STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Alfred Hill, Plaintiff Below,
Petitioner

vs) No. 11-1100 (Kanawha County 09-C-2032)

Trent A. Redman, Attorney at Law, and
Redman, Payne & Muldoon, PLLC,
Defendants Below, Respondents

FILED
April 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Alfred Hill, plaintiff below, appeals the Circuit Court of Kanawha County's April 4, 2011, "Order Granting Summary Judgment" in favor of Respondents Trent A. Redman and Redman, Payne & Muldoon, PLLC, defendants below. Petitioner appears by counsel Todd W. Reed. Respondents appear by counsel Stephen R. Crislip and Ben M. McFarland.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Respondents, a lawyer and his law firm, represented petitioner in a divorce case. Thereafter, in the instant case, petitioner sued respondents for legal malpractice, breach of contract, and breach of fiduciary duty. Petitioner alleged that Respondent Redman failed to render any advice or analysis to petitioner about equitable distribution. Petitioner also alleged that Respondent Redman agreed to a property settlement on petitioner's behalf, but without petitioner's knowledge or consent, and that this settlement acquiesced to every demand made by petitioner's ex-wife. Petitioner asserted claims against the respondent law firm under a theory of respondeat superior.

Respondents deny the allegations. Respondents argue that petitioner indicated his acceptance of the terms of the property settlement during a hearing in January of 2007, when the settlement was presented to the family court. Moreover, respondents argue that petitioner signed an "Agreed Final Supplemental Divorce Order" that contained a statement indicating that petitioner had read, discussed with counsel, understood, and agreed to all of the terms therein.

After entry of the "Agreed Final Supplemental Divorce Order," petitioner obtained new counsel for the divorce case and filed a motion to modify the final order asserting that Respondent

Redman made misrepresentations to petitioner about the property settlement. The family court held a hearing and denied the motion to modify, finding, inter alia, that "[u]pon a review of the terms of the agreement – assented to by both parties under oath at the final hearing – the court also FINDS that those terms are not so inequitable as to render the agreement unfair or even justify subjecting it to review at this late date." Petitioner appealed the denial of his motion to circuit court, which found no error and refused the petition.

Relying on our opinion in *Walden v. Hoke*, 189 W.Va. 222, 429 S.E.2d 504 (1993), the circuit court granted summary judgment for respondents in this legal malpractice case. In *Walden*, we held that collateral estoppel barred a plaintiff from relitigating, in a legal malpractice suit, the terms of her divorce property settlement. The circuit court concluded that "evaluating Defendant Redman's conduct and advice relative to the property distribution agreement necessarily entails relitigation of the terms of the property distribution agreement itself, which has already been found to be fair and reasonable and agreed to by both parties[.]" The circuit court found that the issues presented in this malpractice litigation are identical to those litigated in the divorce case.

This Court reviews a circuit court's entry of summary judgment under a de novo standard of review. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). Upon a careful review of the parties' briefs and the record on appeal, we conclude that summary judgment for respondents was proper. Our *Walden* opinion is controlling. Petitioner attempts to distinguish *Walden* on its facts, arguing that the plaintiff in *Walden* was aware of the terms of her divorce property settlement, while petitioner was not aware of the terms of his. However, we find petitioner's argument unpersuasive because, when deciding the motion to modify the final divorce order, the family court found that the terms had been assented to by both parties under oath at the final hearing.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh