Control No. 18120235

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

JAMES JOHNSON **Plaintiff**	:	
	:	JANUARY TERM, 2017
vs.	:	
	:	NO. 2554
STEVEN J. SCHATZ and VINCENT F. PRESTO **Defendants**	:	

ORDER

And Now, this 21st day of February, 2019, after considering the Motion for Summary Judgment filed by Defendant Steven J. Schatz, Plaintiff's Response thereto, and considering numerous Memoranda and Supplemental Memoranda filed by all parties, and, after oral argument held January 24, 2019, and for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that the Defendant's Motion is **GRANTED** and Plaintiff's claims are **DISMISSED WITH PREJUDICE.**

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.

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STEVEN J. SCHATZ and VINCENT F. PRESTO **Defendants**	:	

MEMORANDUM in SUPPORT OF ORDERS GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

MASSIAH-JACKSON, J.

February 21st, 2019

A. FACTUAL BACKGROUND

The personal statement submitted by Plaintiff James Johnson, provides the pertinent facts:

> ". . . I discovered that Kenneth James Smith, my wife's uncle, came to my house to visit my mother-in-law. We later learned that Kenneth Smith had forgotten something for my mother-in-law and used the Ford Explorer to go back home in to NJ. Smith returned sometime later and parked the Explorer it in the same place, behind the garage.

Plaintiff-Johnson also learned that on August 14, 2010, his relative Kenneth Smith, backed the Ford Explorer into another vehicle in a parking lot in Ewing Township, New Jersey, caused damage to the New Jersey vehicle, then left the scene of the accident. Apparently, Mr. Smith did not tell Mr. Johnson or family members either that he borrowed their Ford or about his accident. Police Officer Provenzano issued three traffic citations. Plaintiff-Johnson did not receive those tickets nor did he appear at a Traffic Court date on September 13, 2010.

Because Plaintiff-Johnson failed to appear in court on September 13, 2010, the presiding judge issued a Bench Warrant for his arrest. When the Plaintiff received the notice of the Bench Warrant by mail on September 17, 2010, he promptly made arrangements with his family and an attorney to turn himself into the Ewing Township

Police Department. He explained the events of September 20, 2010:

> "At 6:15 a.m., a Police Officer named [sic] Muciente arrived and took me in the back to the cell room. Officer Muciente searched me and handcuffed me. The officer told me to sit in a steel chair, which was attached to a steel table.
> . . . .
>
> Finally, at approximately 7:30 a.m. I was un-cuffed and released from the cell room."

In February, 2012, Plaintiff-Johnson retained Attorney Steven J. Schatz to file a civil rights action in the United States District Court of New Jersey. In May, 2014, Attorney Vincent F. Presto joined the law firm with Attorney Schatz. Police Officer Provenzano, the Ewing Township Police Department and Ewing Township were named as Defendants. Mr. Johnson alleged that he was falsely arrested and illegally detained as a result of the actions of the Police Officer. Further, he claimed the Ewing Township entities were negligent in hiring, training and supervising their employees. See, 42 U.S.C. §§1983, 1988.

On December 11, 2014, United States District Judge Honorable Freda L. Wolfson Granted a Motion for Summary Judgment in favor of Officer Provenzano, the Township and Department. The Court held at Case 3:12-CV-01253-FLW-TJB, Page 10 of 25:

> ". . . Plaintiff [Johnson] was properly detained and processed pursuant to an arrest warrant because he did not appear in municipal court; this was the basis for the arrest . . . Plaintiff was not arrested pursuant to the traffic summons."

The District Court noted at fn3:

> "Thus, Plaintiff's [Johnson's] factual allegation that the arrest warrant was defective cannot be the basis for his claims of false arrest and imprisonment . . .".

The District Court held that there was "nothing unconstitutional" when Officer Muscente processed and detained Mr. Johnson pursuant to the Bench Warrant on September 20, 2010.

