IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MARK HANNA,
Plaintiff Below, Petitioner

v.) No. 25-ICA-490 (Cir. Ct. Wood Cnty. Case No. CC-54-2023-C-196)

JOHN A. CARR,
Defendant Below, Respondent

MEMORANDUM DECISION

Petitioner Mark Hanna appeals two December 4, 2025, orders of the Circuit Court of Wood County. The first order denied Mr. Hanna's motion to appoint an expert to establish malpractice liability and the second granted Respondent John A. Carr's motion for summary judgment. Mr. Carr filed a response.[1] Mr. Hanna filed a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's orders is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

In 1985, Mr. Hanna was tried and convicted of burglary, kidnapping, and abduction with the intent to defile in connection with the disappearance of his then-girlfriend Leslie Marty. Following this conviction, Mr. Hanna was indicted, tried, and convicted of first-degree murder, stemming from the same series of events, and was sentenced to life in prison without parole.

On October 6, 2016, Mr. Hanna retained Mr. Carr, an attorney, to represent him in relation to two petitions for the writ of habeas corpus pending in the Circuit Court of Wood County. Per their written representation agreement, Mr. Hanna was to pay Mr. Carr a flat fee of $25,000, plus expenses. Mr. Hanna terminated their attorney-client relationship in a letter dated June 2, 2022, alleging that Mr. Carr breached their contract and failed to fulfill various obligations, including timely preparing petitions and motions, complying with the court's scheduling order, and communicating with Mr. Hanna.

[1] Mr. Hanna is self-represented. Mr. Carr is represented by Robert L. Bays, Esq.

On July 17, 2023, Mr. Hanna filed a complaint in the Circuit Court of Wood County alleging breach of contract, legal malpractice, and negligence related to Mr. Carr's legal representation. On January 20, 2025, Mr. Carr filed his motion for summary judgment arguing that Mr. Hanna could not establish his claim for legal malpractice without expert testimony. Mr. Carr also argued that all of Mr. Hanna's claims, including his breach of contract claim, stemmed from his malpractice allegations and that the failure of Mr. Hanna's malpractice claim was necessarily fatal to his entire complaint. On February 14, 2025, Mr. Hanna filed a response to Mr. Carr's motion and a motion moving the circuit court to appoint an expert witness for the purpose of proving the liability element of Mr. Hanna's malpractice case. Mr. Hanna argued that expert testimony was not necessary but moved the circuit court to appoint an expert witness if it deemed otherwise because of his indigency. On February 20, 2025, Mr. Hanna filed a motion to join his sister, Pam Riegel, as a plaintiff in the underlying case because she helped Mr. Hanna pay Mr. Carr's representation fee.

On February 28, 2025, the circuit court denied both of Mr. Hanna's petitions for writ of habeas corpus based on its finding that there was no evidence that his trial counsel acted improperly or provided ineffective assistance of counsel. The order also found no possibility that the result of the underlying criminal trials would have been different because Mr. Hanna admitted to the crimes and was dishonest with his attorney regarding his alibi. On July 2, 2025, Mr. Carr filed a supplement to his motion for summary judgment notifying the circuit court that both habeas corpus petitions were denied and arguing that Mr. Hanna's legal malpractice claim failed because his habeas petitions were denied due to his admission of guilt.

On September 22, 2025, the circuit court held a hearing on Mr. Carr's motion for summary judgment and Mr. Hanna's motion to appoint an expert.[2] On December 4, 2025, the circuit court entered an order denying Mr. Hanna's motion to appoint an expert based on its holding that it had no authority to appoint an expert for Mr. Hanna to assist in proving his case. On that same date, the circuit court entered an order granting Mr. Carr's motion for summary judgment on the basis that the legal malpractice claim required expert testimony to establish the standard of care, which Mr. Hanna failed to produce. Accordingly, the court held that Mr. Hanna was unable to establish his claims for legal malpractice, negligence, or breach of contract. It is from these orders that Mr. Hanna now appeals.

Mr. Hanna appeals both an order granting a motion for summary judgment and an order denying his motion to appoint an expert. Our review of a circuit court's entry of summary judgment is de novo. Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d

[2] It is unclear from the record whether the circuit court heard any other pending motions at this hearing.

755 (1994). In conducting a de novo review, this Court applies the same standard for granting summary judgment that a circuit court must apply, which is as follows: "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." *United Bank, Inc. v. Blosser*, 218 W. Va. 378, 383, 624 S.E.2d 815, 820 (2005) (citations omitted) (quoting *Painter*, 192 W. Va. at 190, 451 S.E.2d at 756, syl. pt. 2). "Summary judgment is appropriate if, from the totality of the evidence presented . . . the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syl. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995). "[T]he party opposing summary judgment must satisfy the burden of proof by offering more than a mere 'scintilla of evidence' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor." *Id.* at 60, 459 S.E.2d at 337.

In reviewing the motion to appoint an expert, our standard of review is as follows:

> In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 2, *Walker v. W. Va. Ethics Comm'n*, 201 W. Va. 108, 492 S.E.2d 167 (1997).

