AFFIRM; and Opinion Filed March 22, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01113-CV

GERALD W. HADDOCK, Appellant
V.
G. MICHAEL GRUBER; BRIAN N. HAIL; MICHAEL J. LANG; RICHARD M. HULL, JR., AS INDEPENDENT EXECUTOR OF THE ESTATE OF RICHARD M. HULL, DECEASED; GODWIN GRUBER, LLP; GODWIN PAPPAS LANGLEY RONQUILLO LLP; GRUBER HURST JOHANSEN HAIL & SHANK, LLP; AND GODWIN LEWIS, P.C., Appellees

On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-09161

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Brown
Opinion by Justice Lang-Miers

Appellant Gerald W. Haddock sued the appellee attorneys and law firms who represented him in a dispute with a real estate investment trust. Haddock claimed damages for professional negligence, breach of fiduciary duty, and gross negligence against appellees G. Michael Gruber, Brian N. Hail, Michael J. Lang, Richard M. Hull, Jr., as Independent Executor of the Estate of Richard M. Hull, deceased, Godwin Gruber, LLP, Godwin Pappas Langley Ronquillo LLP, Gruber Hurst Johansen Hail & Shank, LLP, and Godwin Lewis, P.C. (collectively, the "Attorneys"). The trial court granted the Attorneys' motion for summary judgment in part. After his remaining claims

were severed, Haddock filed this appeal alleging that the trial court erred by granting the Attorneys' motion. Because summary judgment was proper on the Attorneys' affirmative defenses of collateral estoppel and release, we affirm the trial court's judgment.

BACKGROUND

Haddock's dispute with Crescent Real Estate Equities Company began over a decade ago. We recount the complicated history of the dispute only as necessary to resolve the question whether summary judgment was proper on Haddock's claims for professional negligence against the Attorneys, who represented him in 2005 and 2006.

Haddock co-founded Crescent, a real estate investment trust, in 1994. Haddock and others also created several related entities for the operation of the trust (collectively, the "Crescent parties"). In June 1999, Haddock resigned from his positions with the Crescent parties and entered into a severance agreement. Among other covenants, each party promised to refrain from making unfavorable comments about the other. Haddock retained certain stock and unit options that he received through the course of his employment.

Some years later, Haddock became concerned about the management of the Crescent parties and its effect on his stock and unit options. Haddock wanted to discuss his concerns with other shareholders, but did not want to breach the unfavorable comments clause of the severance agreement. Consequently, in 2005, Haddock sought declaratory relief in the 17th Judicial District Court of Tarrant County (the "17th Court") that the unfavorable comments clause was void or applied only to actionable defamation. In the alternative, Haddock asked the court to reform the unfavorable comments clause by narrowing its scope. Haddock sought and obtained a temporary restraining order prohibiting the Crescent parties from interfering with his stock option rights; the restraining order also provided that all parties were to abide by the unfavorable comments clause.

The Crescent parties then filed a counterclaim for breach of the severance agreement and a 2001 settlement agreement.

The Attorneys represented Haddock in the 2005 proceeding in the 17th Court. Haddock did not make any claims for damages in that court. However, the Attorneys filed a "motion for clarification" of the 17th Court's restraining order in June, 2005, stating that Haddock had causes of action for damages against the Crescent parties, and seeking a ruling that Haddock would not violate the restraining order or the unfavorable comments clause by making these claims. The Attorneys never sought or obtained a hearing or a ruling on this motion.

The parties filed cross-motions for summary judgment in the 17th Court. Haddock explains in his brief that the 17th Court "essentially denied the parties any and all relief they sought—denying Haddock's declaratory judgment/injunctive claims and denying Crescent's breach of contract claims." The Attorneys filed a notice of appeal, but advised Haddock to dismiss his appeal of the 17th Court's judgment and to pursue his claims for damages in arbitration. Haddock dismissed the appeal and filed a demand for arbitration, but retained other lawyers to represent him in early 2006 after the appeal was dismissed. In May 2006, Haddock and the Attorneys settled a fee dispute; we discuss this settlement in more detail below.

The Crescent parties responded to Haddock's demand for arbitration by filing suit in the 67th Judicial District Court of Tarrant County (the "67th Court") to stay the arbitration, on the ground that Haddock had repudiated or waived the agreement to arbitrate by filing suit in the 17th Court. This dispute proceeded through an interlocutory appeal and petition for writ of mandamus filed in the Fort Worth Court of Appeals. That court's opinion contains a detailed account of the proceedings. *See Haddock v. Quinn*, 287 S.W.3d 158 (Tex. App.—Fort Worth 2009, pet. denied). The court of appeals agreed with the Crescent parties that Haddock waived his right to arbitrate by substantially invoking the judicial process in the 17th Court. *See id.* at 176–82.

Haddock then pursued his claims for damages against the Crescent parties, filing suit in Dallas County in 2010. As summarized by Haddock's expert witnesses in this case, Haddock's claims arose from his contracts with the Crescent parties. The contracts granted Haddock the right to demand a downward adjustment in the exercise price of his unit and stock options in the event of either a recapitalization or reorganization of the Crescent parties. Haddock contended that the Crescent parties had effectively recapitalized by paying special dividends that were not covered by operations, thereby artificially deflating the stock price. He contended that the Crescent parties refused to allow him to adjust the exercise price of his unit options in response to this recapitalization. He also alleged that the Crescent parties did not inform him of a 2002 amendment to a 1996 plan that would have allowed him to exercise his unit options on more favorable terms, and did not disclose to him that management sought to sell the Crescent parties. Haddock claimed that these breaches caused him damages in excess of $10 million.

Haddock's claims were transferred to the 67th Court and consolidated with the Crescent parties' previously-filed case. Both parties moved for summary judgment. Among other grounds, the Crescent parties argued that Haddock's claims were barred by res judicata, having been resolved by the 17th Court, and by limitations. On June 22, 2012, the 67th Court signed an interlocutory order granting partial summary judgment to the Crescent parties and denying Haddock's motion. The order granted the Crescent parties' motion for partial summary judgment "in its entirety." The order also granted the Crescent parties' request for declaratory relief. The 67th Court made four declarations:

1. Crescent Real Estate Equities Company ("CEI"), Crescent Real Estate Equities Limited Partnership ("CREELP") and Crescent Real Estate Equities, Ltd. ("CREE"), collectively the "Crescent Entities," did not breach any agreement with Haddock by not adjusting his options to purchase units in CREELP;

2. The Crescent Entities did not breach any agreement with Haddock by not allowing Haddock to pay for the exercise of his options to purchase units in CREELP with notes executed by Haddock and tendered to the Crescent Entities;

3. The resolutions of the Board of Trust Managers for CEI set forth in the Minutes of the Special Meeting of the Board of Trust Managers of Crescent Real Estate Equities Company, dated July 29, 2002 have no application to Haddock or to any agreement between the Crescent Entities and Haddock;

4. The Crescent Entities did not breach any agreement with Haddock or any duty that may have been created by an agreement with Haddock, by not notifying Haddock of any potential merger of the Crescent Entities with a third party prior to notifying other shareholders of CEI.

The order set a hearing date "to consider the Crescent Parties' request for attorney's fees pursuant to § 37.009 of the Texas Civil Practice and Remedies Code and paragraph 7(b) of the Severance Agreement." The order concluded, "This order is not a final judgment as it does not dispose of the Crescent Parties' claim for attorneys' fees and therefore is not an order from which an appeal may be taken."

Upon learning that the Crescent parties sought attorneys' fees of $2,500,000, Haddock advised his lawyer that a judgment in that amount would have "catastrophic consequences on his personal, financial and business interests." Haddock agreed to settle to avoid these consequences. Haddock and the Crescent parties entered into a settlement agreement and covenant not to sue, which included an agreed final judgment to be submitted to the 67th Court for entry. This judgment provided:

> CAME ON TO BE HEARD the trial of this matter. All parties, after proper notice was given, appeared by and through their attorneys of record and announced they were ready to proceed.
>
> The Court, as a result of the parties' announcement that they have resolved the issues that have not been decided by the Court, finds that a Final Judgment should be entered in this cause.
>
> IT IS THEREFORE ORDERED that, Plaintiff and Counter-Defendant Gerald W. Haddock take nothing of and from Defendants and Counter-Plaintiffs William F. Quinn, Paul E. Rowsey, III, Terry N. Worrell, Robert W. Stallings, Anthony M. Frank, Crescent Real Estate Company, Crescent Real Estate Equities Limited Partnership, Crescent Real Estate Equities, Ltd., Richard E. Rainwater, John C. Goff, Dennis H. Alberts, Jerry R. Crenshaw, Jr. and David M. Dean.
>
> IT IS FURTHER ORDERED that, **except for the declaratory relief granted to Defendants and Counter-Plaintiffs** in the Order Granting the Crescent Parties'

> Motion for Partial Summary Judgment and Denying Gerald W. Haddock's Motion for Summary Judgment dated June 22, 2012 (the "Summary Judgment Order"), Defendants and Counter-Plaintiffs take nothing of and from Plaintiff and Counter-Defendant Gerald W. Haddock.
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> IT IS FURTHER ORDERED that each party will bear its own costs of suit and attorneys' fees.
>
> IT IS FURTHER ORDERED that all relief not expressly granted herein or in the Summary Judgment Order herein is hereby denied.
>
> This order is a final judgment from which an appeal may be taken and disposes of the claims of all parties.

(Emphasis added). The 67th Court signed this judgment on August 27, 2012 (the "67th Court Judgment").

In this lawsuit, Haddock contends that because the Attorneys failed to make his claims for money damages in the 17th Court, the Crescent parties prevailed in the 67th Court by asserting the defenses of res judicata and limitations. Haddock seeks to recover damages from the Attorneys in the amount that he was unable to obtain from the Crescent parties in the 67th Court. The Attorneys filed an "Amended Final Summary Judgment Motion" in this case, urging that (1) Haddock's claims are barred by collateral estoppel; (2) Haddock released his claims in a May 2006 agreement; and (3) certain of Haddock's claims for breach of fiduciary duty are barred by the anti-fracturing rule. The trial court granted this motion in part, and subsequently granted Haddock's motion to sever the claims that remained pending.

Haddock now appeals the trial court's June 13, 2016 order granting summary judgment. In three issues, Haddock contends the trial court erred by (1) granting summary judgment on the affirmative defense of release; (2) determining there was no evidence to support Haddock's claims for gross negligence and breach of fiduciary duty; and (3) granting summary judgment based on the affirmative defense of collateral estoppel.

STANDARD OF REVIEW

We review the trial court's granting of a summary judgment by well-known standards. In our de novo review, we determine whether the moving party has established its right to judgment as a matter of law, considering the evidence in the light most favorable to the non-movant. *See Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013). A movant seeking traditional summary judgment on an affirmative defense has the initial burden of establishing entitlement to judgment as a matter of law by conclusively establishing each element of the affirmative defense. *Lam v. Phuong Nguyen*, 335 S.W.3d 786, 789 (Tex. App.—Dallas 2011, pet. denied); *see* TEX. R. CIV. P. 166a(b), (c). A matter is conclusively established if reasonable people could not differ as to the conclusion to be drawn from the evidence. *Lam*, 335 S.W.3d at 789. If the movant meets its burden, the burden then shifts to the nonmovant to present evidence raising a genuine issue of material fact as to one or more elements of the affirmative defense, precluding summary judgment. *Id.* The evidence raises a genuine issue of material fact if reasonable and fair-minded jurors could differ in their conclusions in light of all the summary judgment evidence. *Id.*

ISSUE THREE—COLLATERAL ESTOPPEL

In their motion for summary judgment, the Attorneys argued that Haddock was collaterally estopped from relitigating the facts underlying his dispute with the Crescent parties because of the declaratory relief granted in the 67th Court's summary judgment that was included in the 67th Court's agreed final judgment. And the Attorneys argued that without relitigating those facts, Haddock could not establish the causation element of his professional negligence claim against them. The trial court granted summary judgment "against all causes of action [Haddock] has asserted against [the Attorneys] for professional negligence that require [Haddock] to prove case-within-the-case causation . . . because the doctrine of collateral estoppel precludes those causes of action as a matter of law."

In his third issue, Haddock argues that the trial court erred by granting summary judgment to the Attorneys on the affirmative defense of collateral estoppel. He contends that the Attorneys committed malpractice by failing to assert his claims for money damages in the 17th Court, allowing the Crescent parties to bar his recovery on those claims in the 67th Court by pleading res judicata and limitations defenses. He contends that the 67th Court Judgment was based on the res judicata and limitations defenses, and argues that the Attorneys should not be able to benefit from an adverse judgment against their client in the 67th Court that resulted from their own negligence. He challenges each element of the Attorneys' collateral estoppel defense.

1. Legal Standard

When a plaintiff alleges that some failure on his attorney's part caused an adverse result in prior litigation, he must prove that but for his attorney's negligence, he would have prevailed in the underlying case. *Green v. McKay*, 376 S.W.3d 891, 898 (Tex. App.—Dallas 2012, pet. denied). The supreme court recently discussed the proximate cause element of a legal malpractice case in *Rogers v. Zanetti*, 518 S.W.3d 394, 407–08 (Tex. 2017). Proof of cause in fact "involves a comparison of two cases—the case containing imprudent attorney conduct and the case the plaintiff claims should have unfolded with competent representation." *Id.* at 407. "This re-creation is typically referred to as the 'case-within-a-case' or 'suit-within-a-suit' and is the accepted and traditional means of resolving the issues involved in the underlying proceeding in a legal malpractice action." *Id.* at 401 (internal quotation omitted). The applicable test is "but-for" causation. *Id.* at 412. Although causation is typically a question of fact, it may be determined as a matter of law when reasonable minds could not arrive at a different conclusion. *Id.* The court concluded, "Whether a negligent lawyer's conduct is the cause in fact of the client's claimed injury requires an examination of the hypothetical alternative: What should have happened if the lawyer had not been negligent?" *Id*. at 411. The Attorneys argued that there was no evidence of proximate

cause because Haddock obtained an adverse result through the declaratory relief in the 67th Court, and any effort to relitigate those issues to attempt to prove his claims of professional negligence was barred by collateral estoppel.

Collateral estoppel prevents relitigation of issues already resolved in a prior suit. *Barr v. Resolution Tr. Corp.*, 837 S.W.2d 627, 628–29 (Tex. 1992). To establish that Haddock's claims were barred by collateral estoppel, the Attorneys were required to prove that (1) the facts sought to be litigated in this suit were fully and fairly litigated in the 67th Court; (2) those facts were essential to the 67th Court's judgment; and (3) the parties were cast as adversaries in the 67th Court. *See Sysco Food Servs., Inc. v. Trapnell*, 890 S.W.2d 796, 801 (Tex. 1994).[1]

A. Full and fair opportunity to litigate

The Attorneys contend that Haddock had a full and fair opportunity to litigate the merits of his claims against the Crescent parties in the 67th Court. They argue that to resolve the parties' competing motions for summary judgment, the 67th Court was required to construe the documents under which Haddock claimed damages from the Crescent parties. They contend that because "the declaratory-judgment action was purely a merit-based request that the court construe certain operative documents," Haddock "actually, and unsuccessfully, litigated the merits of his monetary claims through the [67th Court's] summary-judgment proceedings." They conclude that the res judicata defense had "nothing to do" with the 67th Court's construction of the operative

[1] Relying on *Trapnell*, Haddock contends that even when the three elements are met, "fairness and equity must be evaluated to determine if collateral estoppel should be applied." He argues that a "fairness and equity" element is "especially critical in this proceeding," because (1) he was forced to settle in the 67th Court instead of appealing the judgment, and (2) applying collateral estoppel will allow the Attorneys to benefit from their own negligence. In *Trapnell*, the court explained that "[a]pplication of collateral estoppel also involves considerations of fairness not encompassed by the 'full and fair opportunity' inquiry." *Id.* at 804. In *Trapnell*, however, the court noted the "procedural uniqueness" of the case, in which the Trapnells were prevented from filing claims by case law that was subsequently overruled by statute. *Id.* Because the Trapnells' "procedural predicament [was] not of their own making," considerations of fairness were especially important. *Id.* at 804–05. Since *Trapnell*, courts have continued to apply the three-element test. *See BP Auto. LP v. RML Waxahachie Dodge, LLC*, 517 S.W.3d 186, 205–06 (Tex. App.—Texarkana 2017, no pet.) (distinguishing *Trapnell* and rejecting argument that even where traditional elements of collateral estoppel applied, doctrine could be avoided on basis of "fairness"); *Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Servs., Inc.*, 500 S.W.3d 26, 44–45 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (applying three-element test); *Weaver & Tidwell, L.L.P. v. Guar. Co. of N. Am. USA*, 427 S.W.3d 559, 574 (Tex. App.—Dallas 2014, pet. denied) (same).

documents, and "could not possibly have impacted or influenced" the 67th Court's decision to grant summary judgment on the Crescent parties' declaratory judgment action.

Haddock argues, however, that because he was forced to settle the lawsuit with the Crescent parties and forego his appeal rather than face financial ruin, he did not have a full and fair opportunity to litigate his claims in the 67th Court. Relying on this Court's opinion in *Tate v. Goins, Underkofler, Crawford & Langdon*, 24 S.W.3d 627 (Tex. App.—Dallas 2000, pet. denied) (op. on reh'g), Haddock contends that summary judgment is improper on a claim for professional negligence where a lawyer's conduct "contributes to a client's 'forced to settle' decision." *Tate*, however, is distinguishable.

In *Tate*, the defendant law firm failed to file an answer on its client's behalf in an underlying lawsuit. *Id.* at 630. A default judgment was entered against Tate, the client. *Id.* Tate settled the underlying claim and then sued the law firm for malpractice. *Id.* at 631. The law firm moved for summary judgment, alleging among other arguments that Tate's decision to settle with the underlying defendant was an intervening cause of his damages. *Id.* at 634. We rejected this argument, relying on Tate's testimony that he was "forced to settle" with the defendant because he could not post a supersedeas bond in the amount of the judgment, and if he failed to post the bond, he would likely have lost his business or personal assets or would have been forced to file bankruptcy. *Id.* We concluded that "this evidence raises a fact issue as to whether Goins' alleged malpractice effectively forced Tate to mitigate his damages by settling the underlying suit." *Id.* Because the law firm had not conclusively negated the proximate cause element of Tate's negligence claim, summary judgment was improper. *Id.* Collateral estoppel was not an issue in the appeal. *See generally id.*

Here, the interlocutory order in the 67th Court set a hearing date "to consider the Crescent Parties' request for attorney's fees pursuant to § 37.009 of the Texas Civil Practice and Remedies

Code and paragraph 7(b) of the Severance Agreement." Unlike the default judgment entered against Tate, which was the direct result of his attorney's failure to file an answer in the underlying lawsuit on his behalf, the Crescent parties' entitlement to attorney's fees arose from the 67th Court's resolution of the merits of the Crescent parties' request for declaratory judgment and its interpretation of the parties' contracts. The Attorneys' failure to file Haddock's claims for monetary damages in the 17th Court and the Crescent parties' assertion of a res judicata defense in the 67th Court had no bearing on these rulings. The 67th Court interpreted Haddock's agreements with the Crescent parties, determined that the Crescent parties did not breach the agreements, and ruled that it would consider an award of attorney's fees to the Crescent parties as a result of its construction of the agreements. Haddock settled his dispute with the Crescent parties after consulting with his counsel (not the Attorneys) about the risks of appeal and the benefits of a settlement.

Haddock further contends that the issues were not "actually litigated" in the 67th Court because the 67th Court did not address or resolve his professional negligence claims against the Attorneys. Haddock relies on numerous cases holding that collateral estoppel does not apply where issues relating to an attorney's professional negligence were not litigated in the underlying case. *See, e.g., Byrd v. Woodruff*, 891 S.W.2d 689, 699 (Tex. App.—Dallas 1994, writ dism'd by agr.). In *Byrd*, plaintiff Kassie Byrd sued her former attorney Woodruff for malpractice, alleging that Woodruff was negligent in setting up and handling trusts created with the proceeds of settlements in two underlying lawsuits. *See id.* at 697–98. Byrd did not challenge the fairness or reasonableness of the underlying settlement agreements or attempt to set aside the judgments in the underlying lawsuits. *Id.* at 699. We concluded that collateral estoppel did not bar Byrd's malpractice claims because "[t]he parties did not litigate any issue about Woodruff's legal representation of Kassie in

the prior suit." *Id.* Byrd did not argue that but for Woodruff's actions, the results in the underlying suits would have been different.

Here, Haddock claims that because the Attorneys failed to plead and pursue his claims for money damages in the 17th Court, the Crescent parties were able to raise the affirmative defenses of res judicata and limitations in the 67th Court. To establish but-for causation, however, Haddock must prove that absent the res judicata and limitations defenses, he would have prevailed on his claims for money damages in the 67th Court. *See Green*, 376 S.W.3d at 898. To do so, Haddock must challenge the 67th Court Judgment and re-litigate issues already determined by that court arising from the contractual relationship between Haddock and the Crescent parties. And the 67th Court made its rulings on these issues without reference to the res judicata and limitations defenses. There was no similar case-within-a-case causation question in *Byrd.* We conclude that the Attorneys met their summary judgment burden to conclusively establish that the issues between Haddock and the Crescent parties were fully and fairly litigated in the 67th Court, including the facts forming the basis of Haddock's professional negligence claims, and Haddock did not raise a genuine issue of material fact on this element of the Attorneys' collateral estoppel defense. *See Lam*, 335 S.W.3d at 789.

B. Essential to the judgment

Haddock argues that the four declarations in the 67th Court's interlocutory order and Judgment, which he describes as "manufactured findings created by lawyers," were not essential to the 67th Court Judgment because they were against public policy, allowing the Attorneys to benefit from their own malpractice. He refers to the declarations as "unfindings," explaining that they "stem from the 67th District Court's enumerated absolution of Crescent in its Summary Judgment Order, which was then adopted into its Final Judgment." He contends that rather than defeating the case-within-a-case requirement of proximate causation for his legal malpractice

claim, the 67th Court Judgment merely "'unfinds' by declaratory judgment the elements of [his] underlying lawsuit." Haddock argues that there was no "genuine determination of fact issues" by the 67th Court. He concludes that "[a]t the very least," he raised a fact issue on the question whether the 67th Court's declarations were essential to its judgment.

Haddock relies on "public policy" considerations to support his argument, citing *Tate* and *Mallios v. Baker*, 11 S.W.3d 157, 158 (Tex. 2000). In *Mallios*, a client had partially assigned his malpractice claim to a third party. *Id.* The lawyer argued that because the assignment was against public policy, the client's legal malpractice claim was barred. *Id.* at 159. The court held that summary judgment for the lawyer was improper on this ground. *Id.* Similarly, in *Tate*, we followed *Mallios*, concluding that Tate's right to bring his own cause of action for malpractice was not vitiated by an invalid assignment of the claim. *Tate*, 24 S.W.3d at 634. Neither *Tate* nor *Mallios* supports Haddock's argument. The public policy addressed in those cases was disapproval of "'voluntary assignments of legal malpractice claims that necessitate a duplicitous change in the positions taken by the parties in antecedent litigation.'" *Tate*, 24 S.W.3d at 633 (quoting *Mallios*, 11 S.W.3d at 164 (Hecht, J. concurring)). There were no such policy considerations here.

The Attorneys counter that the 67th Court's declarations were essential to its judgment. Citing the declaratory judgments act, the Attorneys argue that the 67th Court had the power to make a declaration of the rights and status of the parties. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.003 (West 2015) (power of courts to render declaratory judgments). "[T]he declaration has the force and effect of a final judgment or decree." *Id.* § 37.003(b). They argue that the 67th Court's declarations were incorporated into its final judgment, and they point to summary judgment evidence that the Crescent parties would not agree to settle unless the declarations were included in the judgment. The summary judgment record also reflects that Haddock opposed the declaratory judgment action in the 67th Court and sought summary judgment on the Crescent parties'

declaratory judgment claims. We conclude that the Attorneys met their burden to establish that the 67th Court's declarations were essential to its judgment, and Haddock did not raise a genuine issue of material fact on this element of the Attorneys' collateral estoppel defense. *See Lam*, 335 S.W.3d at 789.

C. Cast as adversaries

Haddock next argues that he was not an "adversary" in the 67th Court proceeding, so that the Attorneys' collateral estoppel defense fails to meet the requirement that the parties be "cast as adversaries" in the prior litigation. *See Trapnell*, 890 S.W.2d at 801. Although Haddock does not dispute that he was a party to the suit in the 67th Court,[2] he argues that he and the Crescent parties were "adversaries in name only" at the time of the 67th Court Judgment because "[h]is legal back was broken by the defense of *res judicata* and he faced financial ruin unless he acceded to the demands of the Crescent Parties, including the language for the 'agreed' void judgment 'unfinding' facts under the guise of [a declaratory judgment]." We disagree. The 67th Court's judgment was not void, as we discuss below. The 67th Court's declarations were made on the merits of a hotly-contested and long-fought dispute about the meaning of Haddock's agreements with the Crescent parties. Haddock and the Crescent parties agreed on only one point, to end their protracted litigation by written settlement. In exchange for foregoing his appeal, Haddock was relieved of any obligation, contractual or statutory, to pay the Crescent parties' attorney's fees. Haddock's contention that he and the Crescent parties were "adversaries in name only" is not supported by the record. We conclude that the Attorneys met their burden to establish that the parties were cast as adversaries in the 67th Court, and Haddock did not meet his burden to raise a genuine issue of

[2] "Strict mutuality of parties is no longer required" in order to establish collateral estoppel. *See Trapnell*, 890 S.W.2d at 801–02. Although the Attorneys were not a party to the 67th Court litigation, parties in a subsequent suit may invoke collateral estoppel even if they did not participate in the first suit, as long as the party against whom collateral estoppel is asserted (here, Haddock) was either a party or in privity with a party in the earlier litigation. *Eagle Props., Ltd. v. Scharbauer*, 807 S.W.2d 714, 721 (Tex. 1990).

material fact on this element of the Attorneys' collateral estoppel defense. *See Lam*, 335 S.W.3d at 789.

D. Ultimate factual issues

Haddock next argues that the four declarations made by the 67th Court were actually conclusions of law to which collateral estoppel does not apply. He contends that collateral estoppel applies only to ultimate factual issues, not to causes of action. He relies on two supreme court opinions in support of his argument, *Tarter v. Metropolitan Savings & Loan Ass'n*, 744 S.W.2d 926, 928 (Tex. 1988), and *Kenedy Memorial Foundation v. Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002). The Attorneys contend that Haddock did not make this argument in the trial court, and, in any event, collateral estoppel precludes the relitigation of both factual and legal issues.

In its summary judgment order, the 67th Court declared that certain actions by the Crescent entities were not breaches of their agreements with Haddock. *See Cmty. Health Sys. Prof'l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 681 (Tex. 2017) ("When the controversy can be resolved by proper construction of an unambiguous document, rendition of summary judgment is appropriate."). A court's declaration of a party's contractual obligations in a summary judgment may have collateral estoppel effect in a subsequent suit. In *State & County Mutual Fire Insurance Co. v. Miller*, 52 S.W.3d 693, 697 (Tex. 2001), for example, an insured was collaterally estopped from relitigating the issue of his insurers' liability under an insurance policy where that issue had been decided by summary judgment in previous suit. *Tarter* and *Kenedy* are not to the contrary.

In *Tarter*, homeowners sued their lender for breach of contract and deceptive trade practices after their suit for wrongful foreclosure against the secondary lienholder was unsuccessful. *Tarter*, 744 S.W.2d at 926–27. The trial court rendered judgment for the homeowners after a jury trial, but the court of appeals reversed on the ground that collateral estoppel precluded relitigation of the validity of the foreclosure. *Id.* at 927. The supreme court

reversed, concluding that "no question of fact regarding Metropolitan's conduct was necessarily determined as a prerequisite to the first judgment." *Id.* at 928. The court explained:

> The doctrine of collateral estoppel precludes relitigation of any ultimate issue of fact actually litigated and essential to the judgment in a prior suit. . . . Ultimate issues are those factual determinations submitted to a jury that are necessary to form the basis of a judgment. The term "ultimate issue" does not refer to a cause of action or claim. The ultimate issues in the Tarters' suit against Metropolitan were neither expressly nor necessarily adjudicated in the suit against Albers and Brownsted.

Id. at 927, 928 (citations omitted). The court concluded that because different ultimate issues were litigated in each suit, collateral estoppel did not apply. *See id.* at 927–28 (first suit determined that foreclosure sale was valid; second suit was for breach of contract and DTPA violations).

Kenedy involved a shoreline boundary dispute. *See generally Kenedy*, 90 S.W.3d at 270–74. The State argued that the plaintiff's claims were barred by collateral estoppel based on a previous lawsuit in federal court. *See id.* at 286. The supreme court rejected the State's argument, explaining that "the facts concerning the Foundation's eastern boundary were not fully and fairly litigated" in the previous case. *Id.* at 288. Further, the court had already rejected the federal court's "interpretation of the civil law governing the original grants" of land along shorelines. *See id.* The court concluded, "[d]eterminations of law are not generally given preclusive effect." *Id.* Because "[t]he facts regarding the Foundation's boundary were not determined in [the prior case] and could not have been," collateral estoppel did not apply. *Id.*

In neither *Tarter* nor *Kenedy* were identical fact issues raised in the second proceeding. *See Tarter*, 744 S.W.2d at 928 (no question of fact regarding lender's conduct was necessarily determined in first suit); *Kenedy*, 90 S.W.3d at 288 (prior litigation did not resolve fact question about boundary of plaintiff's land). In *Miller*, in contrast, the issue of the insurers' liability to the insured under the policy was fully and fairly litigated in the first suit. *See Miller*, 52 S.W.3d at 697. Consequently, the court concluded, "[a]fter comparing the issues decided in the [previous] suit

with the issues involved in the present case, we hold that Miller is collaterally estopped from asserting any claims regarding liability under the policy." *Id.*

Here, to determine whether Haddock could have prevailed in the 67th Court absent the Attorneys' alleged malpractice—the case within a case—the trial court would be required to determine whether the Crescent parties breached their agreements with Haddock. This was the exact question litigated in the 67th Court. *See Tarter*, 744 S.W.2d at 927 ("The doctrine of collateral estoppel precludes relitigation of any ultimate issue of fact actually litigated and essential to the judgment in a prior suit. . . . The doctrine applies when the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit.").

In addition, *Tarter* and *Kenedy* did not involve proof of identical issues of fact and law to establish the case-within-a-case causation element of a professional negligence claim. In contrast to *Tarter* and *Kenedy*, the 67th Court resolved the same "ultimate issues of fact" that Haddock had to prove to establish case-within-a-case causation. We conclude that *Tarter* and *Kenedy* do not preclude the application of collateral estoppel here. *See also Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 521–22 (Tex. 1998) (*superseded by statute on other grounds*, TEX. FIN. CODE ANN. § 304.1045) (discussing which of plaintiff's breach of contract claims were precluded by collateral estoppel).

E. Independent ground for judgment

Haddock next argues that collateral estoppel does not apply because the 67th Court's judgment could stand independently on the issue of res judicata or on the issue of limitations. *See id*. The *Johnson & Higgins* court explained that "'[i]f a judgment of a court of first instance is based on determinations of two issues, either of which standing independently would be sufficient

to support the result, the judgment is not conclusive with respect to either issue standing alone.'" *Id.* (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 27, cmt. i).[3]

Here, although the 67th Court's initial order granted the Crescent parties' motion for summary judgment "in its entirety," and necessarily included the Crescent parties' res judicata and limitations defenses raised in their summary judgment motion, the order also included specific declarations that would have been unnecessary had the court decided the case on the basis of the res judicata and limitations defenses. And the subsequent 67th Court Judgment provides that "except for the declaratory relief" granted in the summary judgment order, the Crescent parties "take nothing of and from" Haddock, without the language granting the Crescent parties' summary judgment motion in its entirety. Consequently, there is no independent alternative ground to preclude the application of collateral estoppel.

F. 67th Court's jurisdiction

As a subpart of his third issue, Haddock argues that the 67th Court Judgment is void because the 67th Court lacked jurisdiction over the subject matter of the suit. He contends that a void judgment cannot support collateral estoppel. We disagree that the judgment of the 67th Court was void for lack of subject matter jurisdiction. "Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable." *State Bar of Texas v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). Haddock does not challenge these elements. Instead, he argues that the 67th Court "interfered" with the 17th Court's exclusive or dominant jurisdiction. We disagree.

"When one court has exclusive jurisdiction over a matter, any order or judgment issued by another court pertaining to the same matter is void." *King v. Deutsche Bank Nat'l Tr. Co.*, 472

[3] The *Johnson & Higgins* court, however, determined that collateral estoppel applied because both of the alternative findings had been reviewed and affirmed by an appellate court. *See Johnson & Higgins*, 962 S.W.2d at 521–22 (citing RESTATEMENT (SECOND) OF JUDGMENTS § 27, cmt. o).

S.W.3d 848, 851 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (citations and internal quotations omitted). But there is a "constitutional presumption that district courts are authorized to resolve disputes." *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004). As the *Entergy* court explained:

> Pursuant to the Texas Constitution, a district court's jurisdiction "consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." TEX. CONST. art. V, § 8. An important corollary is that district courts are courts of general jurisdiction and generally have subject matter jurisdiction absent a showing to the contrary. *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000).

Id.

When the jurisdiction of two courts is concurrent, the issue is one of dominant jurisdiction. *King*, 472 S.W.3d at 851–52. As a general rule, when cases involving the same subject matter and the same parties are brought in different courts, the court with the first-filed case has dominant jurisdiction, and the other case should be abated. *Id.* at 852. The party contesting a court's lack of dominant jurisdiction must file a plea in abatement, however, or the complaint is waived. *Id.*; *see also Lagow v. Hamon ex rel. Roach*, 384 S.W.3d 411, 418 (Tex. App.—Dallas 2012, no pet.) ("Generally, a plea in abatement must be raised in a timely manner, or it is waived."). No party filed a plea in abatement in the 67th Court.

In addition, Haddock does not cite any case in which the "dominant jurisdiction" doctrine has been applied where the first-filed suit has proceeded to final judgment and appeals have been exhausted before the second suit is filed. *See, e.g.*, *Cleveland v. Ward*, 285 S.W. 1063, 1069–70 (Tex. 1926) (*disapproved on other grounds by Walker v. Packer*, 827 S.W.2d 833, 842 (Tex. 1992)) (court that first acquired jurisdiction was entitled to proceed to judgment; injunction issued in second suit filed six days later was void because second court "had no jurisdiction thereof except to dismiss the same"); *see also In re J.B. Hunt Transport, Inc.*, 492 S.W.3d 287, 292 (Tex. 2016)

(dominant jurisdiction question "only arises when an inherent interrelation of the subject matter exists in two *pending* lawsuits") (internal quotations omitted and emphasis added).[4]

Haddock relies on *Ex Parte Lillard*, 314 S.W.2d 800 (Tex. 1958), as "dispositive as to the question as to the voidness of the judgment of the 67th Judicial District Court in this case." In *Lillard*, a Dallas County court awarded custody of a minor child to his mother on the condition that the child would remain in the home of his paternal uncle. The mother sought to modify the decree to remove the condition in that same court, and also filed suit in Tarrant County to obtain complete custody of the child. The Tarrant County court awarded full custody to the mother and held the uncle in contempt for failure to comply with its order. *Id.* at 804. As Haddock argues, the supreme court held that because the Tarrant County order was "void for want of jurisdiction," the uncle could not be held guilty of contempt for refusing to obey it. *Id.* at 804, 806. And the court granted the uncle's application for writ of habeas corpus. *Id.* at 801. The court noted, however, that "'the pendency of a suit in another jurisdiction must be seasonably pleaded in abatement.'" *Lillard*, 314 S.W.2d at 805 (quoting *Cleveland*, 285 S.W. at 1071–72). The plea in abatement can be waived. *Cleveland*, 285 S.W. at 1071. The *Cleveland* court explained, "since the pendency of a prior suit is predicated upon a state of facts, the facts must be seasonably alleged and proved, and,

