

[Cite as *Jackson v. Rohrbaugh*, 2015-Ohio-2112.]
DONOFRIO, P.J.

{¶1} Plaintiff-appellant, David Jackson, appeals from a Mahoning County Common Pleas Court judgment granting the motion of defendant-appellee, Robert Rohrbaugh, for judgment on the pleadings.

{¶2} On October 9, 2013, appellant filed a complaint against appellee, his former attorney, for legal malpractice and breach of fiduciary duty. The malpractice claim asserted that appellee negligently gave appellant erroneous legal advice, which convinced appellant to sign an October 10, 2012 post-divorce Agreed Judgment Entry (AJE) waiving his ability to modify his spousal support obligation to his ex-wife.

{¶3} Appellee filed a motion for judgment on the pleadings. He asserted appellant's claims were barred by the doctrine of judicial estoppel because appellant represented to the domestic relations court that he fully understood and agreed to the AJE's terms. Appellee next asserted that the complaint did not demonstrate that an act or omission by appellee proximately caused appellant's alleged damages. Finally, appellee asserted that appellant's claim for breach of fiduciary duty failed because it arose solely from his legal malpractice claim and could not be maintained as a separate claim.

{¶4} A magistrate ruled that no material fact existed and that appellee was entitled to judgment as a matter of law pursuant to Civ.R. 12(C). The magistrate found that appellant's legal malpractice claim was barred by the doctrine of judicial estoppel and that appellant's breach of fiduciary duty claim was subsumed into his malpractice claim. Therefore, the magistrate sustained appellee's motion for judgment on the pleadings.

{¶5} Appellant filed objections to the magistrate's decision, arguing that his complaint met the notice-pleading requirements and that judicial estoppel did not apply.

{¶6} The trial court overruled the objections, adopted the magistrate's decision, and entered judgment in favor of appellee.

{¶7} Appellant filed a timely notice of appeal on April 10, 2014.

{¶8} Appellant raises a single assignment of error that states:

THE TRIAL COURT ERRED BY GRANTING A MOTION FOR JUDGMENT ON THE PLEADINGS BASED UPON AN IMPROPER APPLICATION OF THE JUDICIAL ESTOPPEL DOCTRINE.

{¶9} Appellant begins by pointing out that Ohio is a notice-pleading state. He asserts all that was required of him was that he place enough text in the complaint to demonstrate that he was entitled to some relief. He notes that all allegations in the complaint must be deemed true for Civ.R. 12 purposes. Appellant asserts that Civ.R. 12 also prohibits the consideration of evidence.

{¶10} Appellant contends that his legal malpractice claim only required him to allege (1) an attorney-client relationship giving rise to a duty, (2) a breach of the duty, and (3) damages proximately caused by the breach. Furthermore, he asserts he was permitted to plead both a legal malpractice claim and a breach of fiduciary duty claim against a lawyer-defendant.

{¶11} Appellant next argues that judicial estoppel does not apply here. In order for this doctrine to apply, appellant urges, the parties to the litigation must be essentially the same and the relevant issue must be the same. Additionally, he asserts judicial estoppel does not apply when a party has simply made a good faith mistake in a prior proceeding concerning certain facts and issues. And he argues that since a complaint is not a sworn statement, the doctrine of judicial estoppel cannot be applied on the pleadings alone.

{¶12} Appellant asserts that if judicial estoppel were applied to the facts and pleadings of this case, then any time a lawyer gives bad advice to a client and the client signs an agreed judgment entry based on the bad advice, the client will never be able to raise a malpractice claim. Appellant explains that in this case, he signed the AJE in reliance on the bad legal advice his counsel gave him.

{¶13} Appellant goes on to argue that appellee's answer contained numerous unauthenticated documents and numerous false factual allegations that the trial court improperly considered.

