entered a scheduling order, which included a deadline for Plaintiff to disclose his expert by February 2021. In January 2021, Plaintiff filed a motion seeking to revise the scheduling order and extend discovery to allow him to take the depositions of several medical expert witnesses regarding his health condition and its cause. Defendant objected to the extension of the discovery deadline. Ultimately, the Trial Court held the motion in abeyance. According to Defendant, Plaintiff had never provided a disclosure of any expert to support his claim.

In March 2021, Defendant filed a motion for summary judgment, arguing that Plaintiff provided no expert testimony to establish the standard of care for attorneys and no

such evidence of any breach of that standard of care. According to Defendant, the lack of expert proof was fatal to Plaintiff's claim. To affirmatively negate Plaintiff's claim, Defendant presented affidavits by two expert witnesses, lawyer Harry Burnette and Defendant.

Harry Burnette practiced primarily employment litigation and had represented both plaintiffs and defendants for forty years. Mr. Burnette opined that Defendant's representation of Plaintiff in the employment action had "met and exceeded the degree of care, skill and diligence which is commonly possessed and exercised by attorneys practicing law in the area of employment litigation in this jurisdiction." Mr. Burnette further opined that the settlement agreement between Plaintiff and Murray Guard in the underlying employment action was "a very favorable resolution" for Plaintiff. Mr. Burnette explained that in his opinion, it was unlikely that a jury would have awarded Plaintiff any damages had he gone to trial against Murray Guard. Mr. Burnette also agreed with Defendant's decision to focus the state civil action against Murray Guard rather than attempting to assert a claim against TVA.

Mr. Burnette pointed out that TVA had denied Plaintiff a security clearance based, at least in part, on an arrest he had for indecent exposure on TVA property and that the EEOC had determined the decision to deny him a security clearance "was not motivated by discriminatory animus during the review process." Mr. Burnette further stated that Plaintiff's credibility in the lawsuit with Murray Guard was diminished due to Plaintiff's several lawsuits filed in both state and federal courts, as well as the number of jobs in which he had been terminated for cause. Additionally, Mr. Burnette stated that Plaintiff's lack of meaningful effort to mitigate his damages also would have hurt his credibility in the underlying action. Mr. Burnette opined that Defendant had not breached any duty owed to Plaintiff.

Defendant filed his own affidavit in support of his summary judgment motion. In his affidavit, Defendant stated that he entered into a legal services agreement to represent Plaintiff in his claim that he was wrongfully discharged from his employment with Murray Guard. He explained that the agreement entered into between the parties provided that expansion of the scope of representation required modification of their agreement. According to Defendant, that agreement was never modified to include a claim against TVA. Defendant stated in his affidavit that he informed Plaintiff multiple times that his professional opinion was that it would not be advisable to pursue an action against TVA or join TVA into the state court litigation against Murray Guard. According to Defendant, Plaintiff acknowledged his agreement with Defendant's professional judgment and litigation strategy.

Additionally, Defendant stated in his affidavit that Murray Guard had taken the position in the underlying employment action that Plaintiff had voluntarily ended his employment with it and that although it had made Plaintiff aware of other non-TVA

assignments that were available, Plaintiff did not want to work for other Murray Guard clients. According to Defendant, Plaintiff voluntarily participated in the second mediation, asked several questions of both Defendant and the mediator, and agreed to accept the settlement offer of \$75,000 to settle all his claims against Murray Guard. Defendant stated that Plaintiff reviewed and voluntarily signed the mediated settlement agreement. Similar to those identified by Mr. Burnette in his affidavit, Defendant also identified “problems” with the underlying employment case, which included Plaintiff’s failure to attempt to mitigate his damages, previous unsuccessful lawsuits against former employers, and previous terminations by former employers. According to Defendant’s affidavit, his firm subsequently represented Plaintiff again after the underlying employment action in an unrelated action in the general sessions court, and he was surprised to receive the complaint in this legal malpractice action. Defendant denied that he had breached his duty to Plaintiff and opined that his representation met or exceeded the standard of care required in the underlying action.