In April, 2016, the Court of Appeals for the Third Circuit affirmed the District Court in the Unpublished Opinion of Johnson v. Provenzano, et al., 646 Fed. Appx. 279 (April 14, 2016).

On January 19, 2017, Mr. James Johnson filed this legal malpractice action against Defendant Attorneys Schatz and Presto in the Philadelphia Court of Common Pleas. Plaintiff-Johnson's Amended Complaint grounded solely in negligence, asserts that the failure of the Defendant-Attorneys to argue certain defenses in the response to the New Jersey Motion for Summary Judgment caused him harm. This Plaintiff contends that the District Court Judge Wolfson did not consider that Mr. Johnson was "completely innocent" of the hit and run accident or that the Bench Warrant was not validly executed.

B. PROCEDURAL HISTORY

The pertinent procedural history is set forth in the pleadings filed by these parties. Plaintiff-Johnson initiated this professional negligence action against the Attorney-Defendants more than two years after the entry of judgment by the District

Court of New Jersey. 42 Pa. C.S. §5524. Plaintiff-Johnson's Amended Complaint, Paragraph 17:

> "17. Plaintiff did not know, nor have reason to know, even after exercising due diligence of the above errors and negligence of defendants until the year 2016, as defendants never advised plaintiff of such errors nor of the existence of his claim against them."

Defendant-Schatz New Matter, Paragraph 28:

> "Plaintiff's claims may be barred in whole or in part by the statute of limitations."

Defendant-Presto New Matter, Paragraph 49:

> "Plaintiff's claims are barred by the statute of limitations."

Whether the statute of limitations has run on a claim is usually a question of law for the court. Under the circumstances present here there are no factual issues for a jury's consideration. The underlying New Jersey action was dismissed by judgment on December 11, 2014. The run-date on the statute of limitations was December 11, 2016. Plaintiff-Johnson did not commence this legal malpractice action until January 19, 2017. James Johnson's Complaint is Dismissed With Prejudice.

C. LEGAL DISCUSSION

1. Neither the Law of the Case Doctrine Nor the Coordinate Jurisdiction Rule Have Been Violated Here.

Generally, a trial judge should not place herself in a position to overrule a decision by another judge of the same court in the same case. Rosenfeld v. Pa. Auto Insurance Co., 636 A.2d 1138, 1142 (Pa. Superior Ct. 1994).

When assessing the coordinate jurisdiction rule, Pennsylvania Appellate Courts have been guided by the procedural posture in a case and the context of the rulings. In Mariner v. Chestnut Partners, L.P. v. Lenfest, 152 A.3d 265 (Pa. Superior Ct. 2016), the Superior Court considered the context of a transferor judge's ruling and the transferee judge's decision. That Court held that the transferee judge did not violate either the law of the case or the coordinate jurisdiction rule when the second judge determined that the cause of action was barred by the statute of limitations. 152 A.3d at 282:

> "The purposes behind the law of the case doctrine and the coordinate jurisdiction rule are '(1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end.' [*Commonwealth v. Starr,* 664 A.2d 1326, 1331 (Pa. 1995)]. Only in exceptional circumstances, such as 'an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed,' may the doctrine be disregarded. *Id.* at 1332.

> To determine whether the law of the case doctrine applies, a court must examine the rulings at issue in the context of the procedural posture of the case. *Stein v. Magarity*, 102 A.3d 1010, 1017 (Pa. Super. 2014). The coordinate jurisdiction rule does not apply where the motions ruled upon are of a different type. *Hunter v. City of Phila.*, 80 A.3d 533, 536 (Pa. Cmwlth. 2013)." (footnotes omitted)

In the case at bar, one of the transferor judges, Honorable Shelley Robins New, denied without opinion, a Motion for Summary Judgment filed one year ago in February, 2018. The motion papers of the parties did not address the statute of limitations. A second transferor judge, Honorable Lisa M. Rau, considered a different type of motion filed in January, 2018 . . . a Motion for Sanctions and attorneys fees per Rule 1023.1 of the Pennsylvania Rules of Civil Procedure. When Judge Rau denied Defendant's Motion, she indicated that she did not rule on the merits. Accordingly, after considering the procedural posture and context it is apparent that there has not been a previously decided judicial determination of the legal issue involved here, that is, whether or not the statute of limitations bars this legal malpractice litigation. The coordinate jurisdiction rule does not apply where the motions differ in kind or are a different type. Bates v. Delaware County Prison Employees Union, 150 A.3d 121, 126-129 (Pa. Commonwealth Ct. 2016).

In D'Errico v. DeFazio, 763 A.2d 424, 436 (Pa. Superior Ct. 2000), the Appellate Court held that allowing parties to proceed to trial in the face of appeals and later reversal, would not further the goals of the law of the case doctrine and would thwart the purpose the rule was intended to serve, that is, judicial economy and efficiency. See generally,

Zane v. Friends Hospital, 836 A.2d 25 (Pa. 2003); Ryan v. Berman, 813 A.2d 792 (Pa. 2000); Dean v. PennDOT, 751 A.2d 1130 (Pa. 2000); Riccio v. American Republic Ins. Co., 705 A.2d 422 (Pa. 1997); Farber v. Engle, 525 A.2d 864 (Pa. Commonwealth Ct. 1987).

2. This Legal Malpractice Action Is Barred By the Statute of Limitations.

Initially, it must be noted that this Court did not raise an argument in favor of summary judgment *sua sponte*. All parties and the Court had the benefit of advocacy on the issue of statute of limitations in the memoranda, in the supplemental memoranda, and, at oral argument held January 24, 2019. The cases referred to by the Court on January 24, 2019, were identified by Defendant-Presto in his Memorandum, dated December 3, 2018, pages 10-12. See also, Plaintiff's Response Memorandum, December 18, 2018, unpaged.

This Motions Court did not usurp the role of the litigants nor act as defendants' advocate. All parties had multiple opportunities to be heard. Further the records throughout this litigation reveal that while each Defendant-Attorney focused on different challenges to the deficiencies in Plaintiff's legal malpractice action, the record has been consistent and clear that each Defendant seeks dismissal on behalf of both Defendants. The Presto Memorandum states at page 10:

> "Johnson cannot prevail against **Defendants** because his legal malpractice claim is barred by the statute of limitations. In Pennsylvania, the statute of limitations for a negligence claim is two years. 42 Pa. C.S. §5524." (emphasis added)

The test is not whether or not one Defendant formally joined a motion filed by the other. Rather, we consider whether either Defendant has articulated a proper basis for summary judgment of the cause of action. Plaintiff cannot manufacturer a schism by proffering an artificial division between the interests of the two Defendant-Attorneys.

In Communications Network International, Ltd. v. Mullineaux, 187 A.3d 951 (Pa. Superior Ct. 2018), the Superior Court affirmed summary judgment and reviewed the well-established guidelines for the affirmative defense of statute of limitations. The Court held at 960-961:

> "Moreover, the trigger for the accrual of a legal malpractice action, for statute of limitations purposes, is not the realization of actual loss, but the occurrence of a breach of duty. Pennsylvania law provides that:
>
> > 'the occurrence rule is used to determine when the statute of limitations begins to run in a legal malpractice action. Under the occurrence rule, the statutory period commences upon the happening of the alleged breach of duty. An exception to this rule is the equitable discovery rule which will be applied when the injured party is unable, despite the exercise of due diligence, to know of the injury or its cause. *Pocono [International] Raceway v. Pocono Produce, Inc.*, 503 Pa. 80, 85, 468 A.2d 468, 471 (1983). Lack of knowledge, mistake or misunderstanding, will not toll the running of the statute. *Id.* 503 Pa. at 85, 468 A.2d at 471.
>
> Pennsylvania favors strict application of the statutes of limitation. Accordingly, the statute of limitations in a legal malpractice claim begins to run when the attorney breaches his

> or her duty, and is tolled only when the client, despite the exercise of due diligence, cannot discover the injury or its cause.'
>
> *Wachovia Bank, N.A. v. Ferretti*, 935 A.2d 565, 572-73 (Pa. Super. 2007)."