{¶14} A Civ.R. 12(C) motion for judgment on the pleadings presents only

questions of law. *Ahmed v. Sargus*, 7th Dist. No. 03-BE-63, 2005-Ohio-2382, ¶7. Therefore, this court conducts a de novo review. *Id.*

{¶15} Pursuant to Civ.R. 12(C), a party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay the trial. Such a motion has been characterized as a belated Civ.R. 12(B)(6) motion to dismiss for failure to state a claim. *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 592, 635 N.E.2d 26 (1994). In ruling on a Civ.R. 12(C) motion, the court may grant judgment on the pleadings where no material factual issue exists and the moving party is entitled to judgment as a matter of law. *Id.* at 592-593. The court is to rely solely on the allegations in the pleadings and the plaintiff is entitled to have all material allegations in the complaint construed in his favor as true. *Id.*

{¶16} First, we must address appellant's argument that the trial court was not permitted to consider the documents appellee attached to his answer. Appellee attached three documents to his answer: (1) a certified copy of the AJE; (2) a copy of the transcript of the hearing on the motion to modify appellant's spousal support obligation where appellant agreed to the terms of the AJE; and (3) a certified copy of the decree of dissolution of appellant's marriage, which set out his original spousal support obligation. Appellee contends the trial court correctly considered these documents in dismissing appellant's lawsuit.

{¶17} Civ.R. 12(C) permits the court to consider both the complaint and the answer. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St. 3d 565, 569, 1996-Ohio-459, 664 N.E.2d 931. Moreover, the trial court may consider the complaint, answer, *and any documents attached to those pleadings* when it rules on a Civ.R. 12(C) motion. *Toman v. Humility of Mary Health Partners*, 7th Dist. No. 13MA105, 2014-Ohio-4417, ¶9; *White v. King*, 5th Dist. No. 14 CAE 02 0010, 2014-Ohio-3896, ¶16; *Schmitt v. Educ. Serv. Ctr. of Cuyahoga Cty.*, 8th Dist. No. 97605, 2012-Ohio-2208, ¶10. Based on case law from this district as well as other districts, the trial court was permitted to consider the documents attached to appellee's answer.

{¶18} Next, we must consider whether appellant's claims were barred by the doctrine of judicial estoppel.

{¶19} Courts use the doctrine of judicial estoppel to preserve the courts' integrity "by preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposing to suit an exigency of the moment." *Greer-Burger v. Temesi*, 116 Ohio St. 3d 324, 2007-Ohio-6442, 879 N.E.2d 174, ¶25, quoting *Griffith v. Wal-Mart Stores, Inc.* 135 F.3d 376, 380 (C.A.6, 1998), quoting *Teledyne Industries, Inc. v. Natl. Labor Relations Bd.* (C.A.6, 1990), 911 F.2d 1214, 1217 (C.A.6, 1998). Under the doctrine of judicial estoppel, a party may not take a position in a court proceeding that is inconsistent with that party's position in a previous court proceeding that he successfully advanced under oath. *Zapor Architects Group, Inc. v. Riley*, 7th Dist. No. 03 JE 27, 2004-Ohio-3201, ¶19. "Judicial estoppel involves an attempt to deceive the court itself." *Id.*

{¶20} In order to apply the doctrine of judicial estoppel, the proponent must show that his opponent "(1) took a contrary position; (2) under oath in a prior proceeding; and (3) the prior position was accepted by the court." *Greer-Burger*, at ¶25. Judicial estoppel does not apply, however, when the party's prior inconsistent position was a result of mistake or inadvertence. *Saha v. Research Inst. at Nationwide Children's Hosp.*, 5th Dist. No. 12AP-590, 2013-Ohio-4203, ¶16, citing *Lewis v. Weyerhaeuser Co.*, 141 Fed.Appx. 420, 426 (6th Cir.2005), quoting *Browning v. Levy*, 283 F.3d 761, 776 (6th Cir.2002).

{¶21} As discussed above, we can consider the attachments to appellee's answer. One of these attachments is a copy of the transcript of the spousal support modification hearing in domestic relations court between appellant and his ex-wife. At the hearing, appellant stated to the court that he understood all terms of the AJE, that he had no questions about the AJE, that he consulted with his attorney (appellee) prior to signing the AJE, that he made the agreement voluntarily and of his own free will, and that no one forced him to agree to anything he did not want to

agree to. (Answer, Ex. B, p. 8).

{¶22} The AJE requires appellant to pay \$8,000 per month in spousal support to his ex-wife until she starts to receive social security, at which time appellant's monthly obligation will be reduced by the amount of social security. (Answer, Ex. A). This reduced appellant's monthly spousal support obligation from \$13,000. (Answer, Ex. C). The AJE also provided the court would not retain jurisdiction over spousal support. (Answer, Ex. A).

{¶23} In his complaint in this case, appellant asserted that while representing him in the divorce case, appellee committed malpractice by having him agree to pay permanent monthly spousal support in an amount he did not have the ability to pay. (Complaint ¶4). Appellant further asserted that as a direct and proximate result of appellee's malpractice, he suffered damages including, being barred from ever modifying his spousal support obligation and incurring additional legal fees associated with trying to vacate the orders in the divorce case. (Complaint ¶12).

{¶24} Ohio is a notice-pleading state. *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991). Civ.R. 8(A) requires only that a complaint "contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled." Under this rule, "a plaintiff is not required to prove his or her case at the pleading stage," and the complaint is sufficient "as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover." *York*, 60 Ohio St.3d at 145.

{¶25} Reading the complaint alone, appellant complied with Civ.R. 8(A) by providing a short and plain statement of his claim showing he is entitled to relief. Appellant asserted appellee had him agree to pay permanent spousal support of a specific amount when he lacked the ability to pay this amount. (Complaint ¶4). He alleged appellee was negligent in providing legal representation and services to him. (Complaint ¶10). Appellant further alleged that he reasonably relied on appellee's advice and judgment to his own detriment. (Complaint ¶11). And appellant alleged

that as a direct and proximate result of appellee's negligence/malpractice, he suffered damages including being barred from modifying his spousal support obligation and incurring additional legal fees associated with attempting to vacate the order in the divorce case. (Complaint ¶12).

{¶26} As stated above, in ruling on a Civ.R. 12(C) motion to dismiss on the pleadings, we are to consider not only the complaint but also the answer and any attachments to the complaint and/or answer. The attachments reveal the following.

{¶27} At the spousal support modification hearing, appellant stated to the court that he understood and agreed to the terms of the AJE. He also stated that he made the agreement after consulting with his attorney. The court then approved the AJE. The allegations in appellant's legal malpractice complaint may seem inconsistent with his representations to the domestic relations court. But judicial estoppel does not apply here to bar appellant's legal malpractice claim.

{¶28} If we were to apply the doctrine of judicial estoppel in cases such as this, the attorney giving the bad advice would always have immunity from a malpractice claim. This is so because the client would represent to the court that he was voluntarily entering the agreement and that he understood the terms. But the client may have been wholly relying on the bad legal advice he received from his counsel. The client would then always be estopped from raising a subsequent claim for legal malpractice because he would have to assert a position that would be inconsistent with the position he previously successfully asserted in court. For this reason, judicial estoppel does not bar appellant's legal malpractice claim.

{¶29} At the AJE hearing, appellant stated that he entered the AJE after consulting with his counsel (appellee). (Answer, Ex. B, p. 8). If appellant's counsel gave him erroneous legal advice, appellant may not have been aware of the bad advice at the time he entered the AJE. Therefore, he would have represented to the court that he was signing the AJE voluntarily and that he understood its terms. But the advice from appellant's counsel, on which he likely relied, could have been poor advice perhaps even constituting malpractice. Thus, as stated above, judicial

estoppel does not apply in this situation.

{¶30} In addition to his legal malpractice claim, appellant raised a claim for breach of fiduciary duty. He asserted in his complaint that due to appellee's attorney-client relationship with him, appellee had a fiduciary relationship with him. (Complaint ¶15). Appellant further asserted that appellee breached this fiduciary "in the legal mistakes and/or malpractice as set forth above" and in how appellee "failed to inform or even timely inform [appellant] of the legal mistakes made and malpractice committed." (Complaint ¶17).

{¶31} The trial court found appellant's breach of fiduciary duty claim was subsumed by his legal malpractice claim. But we have already concluded that appellant's legal malpractice claim is not barred. Therefore, this cannot be the basis for dismissing his breach of fiduciary duty claim.

{¶32} In sum, the trial court should not have granted appellee's Civ.R. 12(C) motion. Appellant's complaint meets Ohio's notice pleading requirements and the doctrine of judicial estoppel does not bar his claims. Accordingly, appellant's sole assignment of error has merit.

{¶33} For the reasons stated above, the trial court's judgment is hereby reversed. Appellant's complaint is reinstated. The matter is remanded to the trial court for further proceedings pursuant to law and consistent with this opinion.

Waite, J., concurs.

Robb, J., concurs.