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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1024-16T2

DONELL L. PRINCE,

Plaintiff-Appellant,

v.

KEVIN C. ORR, ESQ.,

Defendant-Respondent.

Submitted April 19, 2018 – Decided April 26, 2018

Before Judges Haas and Gooden Brown.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
7765-15.

Donell L. Prince, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff appeals from the Law Division's July 8, 2016 order dismissing his legal malpractice complaint against defendant for failure to file an affidavit of merit (AOM). He also challenges the court's June 29, 2016 order denying his request that defendant be sanctioned for alleged spoliation of evidence, and a January

22, 2016 order denying plaintiff's motion for a temporary stay of the proceedings.¹ We affirm.

In 2006, plaintiff retained defendant to represent him after plaintiff was charged with assault, disorderly conduct, and firearms offenses in the Hackensack Municipal Court. Plaintiff and defendant signed a retainer agreement stating that defendant agreed to represent plaintiff in defending against these charges. The written agreement made no mention of any other legal services to be provided by defendant.

Without defendant's knowledge, plaintiff later filed a notice of tort claim against the City of Hackensack, the Hackensack Municipal Court, the Court Administrator, and numerous municipal police officers. After learning of plaintiff's action, defendant promptly filed an application to disqualify the Hackensack Municipal Court from hearing the criminal proceedings and to transfer the matter to another municipal court. In that application, defendant advised the Hackensack Municipal Court that

¹ Plaintiff's notice of appeal states that he is also appealing the trial court's August 19, 2016 order denying his motion to proceed as an indigent. However, plaintiff's brief does not address this issue. We therefore assume this issue has been abandoned. Grubb v. Borough of Hightstown, 353 N.J. Super. 333, 342 n.1 (App. Div. 2002) (explaining that issue raised in notice of appeal but not briefed is abandoned). In any event, this argument is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

he was not representing plaintiff in any civil action brought by plaintiff. Defendant sent a copy of the application to plaintiff. Defendant continued to represent plaintiff in connection with the criminal charges and, in 2007, those charges were dismissed.

In 2013, plaintiff filed a civil action in the United States District Court for the District of New Jersey against the City of Hackensack and several of its police officers for false arrest, false imprisonment, malicious prosecution, and injuries plaintiff allegedly sustained in jail. Plaintiff also filed a legal malpractice complaint against defendant in the district court. That court subsequently dismissed the legal malpractice complaint, and, with the exception of plaintiff's malicious prosecution claim, all of his allegations against the municipality and its officers.

In August 2015, plaintiff filed a legal malpractice complaint against defendant in the Law Division. Plaintiff alleged that defendant orally agreed to represent him in his civil action against the municipality, but failed to do so. As a result, plaintiff filed the complaint himself, but, by the time he instituted his legal malpractice action, the district court had dismissed many of his claims against the municipal defendants on statute of limitations grounds.

N.J.S.A. 2A:53A-27 requires a plaintiff who alleges professional negligence to provide an expert's affidavit stating the action has merit. "The submission of an appropriate [AOM] is considered an element of the claim." Meehan v. Antonellis, 226 N.J. 216, 228 (2016) (citing Alan J. Cornblatt, PA v. Barow, 153 N.J. 218, 244 (1998)). "Failure to submit an appropriate [AOM] ordinarily requires dismissal of the complaint with prejudice." Ibid. (citing Cornblatt, 153 N.J. at 243). A plaintiff must file the AOM within sixty days after defendant files an answer. N.J.S.A. 2A:53A-27.

On January 22, 2016, Judge James J. DeLuca granted plaintiff's motion for a sixty-day extension to file the AOM. Plaintiff also asked that the proceedings on his legal malpractice complaint be temporarily stayed pending the completion of the federal proceedings. Judge DeLuca denied this request. In his accompanying written opinion, the judge explained that plaintiff's federal complaint against defendant for legal malpractice had already been dismissed, and the remaining allegations in his complaint against Hackensack had no "impact on the case."

Plaintiff did not file an AOM. Instead, he filed a motion again seeking a temporary stay of the proceedings pending the completion of his federal action. Plaintiff also asked the court to impose sanctions against defendant for alleged spoliation of

evidence. In this regard, plaintiff asserted that defendant made and discarded notes that would have documented the oral agreement plaintiff alleged he made with defendant for representation in his civil action.

On June 29, 2016, Judge DeLuca denied both applications. In his written opinion, the judge explained that plaintiff's request for a stay had to be denied because the court had "already determined there were no pending actions that would impact the within matter." The judge also denied plaintiff's motion for sanctions. In denying this request, Judge DeLuca noted that defendant gave plaintiff a disc containing all of the documents in his possession, "a total of 722 pages." The judge found that plaintiff failed to present any evidence to suggest defendant destroyed any documents.

On July 8, 2016, Judge DeLuca granted defendant's motion to dismiss plaintiff's complaint for failing to file the required AOM. In so ruling, the judge rejected plaintiff's argument that an AOM was not required under the "common knowledge doctrine." This doctrine applies "where jurors' common knowledge as lay persons is sufficient to enable them, using ordinary understanding and experience, to determine a defendant's negligence without benefit of the specialized knowledge of experts." Hubbard v.

Reed, 168 N.J. 387, 394 (2001) (holding AOM was not required where dentist removed the wrong tooth).

Judge DeLuca concluded that the common knowledge doctrine did not apply in this case because plaintiff

asserts that [d]efendant's conduct and statements in connection to [his agreement to represent plaintiff in the criminal matter] set forth a duty for [d]efendant to take additional steps to prepare and enter into the [alleged] [s]econd [a]greement [to represent plaintiff in the civil matter]. As such, [p]laintiff's claims involve an analysis of [d]efendant's professional conduct as an attorney which requires an [AOM] setting forth the basis of how [d]efendant's conduct fell outside acceptable professional standards.

This appeal followed.

On appeal, plaintiff presents the following contentions:

POINT I

THE COURT SHOULD REVERSE THE ORDER/DECISION OF HON. JAMES J. DELUCA J.S.C., IN HIS WRITTEN FINAL DECISION/RIDER WITH ORDER DATED JULY 08, 2016, DISMISSING PLAINTIFF'[S] COMPLAINT WITH ALL CLAIMS WITH PREJUDICE FOR FAILURE TO FILE AND SERVE AN AFFIDAVIT OF MERIT . . . BECAUSE THE COURT [ERRED] AS IT RELATES TO APPLYING THE DOCTRINES OF RES IPSA LOQUITUR AND COMMON KNOWLEDGE TO THIS CASE.

POINT II

THE COURT SHOULD REVERSE THE ORDER/DECISION OF HON. JAMES J. DELUCA J.S.C., IN HIS WRITTEN FINAL DECISION/RIDER WITH ORDER DATED JUNE 29, 2016 IN DENYING MOTIONS TO IMPOSE SANCTIONS FOR SPOILIATION AGAINST DEFENDANT & RENEWED REQUEST FOR TEMPORARY STAY PENDING OUTCOME OF

UNDERLYING CASE CLAIMS ARE BASED ON IN FEDERAL
DISTRICT COURT . . . , BECAUSE THE COURT
[ERRED] AS IT RELATES TO THESE MATTERS.

We conclude that plaintiff's arguments are without sufficient
merit to warrant discussion in a written opinion. R. 2:11-
3(e)(1)(E). We affirm substantially for the reasons set forth in
Judge DeLuca's thoughtful written opinions rendered on January 22,
2016, June 29, 2016, and July 8, 2016.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION