

Circuit Court for Montgomery County
Case No. C-15-CV-22-004730

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2389

September Term, 2023

KALANTARY DESIGN GROUP (KDG),
LLC, ET AL.

v.

KELLY DORSEY, P.C.

Arthur,
Reed,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: January 21, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A law firm sued its clients because they failed to pay the firm’s invoice. The clients asked the circuit court to give a non-pattern jury instruction concerning an attorney’s ethical duty to communicate with clients under Md. Rule 19-301.4(b). The court declined to give the instruction, and the jury found in the firm’s favor.

The clients appealed. They present one question, which we quote: “Whether the Circuit Court committed reversible error by failing to present to the jury the instruction requested by the Appellants.”

For the reasons stated herein, we affirm.

BACKGROUND

Kalantary Design Group (KDG), LLC, and its principal, Abbe Kalantary, retained the law firm of Kelly Dorsey, P.C., on November 20, 2020, to pursue litigation in the Circuit Court for Baltimore City. Kalantary signed the legal services contract in his personal capacity and as a member of KDG.

As counsel for KDG, Kelly Dorsey filed a complaint against Future Home, LLC, and Mohammed Reza Dehdashtian in the Circuit Court for Baltimore City. That complaint alleged that Future Home and Dehdashtian had failed to pay for KDG’s services as a general contractor. Future Home and Dehdashtian filed a counterclaim against KDG and a third-party complaint against Kalantary. In response to a motion filed by Kelly Dorsey on Kalantary’s behalf, the court dismissed the third-party complaint.

The case was set for trial in April of 2022. In the midst of the trial preparations, the Kelly Dorsey attorneys learned that KDG had forfeited its charter and, thus, had forfeited its right to do business in Maryland (*see* Maryland Code (1975, 2014 Repl. Vol.,

2022 Supp.), § 4A- 911(d) of the Corporations and Associations Article) and its ability to prosecute litigation. *See 7222 Ambassador Road, LLC v. National Center on Institutions and Alternatives, Inc.*, 470 Md. 66, 82 (2020). Consequently, the Kelly Dorsey attorneys had to stop their preparations for trial in order to seek and obtain a postponement.

The court rescheduled the case for August of 2022. Because of the postponement, the Kelly Dorsey attorneys had to prepare for trial twice.

At the ensuing bench trial, three Kelly Dorsey attorneys represented KDG: the president of the law firm (Gregory Dorsey) and two associates. In an order signed on September 1, 2022, the court entered judgment in favor of Future Home and Dehdashtian in the amount \$50,903.04 on their counterclaims against KDG. KDG succeeded on none of the counts in its complaint.

Meanwhile, between April of 2022, when KDG’s case against Future Home and Dehdashtian was postponed, and October of 2022, Kelly Dorsey did not send any invoices to KDG. Although Kelly Dorsey’s policy is to send monthly invoices, the firm departed from the policy in this instance because it knew that it would have to bill additional time for preparation in August.

On October 10, 2022, about five weeks after the circuit court’s decision, Kelly Dorsey sent its clients an invoice for \$94,436.40 in fees incurred since April 1, 2022. After the bill remained unpaid for two months, Kelly Dorsey filed a complaint against KDG and Kalantary in the Circuit Court for Montgomery County. KDG and Kalantary defended, in part, on the ground that Kelly Dorsey did not inform them that it would have

three lawyers at trial and did not inform them of how the size of the bill was growing between April and October.

Before trial, KDG and Kalantary submitted a proposed, non-pattern jury instruction derived from Maryland Rule 19-301.4(b), which is part of the Maryland Attorneys’ Rules of Professional Conduct. Rule 19-301.4(b) states: “An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Paraphrasing the rule, the proposed instruction stated: “A[n] attorney is required to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

After jury selection, the court considered that proposed instruction. In arguing that the court should not give the instruction, Kelly Dorsey’s attorney cited the preamble to the Rules of Professional Conduct. The preamble states:

Violation of a Rule does not itself give rise to a cause of action against an attorney nor does it create any presumption that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of an attorney in pending litigation. The Rules are designed to provide guidance to attorneys and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for an attorney’s self-assessment, or for sanctioning an attorney under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, in some circumstances, an attorney’s violation of a Rule may be evidence of breach of the applicable standard of conduct. Nothing in this Preamble and Scope is intended to detract from the holdings of the Supreme Court in *Post v. Bregman*, 349

Md. 142 (1998) and *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 349 Md. 441 (1998).^[1]

Md. Rule 19-300.1, para. 20.

The court declined to give the proposed jury instruction.

DISCUSSION

KDG and Kalantary contend that the trial court committed reversible error in refusing to give the jury an instruction crafted from the language in Rule 19-301.4. Kelly Dorsey responds that the court correctly relied on the preamble, Rule 19-300.1, as a basis not to give the jury instruction. In addition, Kelly Dorsey claims that KDG and Kalantary offered no evidence to generate the jury instruction.

Maryland Rule 2-520(e) provides that “[n]o party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection.” If the objecting party does not “fully comply with the requirements of the rule[,] there is nothing for us to consider on an appeal.” *See Butler-Tulio v. Scroggins*, 139 Md. App. 122, 151 (2001) (internal citations omitted).

We cannot tell whether KDG and Kalantary complied with Rule 2-520(e), because they did not supply us with a transcript of the jury instructions that the court actually gave or a transcript of any of the proceedings that occurred after the court instructed the jury. The failure to provide the transcripts is grounds for the dismissal of the appeal. *See* Md.

¹ We discuss *Post v. Bregman*, 349 Md. 142 (1998), and *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 349 Md. 441 (1998), in some detail below.

Rule 8-411(a)(2) (requiring an appellant to provide this Court with “a transcription of any portion of any proceeding relevant to the appeal”); Md. Rule 8-413(a)(2) (stating that the record on appeal must contain “the transcript required by Rule 8-411”); Md. Rule 8-602(c)(4) (stating that this Court may dismiss an appeal when “the contents of the record do not comply with Rule 8-413”).

The party asserting error has the burden to show “by the record” that an error occurred. *Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993); *see also Lynch v. R.E. Tull & Sons, Inc.*, 251 Md. 260, 262 (1968) (stating that appellants have the burden “to put before this Court every part of the proceedings below which were material to a decision in [their] favor[]”). “The failure to provide the court with a transcript warrants summary rejection of the claim of error.” *Kovacs v. Kovacs*, 98 Md. App. at 303. Without the relevant transcripts, we cannot determine whether KDG and Kalantary preserved an objection to the court’s refusal to give the requested instruction by “object[ing] on the record promptly after the court instruct[ed] the jury, stating distinctly the matter to which the party objects and the grounds of the objection.” Md. Rule 2-520(e). The claim of error is unpreserved.

But even if this claim had been preserved for appellate review, we would determine that no error occurred. “We review the denial of a proposed jury instruction under the highly deferential abuse of discretion standard[.]” *White v. Kennedy Krieger Inst., Inc.*, 221 Md. App. 601, 623 (2015). In determining whether a court abused its discretion in declining to give a requested instruction, “we consider the following factors: ‘(1) whether the requested instruction was a correct statement of the law; (2) whether it

was applicable under the facts of the case; and (3) whether it was fairly covered in the instructions actually given.” *Woolridge v. Abrishami*, 233 Md. App. 278, 305 (2017) (quoting *Keller v. Serio*, 437 Md. 277, 283 (2014)). Our focus here is on the second factor: whether the proposed jury instruction was applicable under the facts of the case.

The record shows that the court addressed the proposed jury instruction before the opening statements. Interpreting the preamble, the court observed that a violation of Rule 19-301.4(b) creates no presumption that an attorney breached a legal duty. The court declined to give what it called “an expert legal opinion” in a case where KDG and Kalantary lacked an expert witness to support their contention that Kelly Dorsey had violated Rule 19-301.4(b).

The plain language of the preamble is largely dispositive of this appeal. According to the preamble, the “violation of a Rule,” if one even occurred, would not “create any presumption that a legal duty has been breached.” Md. Rule 19-300.1, para. 20. Nor does a violation of a disciplinary rule “necessarily warrant any other non-disciplinary remedy[.]” *Id.* The Rules of Professional Conduct “are not designed to be a basis for civil liability[.]” and their purpose “can be subverted when they are invoked by opposing parties as procedural weapons.” *Id.* “The fact that a Rule is a just basis for an attorney’s self-assessment, or for sanctioning an attorney under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.” *Id.*

Nonetheless, in a limited set of circumstances, “an attorney’s violation of a Rule may be evidence of breach of the applicable standard of conduct.” *Id.*; accord *Bland v.*

Hammond, 177 Md. App. 340, 349 (2007). For example, in *Post v. Bregman*, 349 Md. 142, 168 (1998), the Court held that a fee-sharing agreement “in clear and flagrant violation” of current Rule 19-301.5(e) “may” be unenforceable on the ground that it violates “a supervening statement of public policy.” (Emphasis in original.) Similarly, in *Son v. Margolius, Mallios, Davis, Rider & Tomar*, 349 Md. 441, 461-65 (1998), the Court analyzed whether a lawyer's agreement to share a legal fee with a non-lawyer was unenforceable because it violated the disciplinary rule that generally prohibits attorneys from sharing fees with non-attorneys (current Rule 19-305.4(a)) and the disciplinary rule that generally prohibits an attorney from giving anything of value to a person for recommending the attorney’s services (current Rule 19-307.2(c)). In *Goldman, Skeen & Wadler, P.A. v. Cooper, Beckman & Tuerk, L.L.P.*, 122 Md. App. 29, 44 (1998), this Court held that the circuit court erred in preventing a law firm from defending against the enforcement of a fee-sharing agreement by arguing that the agreement violated what is now Rule 19-301.5(e) and was, thus, unenforceable. Finally, in *Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 430-45 (2023), this Court tacitly assumed that an agreement between an attorney and a law firm might be unenforceable if it violated Rule 19-305.6(a), which generally prohibits agreements that “restrict[] the right of an attorney to practice after termination of the relationship[.]”

In each of these cases, the Court treated specific disciplinary rules as expressions of public policy and held that agreements that violated the rules were or may be unenforceable on the ground that they violated public policy. In this case, however, KDG and Kalantary do not contend that an agreement with a lawyer or law firm is

unenforceable because it violates the public policy expressed in one of the disciplinary rules. Instead, they sought to use the disciplinary rules to bolster their defense to an otherwise enforceable agreement. In these circumstances, the circuit court correctly decided that a reference to the Rules of Professional had no place in this case.²

The result might have been different if KDG and Kalantary had produced an expert to opine that Kelly Dorsey had violated its contractual obligations. In *Abramson v. Wildman*, 184 Md. App. 189, 205 (2009), this Court affirmed the use of a jury instruction that was “identical”³ to what is now Md. Rule 19-301.1 when the client produced an expert to support the allegation that his attorney had violated a contractual obligation to provide competent representation.

Here, however, KDG and Kalantary had no expert. KDG and Kalantary needed an expert to prove that Kelly Dorsey breached its duty to communicate with its clients in the circumstances of this case, because ““the intricacies of professional disciplines generally are beyond the ken of the average lay[person].”” *Catler v. Arent Fox, LLP*, 212 Md. App.

² KDG and Kalantary cite, but do not discuss, two other cases that mention the Rules of Professional Conduct: *Arriz v. Klinger-De Arriz*, 179 Md. App. 458 (2008); and *Bland v. Hammond*, 177 Md. App. 340 (2007). Neither case supports the contention that the circuit court abused its discretion in declining to read an instruction that paraphrases the disciplinary rule concerning a lawyer’s duty to communicate with a client. In *Arriz v. Klinger-De Arriz*, 179 Md. App. at 482-83, the circuit court discussed, but did not decide, whether a law firm had violated the disciplinary rules pertaining to conflicts of interest and transactions with its clients. Because neither party raised that issue on appeal and because the circuit court had not decided the issue, this Court held that the issue was not properly before it. *Id.* at 483. In *Bland v. Hammond*, 177 Md. App. at 355, this Court held a lawyer’s violation of the professional duty to provide competent representation did not amount to extrinsic fraud sufficient to warrant setting aside an enrolled judgment.

³ *Abramson v. Wildman*, 184 Md. App. at 196 n.5.

685, 720 (2013) (quoting *CIGNA Prop. & Cas. Cos. v. Zeitler*, 126 Md. App. 444, 464 (1999)). In fact, the only testimony about whether Kelly Dorsey complied with its professional duty was that of Dorsey, who testified as an expert: he asserted, on cross-examination, that the firm acted fairly and reasonably in not sending an invoice after the aborted trial preparations in April 2023 and, instead, in waiting until the trial preparations and the trial itself were completed.

In summary, the circuit court correctly recognized that, under the circumstances of this case, KDG and Kalantary were not entitled to an instruction pertaining to Kelly Dorsey’s ethical duty to communicate with its clients. The court, therefore, did not abuse its discretion in declining to give such an instruction.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**