TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00402-CV

Anthony West, Appellant

v.

Daniel Wannamaker, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT
NO. D-1-GN-14-004025, HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant Anthony West, an inmate in the Texas Department of Criminal Justice Institutional Division, sued his attorney, Daniel Wannamaker, for legal malpractice, alleging that Wannamaker did not fulfill the terms of his engagement. West appeals pro se from the trial court's grant of summary judgment on limitations in favor of Wannamaker. We will affirm the trial court's summary judgment.

BACKGROUND

Anthony West was convicted of murder in Dallas County in 2003. *West v. State*, No. 05-02-01653-CR, 2003 WL 22976705, at *1 (Tex. App.—Dallas Dec. 19, 2003, pet. ref'd) (not designated for publication). His parents, Elsie and Nathaniel West, contacted Austin attorney Daniel Wannamaker in 2008 regarding Wannamaker's possible representation of Anthony in connection with a pro se writ of habeas corpus that Anthony had filed in federal court. Subsequently, a contract

between Elsie West, Nathaniel West, and Wannamaker was executed on October 2, 2008. The Wests paid Wannamaker $10,000 for his services. The court dismissed Anthony's pro se habeas corpus petition on October 8, 2008; in response, Wannamaker filed an Attorney Appearance with the court as well as a Motion for Relief from the Judgment. The court then entered an order denying Wannamaker's motion on November 11, 2008.

On June 28, 2010, Elsie and Nathaniel West emailed Wannamaker stating their dissatisfaction with Wannamaker's efforts on Anthony's behalf. They stated that Wannamaker should have taken additional steps to assist Anthony, and that Wannamaker had "not held up to [his] end of the barg[a]in." Anthony also wrote a letter to Wannamaker on April 5, 2011, stating that he had "not fulfilled any of [his] duties as an Attorney." Wannamaker replied to Anthony on April 26, 2011, stating that he had "agreed to continue to work on [his] behalf" but that Elsie and Nathaniel needed to hire an investigator to locate additional witnesses before work could continue.

On April 18, 2011, Elsie and Nathaniel filed a grievance with the State Bar of Texas, alleging that Wannamaker had failed to fulfill the terms of their contract with him. Anthony filed a similar grievance with the State Bar on October 23, 2011. These grievances were later dismissed. On May 5, 2014, Anthony, Nathaniel, and Elsie filed suit against Wannamaker in district court, alleging "malpractice/breach of contract and negligence."

Wannamaker moved for summary judgment on the ground that all alleged claims filed by the Wests in May 2014 were barred by the two-year statute of limitations for attorney malpractice claims. Anthony did not respond to Wannamaker's motion but instead filed his own motion for summary judgment, though he did not request a hearing.

The district court granted Wannamaker's motion for summary judgment and dismissed the case with prejudice. Anthony then filed a notice of appeal.[1]

STANDARD OF REVIEW

We review summary judgments de novo, taking as true all evidence favorable to the non-moving party and indulging every reasonable inference and resolving any doubts in the non-moving party's favor. *Valance Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). To prevail on a traditional motion for summary judgment, the moving party must establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c).

DISCUSSION

At the outset of our analysis, we must determine whether West has adequately raised a reviewable issue on appeal in his brief. We construe pro se litigants' briefs liberally, but we hold them to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184-85 (Tex. 1978); *In re N.E.B.*, 251 S.W.3d 211, 211-12 (Tex. App.—Dallas 2008, no pet.). It is necessary that litigants who represent themselves comply with applicable procedural rules, or else they would be given an unfair advantage over litigants who are represented by counsel. *Mansfield*, 573 S.W.2d at 185.

[1] Elsie and Nathaniel West are not parties to this appeal.

West's appellate brief can possibly be interpreted as an attempt to respond to the grant of summary judgment for Wannamaker, which barred the Wests' claims under a two-year statute of limitations for attorney malpractice lawsuits. However, West's brief contains no citations to the trial record or to applicable law. *See* Tex. R. App. P. 38.1(i) (an appellate brief "must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"). Instead, West's brief states that the trial court "dismiss[ed] Appellant's cause of action . . . based on statutory limitation grounds in an abuse of discretion." It also states that Wannamaker "was not entitled to summary judgment because the statutory limitation Defendant relies on did not start at that point," and concludes by saying that the brief "presents legally binding factual proof that negates Defendant's summary judgment elements." However, West's brief contains no "factual proof." Although West did attach two documents to his brief, West presented neither document to the trial court in response to Wannamaker's motion for summary judgment, and we cannot consider them on appeal as a basis for reversing summary judgment. In short, West's brief is insufficient to present a reviewable issue to this Court.

Nevertheless, even assuming for the sake of argument that West's brief is sufficient to challenge the sufficiency of the evidence in support of summary judgment, we conclude that Wannamaker sufficiently established application of the statute of limitations to West's suit. Legal malpractice claims have a two-year statute of limitations. *Hicks v. Rodriguez*, No. 03-08-00040-CV, 2010 WL 532394, at *1 (Tex. App.—Austin Feb. 10, 2010, no pet.) (mem. op.); Tex. Civ. Prac. & Rem. Code §16.003(a). The discovery rule is also applied to legal malpractice claims; the statute of limitations does not begin to run until the client discovers, or should have discovered through the

exercise of reasonable care and diligence, the facts establishing the elements of his cause of action. *Willis v. Maverick*, 760 S.W.2d 642, 646 (Tex. 1988). Thus, the latest possible date for the cause of action to accrue in West's case would be October 23, 2011, the date he filed his grievance with the State Bar of Texas, complaining of the same conduct that is the basis for his suit. Because West filed suit against Wannamaker more than two years later, on May 4, 2014, his claim is barred by the statute of limitations.

CONCLUSION

We affirm the trial court's grant of summary judgment for Wannamaker.

Scott K. Field, Justice

Before Justices Puryear, Goodwin, and Field

Affirmed

Filed: June 23, 2016