

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COTTMAN TRANSMISSION SYSTEMS,
LLC AS ASSIGNEE OF BRIJESH PATEL,
SITAL PATEL AND SEA BUSINESS
GROUP, LLC,

Appellant

v.

LAW OFFICES OF PETER E. BORT,
ROCHELLE BOBMAN AND PETER E.
BORT,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2390 EDA 2012

Appeal from the Order of August 2, 2012,
in the Court of Common Pleas of Montgomery County,
Civil Division at No. 09-09339

BEFORE: STEVENS, P.J., LAZARUS and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED JULY 19, 2013

Appellant Cottman Transmission Systems, LLC appeals from the order that granted the motion for summary judgment filed by Appellees Law Offices of Peter E. Bort; Rochelle Bobman; and Peter E. Bort (collectively “the law firm”) in the law firm’s favor and against Appellant on its claims in legal malpractice based upon breach of contract and negligence. We affirm.

The relevant facts are as follows. This case stems from two 2005 actions brought by Appellant against its former franchisees Brijesh Patel, Sital Patel, and Sea Business Group, LLC (“Franchisees”). On November 7,

*Retired Senior Judge assigned to the Superior Court.

2005, Appellant filed suit against Franchisees seeking money damages for an alleged breach of the franchise agreement. Thereafter, Appellant filed a separate action in equity against Franchisees. Appellant forwarded a settlement agreement to Franchisees which purportedly resolved both the money and equity actions. Franchisees indicated they would obtain counsel to review the document and execute the agreement, which they did not do. On December 20, 2005, Appellant sent Franchisees a notice of intention to take default judgment on the money action. On January 3, 2006, Appellee Rochelle Bobman ("Bobman") entered her appearance for Franchisees in both actions. However, Bobman withdrew her appearance in the money action on the same day. On January 6, 2006, a default judgment was entered in favor of Appellant in the money action in the amount of \$595,965.33. On January 20, 2006, Franchisees filed a petition to open the default judgment, which the trial court denied. The law firm represented Franchisees in connection with the petition to open. Franchisees appealed and this Court affirmed the trial court's denial of the petition to open.

Franchisees assigned their claims against the law firm to Appellant. Appellant then instituted the instant action against the law firm by filing a complaint alleging breach of contract and legal malpractice. The law firm filed an answer and new matter, averring that they agreed to represent Franchisees in the equity action only. Appellant filed a motion for summary judgment, which the trial court denied. Thereafter, the law firm filed a motion for summary judgment, which, after oral argument, the trial court granted. Appellant's timely appeal followed.

Appellant raises the following issues for our review: whether the trial court erred when it ignored material issues of fact and instead found the trial court's decision in the underlying case supporting its ruling to deny the petition to open default judgment establishes that: (1) Franchisees did not have a meritorious defense to the default judgment; and (2) Franchisees did not employ the law firm in the money action.¹

An appellate court reviews an order granting a motion for summary judgment by viewing the record in the light most favorable to the non-moving party and resolving all doubts as to the existence of a genuine issue of material fact against the moving party. ***Barnett v. SKF USA, Inc.***, 38 A.3d 770, 776 n.6 (Pa. 2012). "Summary judgment is properly entered only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law." ***Id.***

"A trial court's [o]rder granting a motion for summary judgment will not be reversed absent an error of law or an abuse of discretion." ***Myers v. Robert Lewis Seigle, P.C.***, 751 A.2d 1182, 1184 (Pa. Super. 2000). In reviewing all appeals, we are mindful that it is an appellant's burden to persuade us that relief is due. ***Commonwealth v. Scarborough***, 9 A.3d 206, 214 (Pa. Super. 2010).

In addition:

In order to establish a claim of legal malpractice, appellant must demonstrate:

¹ We have re-ordered Appellant's arguments for ease of disposition.

employment of the attorney or other basis for a duty; the failure of the attorney to exercise ordinary skill and knowledge; and that such negligence was the proximate cause of damage to the plaintiff.

Kituskie v. Corbman, 552 Pa. 275, 281, 714 A.2d 1027, 1029 (1998). Our Supreme Court stated:

An essential element to this cause of action is proof of actual loss rather than a breach of a professional duty causing only nominal damages, speculative harm or the threat of future harm. Damages are considered remote or speculative only if there is uncertainty concerning the identification of the existence of damages rather than the ability to precisely calculate the amount or value of damages. In essence, a legal malpractice action in Pennsylvania requires the plaintiff to prove that he had a viable cause of action against the party he wished to sue in the underlying case and that the attorney he hired was negligent in prosecuting or defending that underlying case (often referred to as proving a "case within a case").

Id. at 281, 714 A.2d at 1030 (citation omitted).

Myers, 751 A.2d at 1184.

Here, the trial court granted summary judgment to the law firm based upon the finding of the trial court in the underlying action that there was no meritorious defense to the default judgment entered against Franchisees. The trial court appears to have based its decision on the doctrine of collateral estoppel, which operates to prevent litigation of a question of law or issue of fact that has once been litigated and fully determined in a court of competent jurisdiction. ***See Vignola v. Vignola***, 39 A.3d 390, 393 (Pa. Super. 2012).

Appellant argues it was error for the trial court to use the ruling in the underlying action as dispositive of the issues brought in the instant legal malpractice case. Appellant baldly asserts the underlying action involved “different parties, causes of action and operative facts” than the instant action. Appellant’s Brief at 12.

We first note:

The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities. This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority. Failure to cite relevant legal authority constitutes waiver of the claim on appeal.

In re Estate of Whitley, 50 A.3d 203, 209 (Pa. Super. 2012) (citations and quotations omitted); **see** Pa.R.A.P. 2101; 2119(a).

Instantly, Appellant fails to provide any relevant discussion as to why the particular ruling by the trial court in the underlying action was not applicable to dispose of the claims in the instant case. Further, Appellant does not cite to any relevant authority in support of its argument. Thus, this argument is waived for purposes of review.

Appellant alternatively argues the trial court incorrectly characterized the trial court’s ruling in the underlying case as a determination that Franchisees had no meritorious defense to the default judgment whereas the court, in fact, ruled that Franchisees had failed to sufficiently plead a meritorious defense. In its opinion, the trial court in the underlying action determined that none of the alleged defenses to the action brought against

Franchisees for violating the franchise agreement were meritorious. **See** Trial Court Opinion, 07/06/07, at 3-4. Appellant asserts “there were a myriad of good faith defenses which could have been pled at the time . . . that would have kept the case alive and perhaps ultimately proved successful,” but points to only one, *i.e.*, that the law firm should have asserted a mitigation of damages defense to the complaint’s lost future royalties claim. Appellant’s Brief at 16. However, Appellant does not provide any relevant discussion as to how this defense was a meritorious one to the underlying action or how it would have provided Franchisees with relief from entry of the default judgment. Thus, Appellant fails to persuade us of the existence of a genuine issue of material fact as to whether the law firm’s alleged negligence was the proximate cause of damage to Franchisees precluding the entry of summary judgment in this case. We find no trial court error.²

Order affirmed

President Judge Stevens concurs in the result.

² Appellant’s second issue was not a basis for the trial court’s grant of summary judgment and was not raised in Appellant’s Pennsylvania Rule of Appellate Procedure 1925(b) statement. Regardless, because Appellant’s first issue is dispositive with respect to the appeal, we need not address it.

J-A13044-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambett", written over a horizontal line.

Prothonotary

Date: 7/19/2013