Pennsylvania courts favor a policy of the strict application of statutes of limitation. They promote stability and the prompt pursuit of legal rights. Statutes of limitations bar stale claims and avoid the prejudice resulting from deciding stale cases on stale evidence and proofs based on stale memories. DeMartino v. Albert Einstein Medical Center, 460 A.2d 295, 299 (Pa. Superior Ct. 1983); Casner v. AFSCME, 658 A.2d 865, 871 (Pa. Commonwealth Ct. 1995). In our case, the occurrence of the "breach" and the trigger of a legal malpractice case was the date the New Jersey Court entered judgment on December 11, 2014.

This Plaintiff is not able to rely on the discovery exception where, as here, he admitted at his deposition he read the Court's Opinion, challenged Attorney-Schatz and asked "Where is the information about the warrant?" This Plaintiff had awareness of the "breach". It was his duty to exercise reasonable diligence to institute this malpractice suit in a timely manner. See, Schatz Supplemental Memorandum, dated February 4, 2019, pages 9-11.

When resolving all issues of material fact in favor of Plaintiff-Johnson, the statute accrued on December 11, 2014 and the run date was December 11, 2016. Garcia v. Community Legal Services, 524 A.2d 980 (Pa. Superior Ct. 1987) is on point.

Plaintiff-Johnson is deemed to have knowledge of the contents of the motion papers and the District Court's Order on the day his attorneys were notified. "Notice from a court to a person's attorney is considered notice to the client as long as it concerns a matter within the scope of the representation." Garcia, supra, 524 A.2d at 985 and numerous cases cited therein. See also, School District of Aliquippa v. Maryland Casualty Co., 587 A.2d 765, 770-771 (Pa. Superior Ct. 1991); Sadtler v. Jackson-Cross Co., 587 A.2d 727, 731 (Pa. Superior Ct. 1991). Mere mistake or misunderstanding or lack of knowledge does not toll the statute of limitations. Plaintiff had knowledge of the alleged breach of duty in December, 2014.

Plaintiff-Johnson's notion that the discovery rule tolls the statute until the year 2016 when he spoke to a new lawyer is misplaced. That argument is an attempt to invoke the continuous representation rule, which is a concept that the continuous representation of a client by an attorney tolls the running of a statute of limitations. Pennsylvania has not adopted this approach. Glenbrook Leasing Co. v. Beansang, 839 A.2d 437, 441-443 (Pa. Superior Ct. 2003).

The occurrence rule and the discovery exception focus on the happening of the breach and the injured party's awareness of the breach, not knowledge of the damage resulting from the breach. See, Spillman v. Wallen, 1996 WL 379553 (E.D. Pa. 1996) for a comprehensive overview by the District Court which granted summary judgment based

on the statute of limitations. The party asserting the cause of action has an affirmative duty to use all reasonable diligence to determine the facts and circumstances of the claim and institute suit within the prescribed period.

♦ ♦ ♦ ♦

Assuming *arguendo* that Plaintiff-Johnson's claims were not barred by the statute of limitations, this Summary Judgment Motion still would be Granted because this Plaintiff is unable to demonstrate that he would have prevailed in the underlying federal civil rights action.

♦ ♦ ♦ ♦

3. This Plaintiff Has Been Unable to Establish a Viable Case Within A Case.

In order to establish a legal malpractice claim, Plaintiff-Johnson has to demonstrate: **a.** Employment/duty of the attorney; **b.** Failure of the attorney to exercise ordinary skill and knowledge; and, **c.** That such negligence was the proximate cause of damage to the plaintiff. e.g. Kituskie v. Corbman, 714 A.2d 1027 (Pa. 1998).