[4] Haddock also cites several other cases for the proposition that the 67th Court lacked jurisdiction. In *Johnson v. Avery*, 414 S.W.2d 441, 443 (Tex. 1966), the court considered which of two cases should be abated pending trial and final judgment in the other. In *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985) (orig. proceeding), the court held that a second district court in a subsequent proceeding could not declare a judgment from a prior proceeding in a different court to be void. The court followed the principle that a judgment of a court of general jurisdiction is not subject to collateral attack in another court of equal jurisdiction unless the judgment is void. *See id.* In *In re Red Dot Building System, Inc.*, 504 S.W.3d 320, 322 (Tex. 2017) (orig. proceeding), the court explained that "where inherently interrelated suits *are pending* in two counties, and venue is proper in either county, the court in which suit was first filed acquires dominant jurisdiction." (Emphasis added). *Houston North Properties v. White*, 731 S.W.2d 719, 720 (Tex. App.—Houston 1987, writ dism'd) (orig. proceeding), involved "a controversy between two district courts concerning which court has jurisdiction over three related cases." In *Austin Independent School District v. Sierra Club*, 495 S.W.2d 878, 881–82 (Tex. 1973), the plaintiffs sought a declaration that a previous judgment was void; the court determined that the suit was an impermissible collateral attack on the judgment. *Browning v. Prostok*, 165 S.W.3d 336, 345-46 (Tex. 2005), also involved a collateral attack on a judgment. In *Perry v. Del Rio*, 66 S.W.3d 239, 252 (Tex. 2001), the court determined which of four pending cases involving the drawing of congressional districts should be tried first.

None of these cases is authority for the proposition that "the judge of the 67th District Court had no discretion except to sustain the plea of res judicata and abate or dismiss the case before it," as Haddock argues. Res judicata is an affirmative defense which must be pleaded and proven, not grounds for dismissal of a case on the pleadings. *See, e.g., Whallon v. City of Houston*, 462 S.W.3d 146, 155 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (affirmative defense of res judicata is waived if not pleaded).

unless this is done, the judgment of the subsequent court is conclusive on the fact of jurisdiction as upon any other fact." *Id.* (quoted in *Lillard*, 314 S.W.2d at 805–06).

Neither *Lillard* nor *Cleveland* is authority for the proposition that where no prior suit is pending and no plea in abatement or other relief has been sought in the subsequent suit, all actions by the court in the subsequent suit are void for want of subject matter jurisdiction. The constitutional presumption is the opposite. *Entergy*, 142 S.W.3d at 322. We conclude the 67th Court had jurisdiction over the subject matter of the suit between Haddock and the Crescent parties, and its judgment was not void.

In summary, the Attorneys met their burden to establish that summary judgment was proper on their collateral estoppel affirmative defense. The burden then shifted to Haddock to present evidence raising a genuine issue of material fact on one or more elements of collateral estoppel in order to preclude summary judgment. *See Lam*, 335 S.W.3d at 789. For the reasons we have discussed, we conclude that Haddock did not meet this burden. We decide Haddock's third issue against him.

ISSUE ONE—RELEASE

In his first issue, Haddock argues the trial court erred by granting summary judgment on the Attorneys' affirmative defense of release. "A release is a contractual arrangement that operates as a complete bar to any later action based upon matters covered in the release." *McCullough v. Scarbrough, Medlin & Assocs., Inc.*, 435 S.W.3d 871, 885 (Tex. App.—Dallas 2014, pet. denied). In their motion for summary judgment, the Attorneys argued that Haddock released all claims against them, relying on 2006 communications between the parties to resolve a fee dispute.

In a letter dated May 9, 2006, Haddock made numerous complaints about the fees charged and the services rendered by the Attorneys when representing him in his dispute with the Crescent parties. Haddock offered to pay $40,000, "approximately half of what my records indicate remains

outstanding," "in exchange for your firm accepting this payment in total satisfaction of all outstanding amounts and releasing me and all of my affiliates from all outstanding claims." The Attorneys could accept the offer by signing on a blank line under the words "acknowledged, confirmed and agreed." The Attorneys responded by letter dated the following day, accepting Haddock's offer and "enclosing a signed copy of your letter evidencing our agreement." The record also contains a copy of Haddock's check in the amount of $40,000 to the Attorneys bearing Haddock's notation, "This check is tendered in full satisfaction and final settlement of all outstanding claims."

Haddock contends that the Attorneys did not offer any evidence to overcome "the presumption of fraud and voidness" that arises under Texas law to releases between attorney and client. *See Keck, Mahin & Cate v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 20 S.W.3d 692, 699 (Tex. 2000) (because attorney-client relationship is fiduciary in nature, there is presumption of unfairness or invalidity attaching to contracts negotiated during existence of attorney-client relationship). Haddock argues that to meet their summary judgment burden on their affirmative defense of release, the Attorneys were required to establish that (1) the agreement was fair and reasonable, and (2) Haddock, the client, entered into the agreement after being informed of all material facts relating to it. *See id.* at 699. Haddock contends that the Attorneys did not introduce any evidence on either element, and concludes that the Attorneys failed to meet their summary judgment burden.

But the trial court did not grant the Attorneys' motion for summary judgment in its entirety on the affirmative defense of release. The trial court determined that the doctrine of release did not bar Haddock's professional negligence claims; summary judgment was granted only on Haddock's "causes of action . . . regarding attorneys' fees." Haddock recognizes that the trial court ruled that "the doctrine of release does not preclude [Haddock's] causes of action" for professional

negligence, but argues that the court "partially enforced a presumptively void release." He contends that the Attorneys offered no evidence that they advised him there was a conflict of interest and he should seek independent counsel, nor did they advise him they had breached their fiduciary duties or committed malpractice.

The Attorneys offered Haddock's letter, their response, and the settlement check with Haddock's notation as summary judgment evidence. As we have explained, Haddock's letter detailed his complaints about the invoices he received. He evaluated the Attorneys' services, and noted that if the Attorneys accepted his settlement offer, he would have paid over $185,000 in fees. He continued, "I have been a lawyer the majority of my life, and I feel that this amount exceeds the value of the services I received for these matters. However, I am willing to pay the additional $40,000.00 in order to settle this issue honorably." He concluded with a request that "[i]f the foregoing accurately sets forth the understanding and agreement of your firm, please confirm by signing this letter on the line provided and returning the original to my office." The Attorneys complied, and requested that Haddock send his check in the agreed amount. Haddock did so, and included release language on the check itself. The Attorneys also offered summary judgment evidence that at the time the release was signed, Haddock had retained other lawyers to pursue his claims against the Crescent parties. And Haddock's letter to the Attorneys states that "[i]n addition, beginning in 2006, the only attorney in your firm authorized to perform services for me was Dick [Hull], and he left the firm early this year."