On appeal, Mr. Hanna asserts four assignments of error, and we will consolidate their consideration for clarity. For his first and fourth assignments of error, Mr. Hanna argues the circuit court erred in granting summary judgment for Mr. Carr and in finding that Mr. Hanna was required to obtain an expert to determine the standard of care. We disagree. "It is the general rule that want of professional skill can be proved only by expert witnesses. However, cases may arise where there is such want of skill as to dispense with expert testimony." Syl. Pt. 3, *Totten v. Adongay*, 175 W. Va. 634, 337 S.E.2d 2 (1985) (quoting Syl. Pt. 2, *Howell v. Biggart*, 108 W. Va. 560, 152 S.E. 323 (1930)). It has been further noted that expert testimony is not required in professional negligence actions when matters fall within the common knowledge exception identified by *Totten*, which establishes as follows:

> In . . . malpractice cases where lack of care or want of skill is so gross, so as to be apparent, or the alleged breach relates to noncomplex matters . . . within the understanding of lay jurors by resort to common knowledge and experience, failure to present expert testimony on the accepted standard of care and degree of skill under such circumstances is not fatal to a plaintiff's *prima facie* showing of negligence.

Whaley v. Hoyer, Hoyer, & Smith, PLLC, No. 24-ICA-189, 2024 WL 5002535, at *5 (W. Va. Ct. App. Dec. 6, 2024) (memorandum decision) (quoting *Totten*, 175 W. Va. at 634-635, 337 S.E.2d at 3, syl. pt. 4); *see also Scotchel v. Fluharty*, No. 20-0635, 2022 WL 3905940, at *6 (W. Va. Aug. 30, 2022) (memorandum decision). In addition, the Supreme Court of Appeals of West Virginia ("SCAWV") has declined to delineate the "specific parameters beyond the sound discretion of the court regarding the proper scope of expert testimony in the area of legal malpractice." *Sheetz, Inc. v. Bowles Rice McDavid Graff & Love, PLLC*, 209 W. Va. 318, 334, 547 S.E.2d 256, 272 (2001).

Mr. Hanna argues that an expert witness is not required to determine whether Mr. Carr violated his standard of care and committed legal malpractice because this case is not specialized and is within the common knowledge and experience of lay jurors. Mr. Hanna further argues that Mr. Carr failed to perform legal work under the contract, which does not require specialized knowledge. However, based on the SCAWV's decision in *Scotchel*, the circuit court is granted "sound discretion" to determine "the proper scope of expert testimony in the area of legal malpractice." *Scotchel*, 2022 WL 3905940, at *6 (quoting *Sheetz*, at 334, 547 S.E.2d at 272). The circuit court here used its discretion to determine that all of Mr. Hanna's claims relate to his legal malpractice claim, that a habeas corpus proceeding is not within the common understanding of a layman, and that this case required expert testimony to support Mr. Hanna's claims. As the circuit court held, this case involves defining the standard of care for attorneys representing clients in habeas corpus proceedings, which are complex matters. Based upon the record in this case, we find that the circuit court acted within its sound discretion when it determined that Mr. Hanna was required to produce expert testimony to support his claim for legal malpractice, and its award of summary judgment in favor of Mr. Carr was appropriate.

For his second assignment of error, Mr. Hanna argues the circuit court erred in denying his motion to appoint an expert witness. Again, we disagree. Rule 706(a) of the West Virginia Rules of Evidence states, in relevant part, as follows:

> The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he or she consents to act.

Although the SCAWV has not addressed this rule extensively, many federal courts have concluded that the purpose of the substantially similar federal rule is not to assist a party in proving a case. *See, e.g.*, *Stevenson v. Windmoeller & Hoelscher Corp.*, 39 F.4th 466, 470 (7th Cir. 2022) ("[T]he neutral expert envisioned by Rule 706 is one who serves the court as opposed to a party[.]"); *Taylor v. Kuerston*, 598 F. Supp. 3d 874, 876 (E.D. Cal. 2022) ("Courts do not invoke Rule 706 simply to 'appoint an expert on behalf of an indigent

civil party.'"); *Anderson v. United States*, No. 1:05-0876, 2009 WL 2044670, at *1 (S.D. W. Va. July 8, 2009) ("The appointment of an expert pursuant to Rule 706 is not intended to further partisan interests of any party . . . .").

In this case, the circuit court did not cite any authority to support its decision to deny Mr. Hanna's motion to appoint an expert witness to support his claims.[3] However, we agree with its conclusion that there is no authority that would allow a circuit court to appoint an expert witness for the purpose of assisting a party in meeting its burden of proof. Rule 706 allows a court to appoint an expert witness, but this rule does not contemplate appointing a witness to assist a party in carrying its own burden, as Mr. Hanna requests here. Further, Mr. Hanna fails to cite any authority in support of his arguments and further fails to provide any case law contrary to this Court's conclusions. As a result, the circuit court did not abuse its discretion in denying Mr. Hanna's motion to appoint an expert witness.

Finally, Mr. Hanna's third assignment of error argues the circuit court erred in denying his motion to join his sister as a plaintiff in this case because she helped pay Mr. Carr's legal fees. Again, we disagree and find no error. This issue was not addressed in the orders on appeal, and, even if it was error for the circuit court to deny Mr. Hana's motion to join his sister as a plaintiff in this case, it does not impact the circuit court's decision to grant summary judgment for Mr. Carr, which we have affirmed. As a result, this issue is moot.

Accordingly, we affirm the circuit court's December 4, 2025, orders granting Mr. Carr's motion for summary judgment and denying Mr. Hanna's motion to appoint an expert to establish malpractice liability.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White

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[3] Although the circuit court did not explicitly cite any authority in this order, the court incorporated by reference the authorities cited in Mr. Carr's supplement to the motion for summary judgment. In his supplement, Mr. Carr cited *Anderson*, 2009 WL 2044670, at *1 as well as *Boring v. Kozakiewicz*, 833 F.2d 468 (3d Cir. 1987) for the proposition that the circuit court should not appoint an expert for Mr. Hanna.