In many legal malpractice litigations, unlike here, the Court and parties must attempt to reconstruct how an underlying case would have or could have ended. Here, since January, 2017, when this cause of action was filed in Philadelphia, Plaintiff-Johnson

retained attorneys to file two lawsuits in New Jersey state courts based on the allegations which he argues were omitted by Defendants Schatz and Presto. Plaintiff-Johnson has not been successful in any forum.

In March, 2017, Plaintiff-Johnson sued the Ewing Township Police Department, Police Officer Provenzano, Police Officer Muscento and Police Officer Stemler in the Courts of Mercer County, New Jersey. The Complaint asserted, *inter alia*, the arrest warrant was invalid and without authority for failure to have a judge's signature or seal; there was no validly executed warrant; and, Plaintiff was completely innocent of all traffic violations. Mercer Complaint, Paragraphs 20-23, 34, 38, 43.

On July 10, 2017, the Court in Mercer County **Granted** Defendants' Motion to Dismiss. The judge rendered a 30 page Opinion concluding there was no wrongdoing or abnormalities by the individual defendants; the arrest was voluntary; booking procedures appropriate; and, Mr. Johnson knew of traffic tickets from his insurance company and the police report. Significantly, the judge noted that electronic signatures are permitted on warrants issued by the Municipal Courts in New Jersey.

On December 28, 2017, Plaintiff-Johnson again sued four Ewing Police Officers: Police Officer Provenzano, Police Officer Muscente, Police Officer Stemler, and Police Officer Coulton. The Complaint asserted, *inter alia*, that the defendant Police Officers unlawfully created and/or issued a forged and/or fake warrant against Plaintiff-Johnson;

that "there was never actually a bench warrant"; and, the document was not authorized or sanctioned by the Municipal Court in New Jersey. Mercer Complaint, Paragraphs 18, 19, 22-25.

On April 9, 2018, the Court in Mercer County **Granted** Defendants' Motion for Summary Judgment. That ruling has been appealed by Plaintiff-Johnson.

Under the circumstances present here it is apparent that Plaintiff-Johnson cannot prove that he had a viable civil rights action -- no matter how many interpretations he has tried to attach to the Bench Warrant. Four Courts have concluded the Traffic Court Bench Warrant was validly and properly executed when this Plaintiff failed to appear on September 13, 2010.

In Myers v. Robert Lewis Seigle, P.C., 751 A.2d 1182 (Pa. Superior Ct. 2000), the Court held at 1185:

> "Accordingly, to prove actual injury, appellant must demonstrate that [he] would have prevailed in the underlying action in the absence of appellee's alleged negligence."

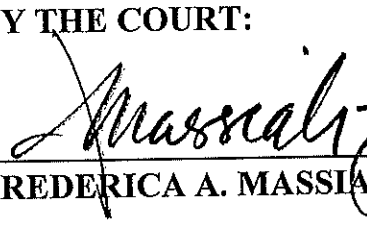
See also, 412 North Front Street Assoc. v. Spector Gadon & Rosen, P.C., 151 A.3d 646, 657 (Pa. Superior Ct. 2016), summary judgment proper where no causal connection shown between alleged breach of professional duty and claimed losses; Scaramuzza v. Sciolla, 2006 WL 55716 (E.D. Pa. 2006), the plaintiff must prove that "but for" the attorney's alleged negligence, the plaintiff would not have been harmed.

This Court concludes that even if the response to the underlying summary judgment motion had included arguments that the Plaintiff was "completely innocent" of the hit and run accident and/or that the Bench Warrant was not validly or properly executed, the civil rights action in the District Court of New Jersey would not have been successful. Plaintiff-Johnson would not have prevailed. Accordingly, he is unable to meet his burden of proof on the legal malpractice claim filed January Term, 2017, No. 2554, in Philadelphia Court of Common Pleas.

D. CONCLUSION

For all of the reasons set forth above, the Motions for Summary Judgment filed by Defendant Steven J. Schatz and Defendant Vincent F. Presto are **GRANTED** in their entirety and Plaintiff's Amended Complaint is **Dismissed With Prejudice.**

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.

2-21-2019