Plaintiff filed a memorandum of law in opposition to the motion for summary judgment. In this memorandum, Plaintiff reiterated his allegations against Defendant. He further argued that he had evidence of negligence by Defendant under the doctrine of *res ipsa loquitur*. According to Plaintiff, expert testimony is not required because emails Plaintiff sent to Defendant instructing him to “factor in the loss of his medical insurance into the settlement negotiations and agreement” and letters between the parties “speak for themselves for a jury to decide.” He further stated that Defendant “committed clear and palpable Negligence” by failing to properly research whether TVA was a *de facto* and joint employer. Plaintiff filed an affidavit in which he stated that the following damages for relief were requested: “back pay (with compound interest); front pay (with compound interest); lost insurance benefits medical - hospitalization, dental, life, vision, 401k Retirement, fringe benefits; vacation pay, holiday pay, sick pay, accumulated pay; pain and suffering; liquidated damages; all compensatory damages; punitive damages; and Attorney’s fees.” According to Plaintiff, a “competent Attorney would have prevailed at trial.” Plaintiff stated in his affidavit that he met with Defendant the day prior to the mediation and they had agreed that they would not settle the case for anything less than “mid to high six figures.” In his affidavit, Plaintiff described the events of the mediation as follows:

28. On December 28, 2018, I attended a mediation conference hearing at the law offices of Evans, Harrison, and Hackett. Attorney John C. Harrison was the Mediator. Murray Guard, Inc. once again made meager settlement offers. I stated to Defendant Attorney Adam Holland that this was a waste of our time and instructed him to take the case to trial. Mediator Attorney John C. Harrison was in and out of the room. Defendant and I sat several feet apart from one another.

29. I attempted to leave but was stopped by Defendant Adam Holland. Defendant stated give it time it will get better. Once Murray Guard reached approximately \$75,000 and stated it would not go any further, I informed the Defendant: 1) this would only cover about two (2) years of back pay and that's it and this was not adequate; 2) I had been off from full time work for four (4) years and three (3) months; 3) there were no damages being paid out (compensatory damages and punitive damages etc.); 4) my major medical insurance benefits, dental, life, vision and 401k retirement benefits were not being included; 5) no front pay or Attorney fees were included; and 6) I ask Defendant to be compensated on the five (5) claims that survived Summary Judgment he stated this was the best he could do. . . .

30. Defendant stated at the conference settlement hearing that: 1) he could not do anything else for me and there were no court rooms available to try my case (although I had a scheduled court date of February 12, 2019); 2) that Murray Guard, Inc. was going to file a Motion to Delay the trial and a second Motion for Summary Judgment and both motions would be granted if I did not accept the settlement offer; and 3) when I ask to be compensated for the loss of my insurance benefits the Defendant Adam Holland ignored me and turned his head away.

Defendant filed a reply to Plaintiff's memorandum, in which he asked the Trial Court to take judicial notice of the EEOC's administrative law judge and subsequent EEOC appeal, both of which had determined Plaintiff was not an employee of TVA.

During a hearing on June 1, 2021, the Trial Court heard arguments on the motion for summary judgment. The Trial Court then took the matter under advisement. The Trial Court subsequently entered an order granting Defendant's motion for summary judgment, upon its determination that Defendant had presented evidence from two expert witnesses, Mr. Burnette and himself, negating Plaintiff's claim and that Plaintiff had failed to present any expert testimony to establish that Defendant owed a duty to Plaintiff, that Defendant breached that duty, that Plaintiff incurred damages, and that Defendant's actions caused Plaintiff to incur those alleged damages.

Regarding Plaintiff's allegation that Defendant should have filed suit against TVA, the Trial Court found as follows:

The Plaintiff maintains the Defendant should have made TVA a party. However, the employment agreement did not provide for such, and the record clearly establishes the Defendant informed the Plaintiff that he would not include TVA as a party because there was no liability on the part of TVA in his opinion.

Further, the Plaintiff—as a self-represented litigant—filed a claim against TVA with the Equal Employment Opportunity Commission (the “EEOC”). After the claim was rejected, the Plaintiff filed a suit in the United States District Court. That case is still pending.

(Paragraph numbering omitted.) In its judgment, the Trial Court stated as follows:

Tennessee Code Annotated section 20-16-101 provides as follows:

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

- (1) Submits affirmative evidence that negates an essential element of the nonmoving party’s claim; or
- (2) Demonstrates to the court that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim.

Here, the Defendant is entitled to summary judgment under both standards.

The Defendant’s two expert witnesses (one of whom is the Defendant) offer affirmative evidence that negates the Plaintiff’s claim. This record establishes that there was no evidence of a breach of a duty owed to the Plaintiff, and that if there was a breach, that it caused the Plaintiff to suffer damages.

Under part two of Tenn. Code Ann. § 20-16-101, the Defendant has demonstrated that the Plaintiff’s evidence is insufficient to establish essential elements of his claim. The Plaintiff has no expert testimony to establish a duty owed to the Plaintiff; a breach of that duty; damages; and causation.

The Plaintiff argues that expert testimony is not necessary to establish his case. This argument is without merit.

Concisely stated, the Plaintiff agreed to a settlement of his employment discrimination suit, accepted the benefits of the settlement, and later suffered “buyer’s remorse.”

The facts will not allow the Plaintiff to go forward without the expert testimony required to establish professional negligence.

Plaintiff timely appealed to this Court. Plaintiff filed a statement of evidence with the Trial Court, to which Defendant objected. The Trial Court rejected the statement of evidence,

determining that a statement of evidence was not permitted or required in this case because there was no evidentiary hearing.

Discussion

Plaintiff raises sixteen issues for our review, which we consolidate as follows: whether the Trial Court erred by granting Defendant’s motion for summary judgment upon its determination that Plaintiff had failed to prove an essential element of his claim and that Defendant had negated an essential element of Plaintiff’s claim. As our Supreme Court has instructed:

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. We review a trial court’s ruling on a motion for summary judgment de novo, without a presumption of correctness. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *see also Abshure v. Methodist Healthcare–Memphis Hosp.*, 325 S.W.3d 98, 103 (Tenn. 2010). In doing so, we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. *Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013) (citing *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 471 (Tenn. 2012)).

* * *

[I]n Tennessee, as in the federal system, when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the nonmoving party’s claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party’s evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with “a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial.” Tenn. R. Civ. P. 56.03. “Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record.” *Id.* When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. “[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56],” to survive summary

judgment, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading,” but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, “set forth specific facts” *at the summary judgment stage* “showing that there is a genuine issue for trial.” Tenn. R. Civ. P. 56.06. The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. [v. Zenith Radio Corp.]*, 475 U.S. [574,] 586, 106 S. Ct. 1348[, 1356 (Tenn. 1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye v. Women’s Care Ctr. of Memphis, M PLLC, 477 S.W.3d 235, 250, 264-65 (Tenn. 2015).

We first address the condition of Plaintiff’s brief. Defendant argues in his brief that Plaintiff has not complied with Tenn. Ct. App. R. 6(a)(4) and 6(b) in his appellate brief by failing to cite to the record and including matters outside the record. Defendant is correct. In addressing the deficiencies in Plaintiff’s appellate brief, we are cognizant of Plaintiff’s pro se status on appeal. Regarding pro se appellants, this Court has stated:

While a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, *Hodges v. Tenn. Att’y Gen.*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000) (citing *Paehler v. Union Planters Nat’l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997)), “[p]ro se litigants are not ... entitled to shift the burden of litigating their case to the courts.” *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000) (citing *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194-95 (D.C. Cir. 1983)). *Pro se* litigants must comply with the same substantive and procedural law to which represented parties must adhere. *Hodges*, 43 S.W.3d at 920-21.

Chiozza v. Chiozza, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009). Pursuant to Tenn. R. App. P. 2, we may suspend the appellate rules governing briefing requirements for good cause at our discretion. This Court previously found good cause existed in a case where a

pro se litigant was involved and the noncompliance with the rules was not so substantial as to constitute waiver. *See Ski Chalet Vill. Owners Club, Inc. v. Pate*, No. E2019-00982-COA-R3-CV, 2020 WL 3409282, at *8-9 (Tenn. Ct. App. June 19, 2020). Despite Plaintiff's noncompliance with Tenn. Ct. App. R. 6, we exercise our discretion in this case to address the overarching issue in this appeal as to whether the Trial Court erred in granting summary judgment to Defendant.

On appeal, Plaintiff raises several issues which relate to the central issue of whether the Trial Court erred by granting summary judgment in favor of Defendant in Plaintiff's legal malpractice action. Plaintiff argues that Defendant committed malpractice in several ways, including when he failed to follow Plaintiff's instruction to take the case to trial; did not file an amended complaint with additional claims against Murray Guard; was indifferent to Plaintiff's reference to his medical needs; failed to negotiate insurance coverage for Plaintiff in his settlement agreement; fraudulently secured the settlement agreement; refused to sue TVA as a *de facto* employer on Plaintiff's behalf; and failed to adhere to the legal contract for representation in the underlying employment action. Plaintiff further raises an issue regarding whether the Trial Court erred when it "ignored" Plaintiff's medical experts' evidence regarding the causation of his injury and damages.¹ Additionally, Plaintiff argues that *res ipsa loquitur* applies to this case and that no expert testimony is necessary to establish negligence by Defendant. All of the foregoing issues relate to the overarching issue regarding whether the Trial Court erred by granting summary judgment in favor of Defendant in this legal malpractice action.

In its order, the Trial Court granted summary judgment to Defendant, dismissing Plaintiff's action upon its determination that Defendant had presented evidence negating an essential element of Plaintiff's claim and that Plaintiff had failed to present any expert testimony supporting his claim of professional negligence. "It is well settled that a plaintiff in a legal malpractice action has the burden of proving: (1) the employment of the attorney; (2) neglect by the attorney of a reasonable duty; and (3) damages resulting from the neglect." *PNC Multifamily Cap. Institutional Fund XXVI Ltd. P'ship v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 543 (Tenn. Ct. App. 2012) (citing *Jamison v. Norman*, 771 S.W.2d 408 (Tenn. 1989); *Sammons v. Rotroff*, 653 S.W.2d 740 (Tenn. Ct. App. 1983)). As the Tennessee Supreme Court has explained:

In order to make out a prima facie legal malpractice claim, the plaintiff must show (1) that the accused attorney owed a duty to the plaintiff, (2) that the attorney breached that duty, (3) that the plaintiff suffered damages, (4) that the breach was the cause in fact of the plaintiff's damages, and (5) that the

¹ In his brief, Plaintiff further argues that Defendant failed to file a response to Plaintiff's claims in the amended complaint against him and that this is a concession to those claims. However, Defendant filed an answer to the amended complaint, denying the substantive allegations against him in the amended complaint. We find no merit to Plaintiff's argument in this regard.

attorney's negligence was the proximate, or legal, cause of the plaintiff's damages. See *Lazy Seven Coal Sales, Inc. v. Stone & Hinds*, 813 S.W.2d 400, 403 (Tenn. 1991); *Horton v. Hughes*, 971 S.W.2d 957, 959 (Tenn. Ct. App. 1998). As with any tort claim, the plaintiff has the burden of proving each of these elements.

Gibson v. Trant, 58 S.W.3d 103, 108 (Tenn. 2001).

In legal malpractice actions, this Court has emphasized the importance of expert testimony in establishing a duty of care on behalf of an attorney and any breach of that duty. See *Rose v. Welch*, 115 S.W.3d 478, 484-85 (Tenn. Ct. App. 2003); *Bursack v. Wilson*, 982 S.W.2d 341, 343 (Tenn. Ct. App. 1998). The question of whether a lawyer's conduct meets an acceptable standard of conduct is generally a question of fact for the jury to decide. *Rose*, 115 S.W.3d at 484-85 (quoting *Cleckner v. Dale*, 719 S.W.2d 535, 540 (Tenn. Ct. App. 1986), *abrogated on other grounds by Chapman v. Bearfield*, 207 S.W.3d 736 (Tenn. 2006)). However, whether the lawyer's conduct meets the applicable professional standards of practice "is generally believed to be beyond the common knowledge of laypersons." *Id.* Except in the most extreme cases that involve conduct that is "clear and palpable negligence" that is within the common knowledge of a layperson, expert testimony must be presented to establish the lawyer's standard of care and whether the lawyer's conduct departed from the applicable standard. *Id.*

