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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-0418-20**

JUDY THORPE,

**Plaintiff-Appellant/
Cross-Respondent,**

v.

**ROSEMARIE CIPPARULO,
ESQ., and WEISSMAN &
MINTZ, LLC,**

**Defendants-Respondents/
Cross-Appellants.**

Argued May 5, 2022 – Decided May 17, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-0561-16.

Judy Thorpe, appellant/cross-respondent, argued the
cause pro se.

Meredith Kaplan Stoma argued the cause for
respondents/cross appellants (Lewis Brisbois Bisgaard
& Smith, LLP, attorneys; Petar Kuridza, of counsel and
on the briefs).

PER CURIAM

Plaintiff Judy Thorpe appeals from the Law Division's July 24, 2020 order granting defendants Rosemarie Cipparulo, Esq. and Weisman & Mintz, LLC's motion for summary judgment, and dismissing her complaint alleging legal malpractice. The court found defendants did not represent plaintiff in the action she referenced in her complaint. Defendants have filed a cross-appeal asserting the trial court could have also dismissed the complaint on three alternate grounds. We affirm.

The parties are fully familiar with the procedural history and facts of this case. This is the latest in a series of legal actions plaintiff has pursued following the Juvenile Justice Commission's (JJC's) August 2008 decision to remove her from her position as a supervisor of nursing services. Plaintiff retained an attorney, who filed an action in the Law Division on her behalf alleging discrimination and unlawful retaliation in violation of the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, and the Conscientious Employer Protection Act (CEPA), N.J.S.A. 34:19-1 to -14. The trial court dismissed this action after finding that plaintiff failed to establish a prima facie case of discrimination or retaliation. We affirmed. Thorpe v. State, Nos. A-0104-11, A-5603-11 (App. Div. June 10, 2015).

Plaintiff's former union, the Communications Workers of America (CWA), filed a grievance challenging the JJC's action pursuant to its collective bargaining agreement (CBA) with the State. The CBA permits the CWA, but not the employee, to appeal an employee's termination to binding arbitration on grounds of breach of the CBA. The CWA retained defendants to represent it in this action. Plaintiff's own attorney continued to advise her during the arbitration. The arbitrator upheld plaintiff's termination.

Plaintiff filed unfair practice charges against the CWA and the State. She claimed the union and her former employer breached their duties of fair representation and good faith negotiation during the arbitration in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -64. The Public Employment Relations Commission (PERC) dismissed plaintiff's charges against the CWA and the State after finding that her allegations did not satisfy PERC's standards for issuing a complaint. We affirmed PERC's determination. In re CWA Loc. 1040, No. A-0852-13 (App. Div. Mar. 24, 2017).

Plaintiff then filed a legal malpractice action against the attorney who represented her in the LAD and CEPA action and in the CWA's grievance arbitration proceeding. The Law Division granted the attorney's motion for

summary judgment and dismissed plaintiff's complaint. We affirmed that ruling. Thorpe v. Swidler, No. A-0649-17 (App. Div. May 7, 2019).

In the present action, plaintiff filed a complaint alleging that defendants committed legal malpractice during the CWA grievance arbitration. However, defendants represented the CWA in that proceeding, not plaintiff. Plaintiff had her own attorney and admitted during her deposition that she consulted with that attorney throughout the matter.

To prevail on a legal malpractice claim, a plaintiff must establish the following elements: "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff." McGrogan v. Till, 167 N.J. 414, 425 (2001). Based upon the uncontested facts of this case, the trial court found plaintiff failed to establish she had an attorney-client relationship with defendants. The court also concluded defendants did not owe plaintiff a third-party duty of care. Therefore, the court granted defendants' motion for summary judgment and dismissed plaintiff's complaint with prejudice.

In so ruling, the court rejected three alternate arguments raised by defendants. First, the court ruled that plaintiff's complaint was not barred by the

six-year statute of limitations established by N.J.S.A. 2A:14-1. The court found that plaintiff's alleged cause of action did not arise until February 12, 2010, when the arbitrator entered the final decision. Because plaintiff filed her legal malpractice complaint on February 10, 2016, the court determined her complaint was timely.

Second, defendants argued plaintiff could not establish proximate causation for any damages because she has received Social Security disability benefits since the date of her termination from the JJC. Therefore, defendants asserted plaintiff's unemployment was due to her medical condition, rather than to any of their actions. However, the court found it was possible plaintiff could still establish damages because she continued to claim she was able to return to full employment despite her disability.

Defendants also asked the court to adopt a per se rule granting malpractice immunity to attorneys retained by labor unions for services performed within the ambit of the collective bargaining process on behalf of the union. The court concluded there was no need to address defendants' request because it had already found there was no attorney-client relationship between plaintiff and defendants. Plaintiff's appeal and defendants' cross-appeal followed.

On appeal, plaintiff contends:

[POINT I]

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN [DEFENDANTS'] FAVOR IN FINDING THAT THERE WAS NO ATTORNEY-CLIENT RELATIONSHIP BETWEEN THE PARTIES; OR THAT A NARROW EXCEPTION DID NOT EXIST IF THERE WAS NO ATTORNEY-CLIENT RELATIONSHIP ESTABLISHED.

[POINT II]

[PLAINTIFF'S] EXPERT WITNESS REPORT CREATED A GENUINE ISSUE OF FACT WHICH SHOULD HAVE PRECLUDED THE ENTRY OF SUMMARY JUDGMENT IN [DEFENDANTS'] FAVOR.

[POINT III]

[PLAINTIFF] WAS UNDULY PREJUDICED BY HER FORMER COUNSEL'S INEFFECTIVE ASSISTANCE OF COUNSEL.

We have considered plaintiff's arguments in light of the record and applicable legal principles, and conclude they are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E). We affirm substantially for the reasons set forth in the trial court's comprehensive written decision rendered on July 24, 2020. We add the following brief comments.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court, namely, the standard set forth in Rule 4:46-

2(c). Conley v. Guerrero, 228 N.J. 339, 346 (2017). Thus, we consider, as the trial court did, whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

If, as here, there is no genuine issue of material fact, "we must then decide whether the trial court correctly interpreted the law." Dickson v. Cmty. Bus Lines, 458 N.J. Super. 522, 530 (App. Div. 2019) (citing Prudential Prop. & Cas. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998)). We accord no deference to the trial judge's conclusions of law and review these issues de novo. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

Applying these principles, we discern no basis for disturbing the trial court's findings of fact and conclusions of law. Defendants were retained by the CWA to represent the union, not plaintiff, in the grievance arbitration proceeding. Plaintiff had her own attorney, who counseled her throughout that case as well as the LAD and CEPA litigation. Because plaintiff did not have an attorney-client relationship with defendants, she could not bring a legal malpractice action against them. See McGrogan, 167 N.J. at 425.

Contrary to plaintiff's contention, her expert's report reviewing defendants' conduct during the arbitration did not raise a genuine issue of material fact which precluded summary judgment. As the trial court correctly found, the undisputed facts demonstrated defendants represented the CWA, rather than plaintiff, during the arbitration. We also decline to consider plaintiff's newly minted claim, raised for the first time on appeal, that her attorney who represented her in the Law Division in this case provided her with "ineffective assistance." See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

Finally, we need only briefly address defendants' arguments on its cross-appeal. Defendants successfully obtained summary judgment and the trial court dismissed plaintiff's complaint with prejudice. There may have been alternate grounds supporting dismissal, but because we have affirmed the trial court's July 24, 2020 order, we need not address them here.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION