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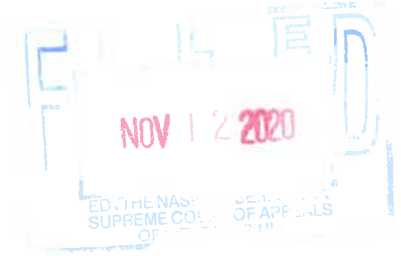
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THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CLAY R. HUPP,
Plaintiff Below, Petitioner/Appellant,

vs.

Case No. 20-0532



RICHARD A. MONAHAN and
THE MASTERS LAW FIRM, LC,
Defendants Below, Respondents/Appellees,

SCANNED

SUMMARY REPLY BRIEF

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SUMMARY REPLY BRIEF

INTRODUCTION

The essence of this appeal is when did the statute of limitations, a period of two years for a tort action, begin to run? For petitioner/plaintiff Hupp it would have been January 2018 when respondents informed him there was there nothing further they could do about reinstating his disability benefits. He then sued them for their earlier alleged negligence some ten months later. Respondents, on the other hand, view the statute of limitations beginning September 2014 when this Court upheld a decision of the West Virginia Consolidated Public Retirement Board's terminating Mr. Hupp's disability benefits meaning this negligence action against them would be time-barred.

The lower court upheld respondents' motion to dismiss on the latter basis and constitutes the grounds of this appeal. While petitioner recognizes the nature of this Reply may waive his earlier requested oral argument, the primary basis for that request was concern for the precipitous and perfunctory manner the circuit court had made its ruling. The lower court dismissal adopted verbatim within two to three working days from its submission an eighteen (18) page order (App. pp. 197-214) prepared by respondents with the only changes being handwritten notations that it amounted to a "Final Order," was "carefully considered," and added "case dismissed." [App. pp. 197 and 214]

The manner this ruling occurred reminds of Justice Workman's dissent, "smacks of lawyer protectionism. . ." Walden v. Hoke, 184 W. Va. 222, 229, 429 S.E.2d 504, 511 (1993) Further, this decision occurred almost immediately in the wake of Hupp's Writ of Prohibition in this Court simply to induce court action after a delay of nearly two years due to the prominence of these lawyers he had sued. State of West Virginia ex rel. Clay R. Hupp v. Hon. Jennifer Bailey, Case No. 20-0067

While petitioner concurs oral argument may not be necessary (Respondents' Brief, p. 15), critical is what occurred and how the law applies, not respondents' repeated assertion their subsequent repre-

sensation of Hupp had been “merely tangential,” thus not amounting to continuing representation. The facts are not in dispute here, only their interpretation and application to the law.

ARGUMENT

1. Doctrine of Continuous Representation

September 2, 2014 this Court entered a Mandate ending Hupp’s appeal of the termination of his retirement benefits. This action filed October 2018 alleged respondents had been negligent representing Hupp in that appeal, and their representation had continued until January 2018. The respondent lawyers countered their representation instead ended with the September 2014 Mandate, and any subsequent representation had merely been tangential to their earlier efforts and did not amount to continuing representation. The lower court adopted their argument dismissing this action as being filed outside the applicable time period of two years.

There is no dispute this Court’s Mandate September 2014 ended appeal of termination of Hupp’s disability benefits. There is also no dispute December 2015 the respondent lawyers represented him in an effort to reinstate those same benefits until January 2018. However, the parties characterize this latter representation differently. Hupp calls it continuous being the same or similar to their earlier representation, while respondents say their representation was not continuous but rather tangential to their earlier efforts. Both parties rely primarily upon this Court’s seminal holding for the doctrine of continuous representation in legal malpractice actions. Smith v. Stacy, 198 W. Va. 498, 482 S.E.2d 115 (1996)

While Stacy involved a rather convoluted fact pattern, the opinion acknowledged its discussion of the doctrine of continuous representation doctrine constituted the essence of that holding. 198 W. Va. at 503, 482 S.E.2d at 120. Critical to a determination of whether the doctrine applies is the requirement of continuity for the same or a related service. 198 W. Va. at 504, 482 S.E.2d at 121.

Stacy and the numerous holdings referred to throughout its discussion of the Doctrine of Continuous Representation holds the same or related service, not a general relationship, tolls the statute of limitations, and the doctrine applies. 198 W. Va. at 504-505, 482 S.E.2d at 121-122. Hupp's position is the lawyers' subsequent representation, if not precisely the same, was certainly related, and by no means constituted a general attorney-client relationship.

Respondents contend their initial representation was to appeal a termination of benefits, and their later representation to reinstate benefits arguing the former constitutes one matter while the other was not the same but merely tangential. Tangential is defined in part as "diverging" or "digressing." Webster's Dictionary, 4th ed. Respondents' seeking to reinstate disability benefits earlier lost on appeal does not equate to diverging or digressing. If not the same service, they are certainly related, and the respondents' "splitting of hairs" avoids any discussion whether the services were related. They also avoid any discussion whether their subsequent relationship with Hupp was of a general nature, the primary basis for there not being continuing representation. Here there was no other basis between the parties other regaining Hupp's disability benefits, whether by appeal or reinstatement. The respondents' argument is contrary to Stacy and all other authority that addresses the doctrine of continuous representation.

The respondent lawyers also misinterpret the only other appellate holding in this jurisdiction regarding the doctrine of continuing representation. Vansickle v. Kohout, 215 W. Va. 433, 599 S.E.2d 856 (2004), see Respondents' Brief at pp. 12 and 23-24. Kohout agrees with Stacy, "where an attorney's subsequent role is only tangentially related," to the action that involved the malpractice, or when the continuing representation is "merely continuity of a general professional relationship." 599 S.E.2d at 861. The holding in Kohout however supports Hupp because respondents' representation, if not the same, was related and was not a mere continuity of a general professional relationship. All the respondents' efforts were focused upon regaining Hupp's disability benefits.

2. Client Knowledge of
Allegedly Negligent Act


Respondents also argue since Hupp was apparently unaware, exhibit or express any knowledge of their alleged negligence, the doctrine of continuous representation should also not apply. This misconstrues Stacy as well as the numerous holdings it references. 198 W. Va. at 505-506, 482 S.E.2d at 122-123 It is immaterial whether the client has knowledge or even suspects negligence for the doctrine of continuous representation to apply. Id. Clay Hupp's sole interest was getting disability benefits, and respondents' by virtue of their relationship with state troopers willingly participated in trying to do that.

CONCLUSION

While petitioner Hupp is admittedly apprehensive about appearing before the same trial court which summarily adjudicated this matter as above described, it is abundantly clear the doctrine of continuous representation as articulated by this Court in Stacy and Kohout applies in Hupp's favor. The lower court's dismissal should be set aside, and this matter remanded for further proceedings.


Respectfully submitted,

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By Counsel


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CERTIFICATE OF SERVICE

I, Richard A. Robb, counsel for petitioner/appellant, certify I have sent by US Mail a true copy of this Reply to Richard A. Monahan, Esq. and The Masters Law Firm, counsel for respondents/appellees, at 181 Summers Street, Charleston, WV 25301 this day of November 12, 25301.


Richard A. Robb