

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2353

September Term, 2013

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JOHN W. TYLER, Ph.D.

v.

ANDREW C. STONE, ESQ., *et. al.*

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Eyler, Deborah S.,  
Berger,  
Sharer, J. Frederick  
(Retired, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: July 9, 2015

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Circuit Court for Carroll County granted the motions to dismiss of appellees Andrew C. Stone and Randolph C. Knepper, filed in response to the complaint of appellant, John W. Tyler. In this appeal, Tyler asks us to consider whether the circuit court erred, as a matter of law, in granting the motions to dismiss.

Finding no error, we shall affirm.

### **FACTS and LEGAL PROCEEDINGS**

As alleged in Tyler’s complaint, and undisputed by the adverse parties, by deed dated September 24, 2002, Tyler’s parents, Joseph and Charlotte Tyler, granted to him and each of his five siblings, as tenants in common, a 1/6 fee simple interest in property located at 720 Humbert Schoolhouse Road in Westminster, Carroll County (“the property”), reserving a life estate to themselves.<sup>1</sup> Neither Tyler nor his siblings were aware of the conveyance.

Charlotte Tyler died on September 25, 2004; Joseph Tyler died testate on August 30, 2008. At the time of Joseph’s death, the house on the property was John Tyler’s primary residence. Joseph’s will left the property to his six children as beneficiaries of his estate, in the same manner as the 2002 deed.

Appellee Stone was appointed successor personal representative of, and attorney for, Joseph’s estate. On August 28, 2009, Stone advised Tyler, erroneously, that the property was an asset of the estate. He notified Tyler to vacate the premises so that the property could be

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<sup>1</sup>Because appellant and his father share a surname, we will hereinafter refer to appellant John W. Tyler as “Tyler” and Joseph Tyler as “Joseph,” for the sake of clarity.

sold and distribution made to the beneficiaries. Tyler refused to vacate, so Stone initiated eviction proceedings against him in the District Court for Carroll County.

Tyler retained appellee Knepper as his attorney in defense of the eviction action. At no time during the pendency of that action did Tyler challenge Stone's assertion that Joseph's estate owned the property. On August 27, 2010, the District Court ruled in favor of the estate and issued a warrant of restitution, requiring Tyler to vacate the premises by September 24, 2010, or face forcible eviction. Remaining unaware of his ownership interest in the property, Tyler vacated the property on September 23, 2010, incurring moving costs.

After the Tyler siblings became aware of the 2002 conveyance, and that Joseph's estate did not, in fact, own the property, Tyler moved back into the house. On March 8, 2011, three of the Tyler siblings filed a complaint for partition in the Circuit Court for Carroll County against the other three siblings, including appellant.<sup>2</sup> By order entered December 8, 2011, the court appointed a trustee of the property, and, on April 11, 2012, entered an award of possession to the trustee. That 2012 order required Tyler to "immediately vacate the property and remove all his belongings therefrom." Tyler again moved out of the house, incurring moving costs for a second time.

On August 20, 2012, Tyler filed suit against Stone and Knepper in the Circuit Court for Carroll County, claiming \$7,000 in moving expenses and \$800,000 in damages for mental

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<sup>2</sup> Although the initial pleading was entitled a complaint for partition of land, it actually sought the sale of the property in lieu of partition.

anguish and emotional distress, which allegedly manifested physically “through a suicide attempt, headaches, sleep loss, increased heart rate,” and other symptoms. Tyler alleged that Stone, as successor personal representative of Joseph’s estate, had breached his fiduciary duty to Tyler, a beneficiary of the estate, by failing to search the land records in Carroll County to determine that the estate had no ownership interest in the property, and by filing the eviction action against Tyler, who was then a rightful fee simple co-tenant of the property. He also alleged that Knepper had committed legal malpractice during his defense of Tyler in the eviction lawsuit, by neglecting to search the land records in Carroll County to determine that Joseph’s estate had no ownership interest in the property and by failing to assert a defense for Tyler.

Stone and Knepper each filed a motion to dismiss Tyler’s complaint. Stone argued that Tyler’s claim against him should fail because: (1) As personal representative of Joseph’s estate, his and the estate’s interests in the eviction action were adverse to Tyler’s, and Stone, therefore, owed no fiduciary duty to Tyler; (2) Tyler was contributorily negligent as a matter of law because he, too, failed to undertake the investigation of land records to determine his ownership interest in the property he sought to require of Stone; (3) Tyler’s claims were time barred because he had failed to file his lawsuit against Stone in his capacity as successor personal representative within six months of its accrual, as required by Md. Code, §8-103(c)

of the Estates & Trusts Article (“E&T”),<sup>3</sup> and; (4) Tyler’s claim for emotional distress is not permitted in a property action under Maryland law.

Knepper’s motion to dismiss averred that Tyler’s complaint was “hopelessly defective.” As did Stone, Knepper argued that Maryland law prohibits a plaintiff’s recovery for damages causing emotional injuries when a defendant’s alleged negligence caused direct harm only to the plaintiff’s property or financial interests in that property. In addition, Knepper averred that Tyler’s complaint failed to state a viable claim with respect to his alleged moving expenses, as there was no dispute those expenses were inevitable in light of the circuit court’s ruling in the siblings’ partition action, which awarded possession of the property to a court-appointed trustee and required Tyler to vacate the premises.

The circuit court heard argument on Stone’s and Knepper’s motions to dismiss on May 29, 2013. Stone’s counsel noted that, at the time of Stone’s appointment as successor personal representative of Joseph’s estate, all the involved parties believed, in good faith, that the estate owned the property. As such, Stone’s request that Tyler vacate the premises was entirely reasonable. Tyler’s refusal to do so gave Stone no choice but to file an eviction action.

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<sup>3</sup>E&T §8-103(c) states that “[a] claim against the estate based on the conduct of or a contract with a personal representative is barred unless an action is commenced against the estate within six months of the date the claim arose.”

Stone's attorney argued that his client owed no duty to Tyler with regard to the eviction proceeding because of their adverse interests, based on all parties' belief that the estate owned the property and Stone's duty to act in the best interest of the estate. Even if Stone owed Tyler a duty, counsel continued, Tyler's claims were barred by his own contributory negligence in failing to determine ownership of the property in defense of the eviction action.

Counsel further argued that Tyler's claim was barred by the statute of limitations set forth in E&T §8-103(c), which requires that all claims against an estate for misconduct by a personal representative be brought within six months of the asserted misconduct. Because Tyler knew of the existence of his ownership interest in the property, and thus his alleged claim against Stone, no later than December 2010, his lawsuit, filed in August 2012, was well beyond the applicable statute of limitations. Finally, counsel asserted that there can ordinarily be no monetary recovery for mental suffering resulting from damage done to an owner's interest in real property.

The court granted Stone's motion to dismiss without leave to amend, on the ground that Stone did not owe Tyler any duty, other than as a beneficiary to the estate, and the actions that Stone took were not adverse to the estate, given the facts available to him at the time he filed the eviction suit against Tyler.

Knepper's counsel focused on two aspects of Tyler's claim: proximate cause and damages. He argued that the court should dismiss Tyler's claim for emotional damages

because such damages were not proximately caused by Knepper’s alleged malpractice in the eviction action; in other words, it was not reasonably foreseeable that Tyler would suffer emotional injuries from Knepper’s failure to determine that Tyler had an ownership interest in the property. Counsel further argued, as he had in his written motion, that Tyler’s moving expenses would inevitably have been incurred because Tyler’s siblings had an absolute right to sell the property, which would have required Tyler to move out of the house in any event.