In this case, the underlying lawsuit involved a settlement agreement that was approved by Plaintiff. Plaintiff's chief complaints are that Defendant failed to take his case to trial, that Defendant had not included all of Plaintiff's damages in his calculation of damages, and that Defendant had not filed suit on his behalf against TVA as Plaintiff's "de facto/joint employer" prior to expiration of the statute of limitations. Plaintiff presented no expert proof regarding the duty of care that Defendant owed to Plaintiff as his lawyer or whether Defendant's conduct had departed from that standard. Although Plaintiff raises an issue regarding whether the Trial Court "ignored" his expert medical witnesses, he states that their testimony was related to causation and damages, which still would not support the elements of the standard of care required and any breach thereof. Contrary to Plaintiff's insistence, this is not an obvious case of legal malpractice and the theory of *res ipsa loquitur* does not apply, especially considering Plaintiff had approved the settlement agreement in the underlying action at the time it was entered into.² Plaintiff further argues that Defendant committed negligence per se by violating the law but fails to develop an argument in this regard that identifies which laws Defendant allegedly violated and

² *Res ipsa loquitur*, translated from Latin as "the thing speaks for itself," is defined as follows: "The doctrine providing that, in some circumstances, the mere fact of an accident's occurrence raises an inference of negligence that establishes a prima facie case." RES IPSA LOQUITUR, Black's Law Dictionary (11th ed. 2019).

explaining how Defendant violated those laws. We hold that expert proof was required as to Defendant's duty of care to Plaintiff, as well as Defendant's failure to meet that duty.

Although Plaintiff presented no proof to support his argument that Defendant breached his duty of care, Defendant presented evidence that no breach of duty occurred. Defendant provided expert testimony from himself and another lawyer in support of his position that he had not breached a duty of care to Plaintiff. In his affidavit, lawyer Harry Burnette opined that Defendant's representation in the underlying action had exceeded the standard of care required and that the settlement agreement was a favorable resolution for Plaintiff. Mr. Burnette considered Plaintiff's credibility issues and concluded that if the matter had been presented to a jury, those credibility issues would have diminished the value of his case and negatively impacted Plaintiff's ability to persuade a jury to find in his favor.

Additionally, Defendant stated in his affidavit that he was not required to file an action against TVA on Plaintiff's behalf because that was not part of the legal services agreement Plaintiff and he had entered. According to Defendant's affidavit, he had advised Plaintiff many times that an action against TVA was not advisable, and Plaintiff had indicated his agreement with Defendant's professional opinion. As an attachment to his affidavit, Defendant presented an email from Plaintiff indicating that Plaintiff was aware that Defendant was not going to pursue a claim against TVA on Plaintiff's behalf and that Plaintiff would contact other attorneys regarding those claims against TVA. He further detailed in his affidavit numerous problems with Plaintiff's underlying employment case which included Murray Guard's defense that Plaintiff had voluntarily ended his employment with it rather than transfer to a different facility, Plaintiff's failure to mitigate his damages, his unsuccessful lawsuits against former employers, and his history of having his employment terminated by other former employers. Based on the foregoing, Defendant opined that he had met or exceeded the duty of care he owed to Plaintiff.

This Court has stated that "except in extreme cases, if a defendant-attorney presents expert proof that he or she did not breach the duty of care, the plaintiff-client must present rebuttal expert proof that a breach of care did occur in order to create a genuine issue of material fact." *Strong v. Baker*, No. M2007-00339-COA-R3-CV, 2008 WL 859086, at *7 (Tenn. Ct. App. Mar. 31, 2008) (citing *Bursack*, 982 S.W.2d at 343-45). Plaintiff has not presented any expert proof to dispute the expert proof presented by Defendant. As such, we hold, as did the Trial Court, that there is no genuine issue of material fact to preclude summary judgment because this was not a case of clear negligence that would be known to a layperson; Defendant presented expert proof that he did not breach the duty of care; and Plaintiff did not present expert proof of a duty of care or a breach of that duty to support his claim. We affirm the Trial Court's grant of summary judgment to Defendant.

Conclusion

Based on the foregoing, the Trial Court's judgment granting summary judgment to Defendant is affirmed. We remand to the Trial Court for the collection of the costs assessed below. Costs on appeal are assessed to the appellant, Carlton B. Parks, and his surety, if any.

D. MICHAEL SWINEY, CHIEF JUDGE