Unhappy with the Attorneys' services, having already turned to other lawyers to pursue his claims against the Crescent parties, Haddock proposed a settlement of the Attorneys' outstanding invoices "in full satisfaction and final settlement of all outstanding claims." At the time of settlement, however, Haddock was not aware that he would be unable to pursue his claims against the Crescent parties in arbitration. We conclude that summary judgment was proper on the ground

that Haddock's claims for attorney's fees, but not his professional negligence claims, were barred by this release. We decide Haddock's first issue against him.

ISSUE TWO—GROSS NEGLIGENCE AND BREACH OF FIDUCIARY DUTY CLAIMS

In his second issue, Haddock contends that he offered "voluminous relevant, reliable, unobjected to and uncontroverted summary judgment evidence" to support his claims for breach of fiduciary duty and gross negligence, so that the trial court's summary judgment on these claims was error. We address each claim in turn.

1. Breach of Fiduciary Duty Claims

Haddock alleged numerous breaches of fiduciary duty which the Attorneys' summary judgment motion addressed in four categories based on Haddock's operative pleading:

(1) Counseling Haddock to pursue an ill-advised litigation strategy in the 17th Court, and rendering this advice through Hull, who the Attorneys should not have allowed to advise on litigation matters;

(2) Advising Haddock to dismiss his appeal of the 17th Court's judgment and pursue arbitration, for the purposes of concealing their malpractice;

(3) Improperly billing Haddock for the legal services of an "associate," when that person was awaiting bar exam results and thus was not yet licensed; and

(4) Executing the release agreement with Haddock while intentionally concealing their malpractice.

The trial court granted summary judgment on the first two of these categories, ruling that "Texas' anti-fracturing rule precludes those causes of action as a matter of law."[5] Haddock notes in his appellant's brief that he "does not raise [this ruling] as formal error here." Consequently, we do not consider the first two categories further.

The trial court also granted summary judgment "concerning that portion of the Motion seeking summary judgment on no-evidence grounds against all causes of action Plaintiff has

[5] *See Won Pak v. Harris*, 313 S.W.3d 454, 457 (Tex. App.—Dallas 2010, pet. denied) (anti-fracturing rule "prevents plaintiffs from converting what are actually professional negligence claims into other claims such as fraud, breach of contract, breach of fiduciary duty, or violations of the DTPA," where gravamen of complaint is "the quality or adequacy of the attorney's representation").

brought against Defendants for breach of fiduciary duty." To defeat the Attorneys' no-evidence motion for summary judgment on his claims for breach of fiduciary duty, Haddock was required to present evidence raising a fact issue on each element specified in the motion. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). "The elements of a breach of fiduciary duty claim are (1) a fiduciary relationship between the plaintiff and defendant; (2) the defendant must have breached his fiduciary duty to the plaintiff; and (3) the defendant's breach must result in injury to the plaintiff or benefit to the defendant." *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App.—Dallas 2006, pet. denied). Although the Attorneys' summary judgment motion challenged all three elements, we address only the third. Haddock did not offer any summary judgment evidence that he was injured, or that the Attorneys benefitted, from either mis-categorizing a law clerk as an associate or from executing the release. There is no evidence that the law clerk in question committed errors that hindered the Attorneys' representation of Haddock or that the Attorneys benefitted in any way from the categorization. Similarly, there is no evidence that Haddock was injured by the release or that the Attorneys benefitted from it. The evidence shows that Haddock benefitted by reducing the amount he owed the Attorneys, while the Attorneys received less than the full amount they had billed for their services. We conclude that the trial court's summary judgment was proper on Haddock's claims for breach of fiduciary duty.

2. Gross Negligence Claims

Haddock also contends the trial court erred by granting summary judgment on his claims for gross negligence. In his summary judgment evidence, Haddock offered expert testimony to support his allegations that the Attorneys were grossly negligent by (1) failing to assert his claims

for monetary damages in the 17th Court before the 17th Court rendered judgment, and (2) failing to seek reconsideration by the 17th Court after it rendered judgment.[6]

In order to prevail on a claim for gross negligence, a plaintiff must first show ordinary negligence. *Taylor v. Alonso, Cersonsky & Garcia, P.C.*, 395 S.W.3d 178, 188 (Tex. App.—Houston [1st Dist.] 2012, no pet.). In their summary judgment motion, the Attorneys argued that because Haddock's gross negligence claims were based on the same allegations as his professional negligence claims, collateral estoppel barred the gross negligence claims as well. We have concluded that collateral estoppel barred Haddock's claims "for professional negligence that require Plaintiff to prove case-within-the-case causation," as the trial court ruled in its summary judgment order. Consequently, summary judgment was proper on his claims for gross negligence as well. *See id.* We decide Haddock's second issue against him.

CONCLUSION

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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[6] As discussed above, Haddock argued that these acts were breaches of fiduciary duty in addition to his claim that the acts were grossly negligent. But the trial court ruled that Haddock's claims for breach of fiduciary duty were precluded by the anti-fracturing rule, and Haddock does not challenge that ruling in this appeal. Consequently, we consider only Haddock's argument that these acts were grossly negligent.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

GERALD W. HADDOCK, Appellant

No. 05-16-01113-CV V.

G. MICHAEL GRUBER, BRIAN N. HAIL, MICHAEL J. LANG, RICHARD M. HULL, JR., AS INDEPENDENT EXECUTOR OF THE ESTATE OF RICHARD M. HULL, DECEASED, GODWIN GRUBER, LLP, GODWIN PAPPAS LANGLEY RONQUILLO LLP, GRUBER HURST JOHANSEN HAIL & SHANK, LLP, AND GODWIN LEWIS, P.C., Appellees

On Appeal from the 162nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-14-09161.
Opinion delivered by Justice Lang-Miers.
Justices Bridges and Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees G. Michael Gruber, Brian N. Hail, Michael J. Lang, Richard M. Hull, Jr., as Independent Executor of the Estate of Richard M. Hull, Deceased, Godwin Gruber, LLP, Godwin Pappas Langley Ronquillo LLP, Gruber Hurst Johansen Hail & Shank, LLP, and Godwin Lewis, P.C. recover their costs of this appeal from appellant Gerald W. Haddock.

Judgment entered this 22nd day of March, 2018.