Ruling that Tyler was not evicted from the property because of Knepper’s alleged negligence, but because the siblings had a legal right to partition or sale, the court granted Knepper’s motion to dismiss with leave to amend within 30 days to allege that: (1) had a title search been timely performed, and the siblings made aware of their ownership interest in the property, they would have allowed Tyler to remain on the premises,<sup>4</sup> and; (2) Tyler had suffered very serious psychological damage as a direct result of Knepper’s conduct. The court posited that whether a lawyer involved in an eviction case has a duty to perform a title search is “another issue. . . that might be the subject of future argument” arising from an amended complaint.

The court entered its written order encompassing its oral ruling on June 24, 2013. Tyler appealed to this Court.<sup>5</sup>

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<sup>4</sup>Tyler’s counsel advised the court that, after speaking with the siblings, he did not believe that allegation could be made in good faith.

<sup>5</sup>The order permitted Tyler to file an amended complaint within 30 days. Instead,  
(continued...)

## DISCUSSION

We review *de novo* the grant of a motion to dismiss as a question of law. *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012). Our consideration of the court’s action is based solely on the allegations contained within the four corners of the complaint. *Nickens v. Mount Vernon Realty Group, LLC*, 429 Md. 53, 62 (2012).

In considering a dismissal,

we inquire whether the well-pleaded allegations of fact contained in the complaint, taken as true, reveal any set of facts that would support the claim made. A court must assume the truth of all well-pleaded relevant and material facts as well as all inferences that reasonably may be drawn therefrom, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action. Any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader. Mere conclusory charges that are not factual allegations need not be considered. [An appellate court] views all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff, the non-moving party.

*Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009) (Internal citations omitted).

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<sup>5</sup>(...continued)

Tyler appealed the grant of Knepper’s and Stone’s motions to dismiss to this Court on July 8, 2013. By mandate issued August 16, 2013, we dismissed the appeal, as failing to arise from a final judgment.

Because Tyler did not file an amended complaint, on September 24, 2013, Knepper moved for entry of judgment in his favor. The circuit court filed a notice of recorded judgment in favor of Knepper on November 21, 2013, after which Tyler filed the instant appeal.

Tyler’s complaint alleged, first, that Stone had breached his fiduciary duty, as successor personal representative to Joseph’s estate, to Tyler, a beneficiary of the estate, when Stone initiated eviction proceedings against him without investigating ownership of the property. Such an investigation would have made clear that Tyler was an owner of the property, as tenant in common with his siblings, thus negating the need for the eviction action and Tyler’s alleged injuries as a result therefrom.

A personal representative of an estate is indeed a fiduciary. E&T §7-101(a). *See also Ferguson v. Cramer*, 349 Md. 760, 769 (1998). The personal representative owes a duty to the beneficiaries of a will to act in the best interests of the estate. *Beyer v. Morgan State University*, 369 Md. 335, 351 (2002). To that end, however, “the primary goal of the personal representative is ‘to serve the interests of the estate, not to promote the objectives of one group of legatees over the interests of competing claimants.’” *Ferguson*, 349 Md. at 769 (quoting *Goldberg v. Frye*, 217 Cal.App.3d 1258, 266 Cal.Rptr. 483, 489 (1990)).

It is clear that Stone, as personal representative of Joseph’s estate, was required to serve the *estate’s* best interests, even if that service was to the detriment of Tyler, one of the beneficiaries of the estate. Given all the facts known to the parties at the time of Joseph’s death, including the reasonable belief that the property was an asset of the estate, Stone operated in the best interest of the estate when he sought to evict Tyler to facilitate a sale of the property in the interest of the beneficiaries.

