

Court of Claims of Ohio

The Ohio Judicial Center
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ROBERT HARSH

Plaintiff

v.

OFFICE OF THE OHIO PUBLIC DEFENDER

Defendant

Case No. 2008-07691

Judge Clark B. Weaver Sr.
Magistrate Matthew C. Rambo

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On July 30, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 8, 2008, plaintiff filed an affidavit in support of his complaint and a combined motion to strike defendant's motion for summary judgment and motion to "hold the case in abeyance until further notice." On August 15, 2008, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On August 22, 2008, defendant filed a motion to strike both plaintiff's affidavit and plaintiff's motion to strike. Also on August 22, 2008, defendant filed a combined memorandum contra plaintiff's motion for summary judgment and motion to strike plaintiff's motion for summary judgment for lack of service. On August 29, 2008, plaintiff filed a memorandum in support of his motion for summary judgment. On January 30, 2009, plaintiff filed a motion for "judgment on all motions filed." The motions for summary judgment are now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 2} As an initial matter, plaintiff's August 8, 2008 motion to strike is construed as a memorandum contra defendant's motion for summary judgment and his motion "to

hold in abeyance” is DENIED. Furthermore, defendant’s August 22, 2008 motions to strike are DENIED.

{¶ 3} Civ.R. 56(C) states, in part, as follows:

{¶ 4} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 5} Plaintiff is currently an inmate in the custody and control of the Department of Rehabilitation and Correction at the Chillicothe Correctional Institution pursuant to R.C. 5120.16. Plaintiff asserts a claim of legal malpractice, alleging that Robert Lane and Sarah Schregardus, employees of defendant, failed to provide him adequate representation in his action for post-conviction relief. Plaintiff seeks damages in the amount of \$442,000 for intentional infliction of emotional distress, loss of consortium, lost wages, “loss of future earnings, loss of business,” and “undue hardship.”

{¶ 6} “To plead a cause of action for legal malpractice arising from criminal representation, a plaintiff must allege (1) an attorney-client relationship giving rise to a duty, (2) a breach of that duty, and (3) damages proximately caused by the breach.” *Krahn v. Kinney* (1989), 43 Ohio St.3d 103, 106. “Failure to prove any one of these

elements entitles a defendant to summary judgment on a legal malpractice claim.” *Brunstetter v. Keating*, 11th Dist. No. 2002-T-0057, 2003-Ohio-3270, ¶ 13; *Sprague v. Simon* (2001), 144 Ohio App.3d 437, 441. In order to establish the element of proximate cause in an action for legal malpractice, a plaintiff must establish a causal connection between the attorney’s action and the unwanted result. *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259.

{¶ 7} Assuming, arguendo, that plaintiff has established the initial two elements of a legal malpractice case, the court finds that plaintiff’s case fails as a matter of law inasmuch as he has not adequately pleaded a recoverable element of damages. Plaintiff was not required to pay for the legal services at issue and any confinement and monetary penalties imposed against plaintiff were a result of his original conviction.

{¶ 8} Moreover, to the extent that plaintiff is attempting to appeal any irregularities in his criminal proceedings, this court has held that a plaintiff who has had the opportunity to appeal his conviction cannot substitute an action in the Court of Claims for a right of appeal in a different court. *Hardy v. Belmont Corr. Inst.*, Ct. of Cl. No. 2004-09631, 2006-Ohio-623, at ¶ 24, citing *Swaney v. Bur. of Workers’ Comp.* (Nov. 10, 1998), Franklin App. No. 98AP-299, and *Midland Ross Corp. v. Indus. Comm.* (1992), 63 Ohio Misc.2d 311. “R.C. 2743.02 does not embrace jurisdiction to review criminal proceedings occurring in courts of common pleas.” *Donaldson v. Court of Claims of Ohio* (May 19, 1992), Franklin App. No. 91AP-1218; see also *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334, at ¶ 10.

{¶ 9} Accordingly, plaintiff’s motion for summary judgment is DENIED and defendant’s motion for summary judgment is GRANTED. Judgment is rendered in favor of defendant as a matter of law. All pending motions are DENIED as moot. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

CLARK B. WEAVER SR.
Judge

cc:

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