

1 **ORDR**

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10 *Judge Pro Tempore*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 MARK SCHNIZLEIN,

11 Plaintiff,

12 v.

13 BLACK & LoBELLO LAW

14 Defendants.

CASE NO.: A-16-734783-C

DEPT. NO.: XXVII

Hearing Date: September 24, 2019

Hearing Time: 3:30 pm

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

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17 The above matter having come before the court for hearing on September 24, 2019, at 3:30
18 pm, for DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S BREACH
19 OF CONTRACT CLAIM, filed by Defendant BLACK & LoBELLO LAW, by and through its
20 counsel of record, Lipson, Neilson, P.C., on August 28, 2019. Plaintiff in proper person, MARK
21 SCHNIZLEIN, filed an opposition to the motion on September 17, 2019. Defendant filed a Reply
22 on September 20, 2019. This was also the appointed date and time for DEFENDANT'S MOTION
23 IN LIMINE TO EXCLUDE TESTIMONY OF KATHY ALLINGER AND JAMES ABBAS AS
24 EXPERT WITNESSES, which was unopposed, and for the Pre-Trial Conference.
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1 Counsel for Defendant, Eric N. Tran, Esq., of Lipson Neilson, P.C., was present for the
2 hearing and pre-trial conference. Plaintiff did not appear and attempts by the Court to reach
3 Plaintiff by phone were unsuccessful. After providing Plaintiff with an additional twenty (20)
4 minutes, the hearing went forward in his absence.

5
6 **RELEVANT PROCEDURAL HISTORY**

7 1. Plaintiff filed a Complaint against Defendant on April 6, 2016 alleging four causes
8 of action arising from breach of contract and legal malpractice associated with representation
9 provided by Defendant in and around 2011 which Plaintiff asserts to have caused him harm.

10 2. Defendant filed a motion for summary judgment, which was heard by District Court
11 Judge Nancy Alf on October 10, 2018. In an order filed November 14, 2018, Judge Alf provided
12 detailed Findings Of Fact related to the history surrounding Plaintiff's allegations, which include
13 the following:

14
15 a. Plaintiff retained Defendant to perform legal services regarding a
16 family trust matter before the Probate Commissioner on or about July 14, 2011.

17 b. On or about August 29, 2011, Plaintiff sent correspondence
18 requesting that Defendant stop all action on the pending trust matter, stating that he
19 would try to negotiate with opposing counsel directly to resolve the pending probate
20 action.

21
22 c. Defendant responded to Plaintiff by advising against entering into
23 negotiations without the assistance of legal counsel.

24 d. Thereafter, a hearing was scheduled for September 9, 2011 and
25 Plaintiff, who was at that time in control of his own case, complained that
26 Defendant did not advise him of the rescheduled hearing. Defendant advised
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1 Plaintiff that the hearing could not be postponed indefinitely. Notably, Defendant
2 continued to warn Plaintiff that he needed to act on this matter and that he was not
3 being charged during this period of time.

4 e. Plaintiff continued the hearing until September 16, 2011. In the meantime,
5 Defendant sent email correspondence advising that Plaintiff needed to take action on the
6 case in anticipation of the September 16, 2011 hearing. The hearing was eventually moved
7 to September 30, 2011. The hearing was then moved to October 14, 2011.

8 f. In the meantime, on October 6, 2011, Plaintiff, against the advice of
9 Defendant, entered into a settlement agreement to resolve the matters at issue before
10 the Probate Commissioner. The settlement agreement executed by Plaintiff
11 expressly provided that Plaintiff disclaimed any interest he had in the trust at issue.

12 g. Defendant sent correspondence to Plaintiff on October 6, 2011,
13 requesting an explanation as to why Plaintiff was sending documents to opposing
14 counsel in the trust matter. Plaintiff responded on October 7, 2011 that he executed
15 the settlement agreement on October 6, 2011 based on his independent
16 determination that "I believe we had a good agreement." Further, Plaintiff related
17 that if the document could be "immediately [filed] with the clerk . . . there will be no
18 hearing **next Friday.**"

19 h. The October 7, 2011 email communication from Plaintiff to
20 Defendant directly contradicts Plaintiff's allegation that he thought there was a
21 hearing on October 7, 2011, and demonstrates his awareness that the hearing had
22 been rescheduled for October 14, 2011.

1 i. On October 20, 2011, Defendant filed a Petition for Confirmation of
2 Settlement Agreement. As part of the agreement, Defendant represented that “[t]he
3 parties hereto have reached an amicable global resolution of all outstanding issues
4 related to the Schnizlein Bypass Trust.” Also attached to the settlement agreement
5 was the following note written by Plaintiff in his own handwriting: “I relinquish all
6 of my monies equally to my three kids.”
7

8 k. Later, when Plaintiff had some disagreements related to management
9 of the trust, he filed a petition through new legal counsel on or about March 5, 2013.
10 The Probate Commissioner held at the April 15, 2013 hearing that Plaintiff had
11 disclaimed any interest he had in the subject trust in favor of his children as per the
12 October 6, 2011 settlement agreement.
13

14 l. Plaintiff, through his new counsel, filed an objection to the Probate
15 Commissioner’s Report and Recommendation, which was followed by the District
16 Court adopting the Probate Commissioner’s Report and Recommendation.

17 m. Plaintiff testified in his deposition of July 16, 2018 that he executed
18 the October 6, 2011 settlement agreement under duress, because he was wrongly
19 advised by Defendant that the hearing was on October 7, 2011 and that Defendant
20 would not be present at the hearing. Plaintiff testified that he was forced to hastily
21 drive from Michigan to Nevada to be present at the October 7, 2011 hearing.
22

23 n. Plaintiff further testified in deposition that Defendant wrongly
24 advised the court that the settlement agreement executed on October 6, 2011 was a
25 “global resolution.” However, the Probate Commissioner and District Court
26 previously held that the October 6, 2011 settlement agreement entered into by
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1 Plaintiff is what caused him to lose standing in the underlying probate action. It had
2 nothing to do with the confirmation subsequently filed by Defendant.

3 3. Judge Alf concluded in the November 14, 2018 order that summary judgment was
4 appropriate as to all claims asserting legal malpractice, namely: paragraphs 1-3 of the Complaint.
5 However, referencing *Allyn v. McDonald*, 112 Nev. 68, 71-72; 910 P.2d 263, 266 (1996), Judge
6 Alf concluded that the issues presented in paragraph 4 of the Complaint related to Defendant
7 allegedly abandoning Plaintiff “is potentially sound in a breach of contract theory.” Accordingly,
8 Judge Alf determined that Plaintiff’s case could go forward as to that remaining claim only.
9

10 4. On March 4, 2019, the Arbitrator issued a determination that Plaintiff could not
11 present sufficient evidence to support his breach of contract claim against Defendant.
12

13 5. On March 28, 2019, Plaintiff filed a request for trial de novo.

14 6. Plaintiff has not conducted any discovery to prove up any facts beyond those
15 identified by Judge Alf in the November 14, 2018 order.

16 FINDINGS OF FACT

17 1. The Findings of Fact, Conclusions of Law, and Order of November 14, 2018 present
18 the undisputed facts and law of the case.

19 2. Plaintiff has not presented any new evidence since November 14, 2018.

20 3. In the September 17, 2019 opposition to the motion for summary judgment, Plaintiff
21 presented conclusory statements which did not address or rebut the issues presented in the motion
22 for summary judgment. In fact, while Plaintiff disputes the allegations set forth by Defendant in
23 the motion for summary judgment, the opposition filed is devoid of any material evidence at all.
24

25 4. The issues presented by Plaintiff in paragraph 4 of the Complaint are directly tied to
26 the attorney/client relationship and cannot be reasonably determined without expert testimony.
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1 5. Plaintiff has not retained an expert to testify in this matter for the purpose of
2 establish his breach of contract claim derived upon the attorney/client relationship.

3 **CONCLUSIONS OF LAW**

4 1. There are no genuine issues of material fact preventing the Court from considering a
5 motion for summary judgment.

6 2. Plaintiff's remaining cause of action encompasses issues surrounding both breach of
7 contract and the fiduciary duty owed to him by Defendant, which cannot be reasonably established
8 without expert testimony. (*See Stalk v. Mushkin*, 125 Nev. 21, 29, 199 P.3d 838, 843, (2009)
9 (citation omitted); *Stoffel v. Eighth Judicial District Court of State in and for County of Clark*,
10 2017 WL 1078662, at *1 (Nev. 2017).)

11 3. District Courts are encouraged to carefully scrutinize cases and grant summary
12 judgment in matters where "claims are deficient of evidentiary support and are based on little more
13 than the complainants' conclusory allegations and accusations." (*Boesiger v. Desert Appraisals,*
14 *LLC*, 444 P.3d 436, 438 (Nev. 2019). More specifically, the Nevada Supreme Court has held as
15 follows:

16 [When] an action is brought with practically no evidentiary basis to support it,
17 summary judgment can be a valuable tool to discourage protracted and meritless
18 litigation of factually insufficient claims. In dispensing with frivolous actions
19 through summary judgment, courts promote the important policy objectives of
20 sound judicial economy and enhance the judiciary's capacity to effectively and
21 efficiently adjudicate legitimate claims.

22 (*Id.*, 444 P.3d at 441.)

23 4. Plaintiff has not presented sufficient evidence to rebut Defendants' Motion for
24 Summary Judgment, and failed to appear at the hearing as ordered by the Court, which is hereby
25 construed as consent by Plaintiff that the motion is meritorious and should be granted in
26 accordance with EDCR 2.20(e).
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ORDER

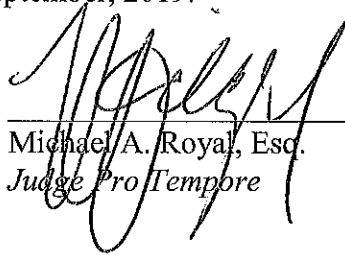
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2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, for the reasons outlined
3 herein above, Defendant's Motion for Summary Judgment on Plaintiff's Breach of Contract Claim
4 is GRANTED.

5 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that the case is
6 hereby DISMISSED.

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8 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Defendants's
9 unopposed Motion in Limine to Exclude Testimony of Kathy Allinger and James Abbas as Expert
10 Witnesses is now rendered moot.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the trial set
12 for October 4, 2019 at 8:00 am, be vacated.

13 DATED this 24 day of September, 2019.

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16 _____
17 Michael A. Royal, Esc.
18 Judge Pro Tempore

19 DATED this 26 day of Sept, 2019.

20 _____
21 Nancy L Alf
22 District Court Judge
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