The fact that the estate’s and the personal representative’s interests were adverse to Tyler’s during the eviction action requires us to conclude that Stone owed no duty to Tyler (to search land records to determine ownership of the property or otherwise). The circuit court was thus legally correct in determining that the allegations contained in Tyler’s complaint do not state a cause of action against Stone.<sup>6</sup> See, e.g., *Flaherty v. Weinberg*, 303 Md. 116, 126 (1985)(quoting R. Mallen & V. Levit, *Legal Malpractice* §79, at 152-54 (2d ed. 1981)) (“no jurisdiction has found a duty by an attorney to an adverse party”); *Lewis v. Long & Foster Real Estate, Inc.*, 85 Md. App. 754, 761 (1991) (a real estate broker “owes no fiduciary duty to the buyer whose interests are adverse to the seller”); *Proctor v. Holden*, 75 Md. App. 1, 19 (1988) (same); *Clagett v. Dacy*, 47 Md. App. 23, 28 (1980) (an attorney’s duty of diligence and care flows only to his direct client and only that client may recover against him for a breach of that duty).

Our analysis is different with regard to Knepper, as Knepper was, in fact, Tyler’s attorney and therefore owed Tyler a fiduciary duty to defend him vigorously during the eviction action. Nonetheless, we determine that the circuit court also properly granted Knepper’s motion to dismiss.

Although our courts have classified an action for attorney malpractice as being in contract, its “gravamen is the negligent breach of the contractual duty.” *Flaherty*, 303 Md.

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<sup>6</sup>Because we conclude that Stone owed no duty to Tyler, we do not address Stone’s alternate arguments in support of the circuit court’s grant of his motion to dismiss.

at 134. In a suit against an attorney for negligence, the plaintiff must prove that the attorney's neglect of a reasonable duty was the proximate cause of injury to the client. *Taylor v. Feissner*, 103 Md. App. 356, 366 (1995).

To establish the existence of proximate cause, the plaintiff must show, in part, that the defendant's alleged negligence was a cause in fact, and that but for the negligence, the injury would not have occurred. *Id.* In the context of proximate cause in a legal malpractice action, foreseeability turns on whether the actual harm to the plaintiff fell within a general field of danger that the lawyer should have anticipated. *Stone v. Chicago Title Ins. Co. of Maryland*, 330 Md. 329, 337 (1993). In other words, the “‘actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm.’” *Id.* (quoting Restatement (Second) of Torts § 435(2) (1965)).

In the instant case, Tyler would have us hold that his mental anguish and suicide attempt were proximately caused by Knepper's failure to search the land records of Carroll County to determine that Tyler had an ownership interest in the property. He argues that, but for Knepper's negligence, he would not have been evicted from his home, and thus would not have incurred moving costs or suffered mental anguish over having to move on two occasions. We are not persuaded.

In our view, Tyler's alleged injuries were a highly extraordinary result of a widespread misapprehension held by all involved parties, including Tyler, that is, that Joseph's estate

owned the property at the time of his death. We find no sufficient link between Knepper’s allegedly negligent failure to conduct a title search and the eviction, moving costs, and mental injury suffered by Tyler. Consequently, Knepper’s actions were not the proximate cause of the ensuing harm that befell Tyler.

As noted by the circuit court, Tyler failed to allege in his complaint — let alone provide facts — that had the actual ownership of the property been known to his five siblings, they would not have petitioned the court for sale of the property in lieu of partition. Indeed, Tyler’s attorney, during the hearing on the motions to dismiss, conceded that he probably could not, in good faith, make such an assertion. In addition, Tyler did not avail himself of the court’s suggestion that he file an amended complaint against Knepper. Without proof that his siblings would have permitted Tyler to continue residence on the property, the circuit court was correct in finding that Tyler ultimately would have been required to vacate the premises and incur moving costs, regardless of whether Knepper had offered his ownership interest as a defense at the eviction hearing, because the siblings had an absolute right, as beneficiaries, to sell the property.

Moreover, we cannot conclude that “severe mental anguish,” including a suicide attempt, is a foreseeable consequence that would likely occur in the normal course of an eviction proceeding, particularly under the specific facts of this matter, where Tyler’s eviction from the property was solely for the purpose of its sale, which would ultimately

benefit him and his siblings, as beneficiaries of their father's estate. Under all these circumstances, the circuit court was legally correct in granting Knepper's motion to dismiss.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR CARROLL COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**