APPENDIX

In The
Supreme Court of the United States

Paul Mueller,

Petitioner,

v.

Bert Parnall,

Respondent.

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Appendix A

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

PAUL MUELLER,

Plaintiff-Appellant,

v. **No. A-1-CA-39254**

BERT PARNALL,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Victor S. Lopez, District Judge

Paul Mueller
Rio Rancho, NM

Pro Se Appellant

Dixon, Scholl, Carrillo, P.A.
Gerald G. Dixon
Albuquerque, NM

for Appellee

MEMORANDUM OPINION

MEDINA, Judge.

{1} Plaintiff appeals from the district court's order dismissing his complaint for legal malpractice as barred by the statute of limitations. In this Court's notice of proposed disposition, we proposed to summarily affirm. Plaintiff filed a memorandum in opposition and a motion to amend the docketing statement seeking to clarify his presentation of the issues on appeal. We remain unpersuaded that

Plaintiff has shown error and we therefore affirm the ruling of the district court. In addition, we deny Plaintiff's motion to amend the docketing statement.

{2} Plaintiff's motion to amend the docketing statement does not seek to add new issues; rather, it seeks to clarify one of the issues presented in the docketing statement and also responds to the analysis in our calendar notice. While we commend Plaintiff for taking care to ensure that the issue has been explicitly raised, we find it unnecessary to allow amendment of the docketing statement because this Court considers additional facts and argument in support of an issue originally raised in the docketing statement without requiring an amendment to the docketing statement. Accordingly, although we have considered all the arguments made in Plaintiff's motion to amend, we deny the motion as unnecessary.

{3} In his memorandum in opposition and motion, Plaintiff clarifies that his argument is that the statute of limitations could not have begun until he knew the claim *against* Allsup's was viable. [MIO 2-3, 12-16; Mot. 3-4] Plaintiff argues that "[t]he viability of the underlying case against Allsup's was a necessary fact in a cause of action for legal malpractice" and that "[o]nly after obtaining the training manual [did] the claim against Allsup's become viable[.]" [MIO 3] In our calendar notice, we proposed to disagree with this argument [CN 4] and Plaintiff has not asserted any facts, law, or argument in his memorandum in opposition that persuades this Court that our notice of proposed disposition was erroneous. *See State v.*

Mondragon, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{4} We additionally deny Plaintiff's request to reassign this case to the general calendar. [MIO 16-17] For the reasons discussed in our calendar notice [CN 3-6], this case does not present an issue of first impression.

{5} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm.

{6} **IT IS SO ORDERED.**

Jacqueline R. Medina

JACQUELINE R. MEDINA, Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

Megan P. Duffy

MEGAN P. DUFFY, Judge

Appendix B

Court of Appeals of New Mexico
Filed 7/6/2021 9:00 AM
Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

PAUL MUELLER,

Plaintiff-Appellant,

v.

BERT PARNALL,

Defendant-Appellee.

No. A-1-CA-39254
Bernalillo County
D-202-CV-2020-00284

NOTICE
PROPOSED SUMMARY DISPOSITION

You are hereby notified that the **Record Proper** was filed in the above-entitled cause on **October 5, 2020**.

This case has been assigned to the **SUMMARY CALENDAR** pursuant to Rule 12-210(B) NMRA.

Summary affirmance is proposed.

Note: This is a *proposal* of how the Court views the case. It is not a final decision. You now have twenty (20) days to file a memorandum telling the Court any reasons why this proposed disposition should or should not be made.

See Rule 12-210(D) NMRA.

Plaintiff appeals dismissal of the complaint he filed against his former counsel. The district court granted Defendant's motion to dismiss for failure to state a claim on the basis that the complaint was barred by the statute of limitations. [DS 1, 22-24] "Dismissals under Rule 1-012(B)(6) [NMRA] are proper when the claim

asserted is legally deficient. A district court's decision to dismiss a case for failure to state a claim under Rule 1-012(B)(6) is reviewed de novo." *Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97, 257 P.3d 917 (internal quotation marks and citations omitted).

Issues 1 & 2: "[T]he limitations period for legal malpractice commences when (1) the client sustains actual injury and (2) the client discovers, or through reasonable diligence should discover, the facts essential to the cause of action." *Sharts v. Natelson*, 1994-NMSC-114, ¶ 11, 118 N.M. 721, 885 P.2d 642. We understand Plaintiff to assert on appeal that neither of these elements were met until 2017 and the district court therefore erred by concluding the limitations period had run by the time Plaintiff filed his complaint in 2020. [DS 1, 21-24] Plaintiff does not appear to dispute that the limitations period governing his claims is four years. [DS 18]

Plaintiff claims he did not have all the facts required to meet the elements of a legal malpractice claim until he prevailed on his claim against Allsup's. [DS 22] Plaintiff explains that until he prevailed at trial in 2017, he did not know Defendant committed malpractice. [DS 19-20] Plaintiff additionally asserts that any legal malpractice claim he filed against Defendant prior to Plaintiff obtaining the Allsup's training manual in 2017 would have been dismissed, because the manual demonstrated that Defendant gave erroneous legal advice. [DS 19, 23] We

understand Plaintiff's contentions to be based on the assumption that his cause of action for malpractice did not accrue until Plaintiff knew he had a valid claim against Defendant. [DS 17-18, 20-23] As explained below, our courts have consistently rejected this notion.

The elements of legal malpractice are: (1) the employment of the defendant attorney; (2) the defendant attorney's neglect of a reasonable duty; and (3) the negligence resulted in and was the proximate cause of loss to the client." *Encinias v. Whitener L. Firm, P.A.*, 2013-NMSC-045, ¶ 8, 310 P.3d 611 (alteration, internal quotation marks, and citation omitted). However, "the essential elements of a negligence cause of action are not the same as the facts that would form the basis of a suit." *Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 29, 126 N.M. 717, 974 P.2d 1174. In assessing the statute of limitations, "[t]he key consideration . . . is the factual, not the legal, basis for the cause of action. The action accrues when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action." *Id.* (internal quotation marks and citation omitted).

In the present case, we understand the basis for Plaintiff's malpractice claims to be that Defendant gave Plaintiff erroneous legal advice and failed to assist Plaintiff in pursuing a claim against Allsup's. [DS 3, 8-9, 18-23] Specifically, Plaintiff alleged that "[Defendant] never lifted a finger to help [him], and [he] was forced to

navigate the system by [himself;]" Defendant refused to sue Allsup's because he said it was not an actionable offense; and Plaintiff was forced to pursue litigation against Allsup's on his own. [RP 14 ¶ 50, 14-15 ¶ 52, 15 ¶ 54, 16 ¶ 59] It therefore appears Plaintiff knew "there may have been serious errors" in Defendant's work in 2013 when Plaintiff terminated the representation. *See Day-Peck v. Little*, 2021-NMCA-___, ¶ 47, ___ P.3d ___ (No. A-1-CA-37168, May 4, 2021) (internal quotation marks and citation omitted). Accordingly, we suggest that in 2013 Plaintiff was on notice of the facts constituting the cause of action against Defendant, even though he may not have had knowledge of whether his malpractice claim was viable. *See Delta Automatic Sys., Inc.*, 1999-NMCA-029, ¶ 29 ("To commence the limitations period, a plaintiff need not know that the injury constitutes a breach of the legal standard of care; it is sufficient if plaintiff is on notice of the facts constituting the cause of action." (internal quotation marks and citation omitted)). We therefore propose to disagree with Plaintiff's assertions that either his discovery of the training manual or his success in the Allsup's suit were essential facts in his case against Defendant.

We likewise propose to disagree with Plaintiff's claim that he was not injured until the Allsup's litigation was resolved in 2017. [DS 23-24] Plaintiff asserts the only actual damages Plaintiff could have obtained in a malpractice suit against Defendant was the amount he could have recovered against Allsup's, but for

Defendant's alleged negligence, and that he could not have collected from Allsup's for the mental distress of conducting his own lawsuit. [DS 23] Plaintiff relies on language in *Encinias*, 2013-NMSC-045, ¶ 8, where the Supreme Court explained that a "plaintiff in a legal malpractice suit must prove . . . loss by demonstrating by a preponderance of the evidence that he or she would have prevailed on the underlying claim" and that "the measure of damages is the value of the lost claims, i.e., the amount that would have been recovered by the client except for the attorney's negligence" (internal quotation marks and citation omitted). [DS 27-28]

It appears Plaintiff is asserting that he was not injured until 2017 when he realized the measure of his damages by losing some claims against Allsup's. We suggest that Plaintiff's position disregards his own allegations that the reasons he lost some claims against Allsup's was *because he was forced to conduct litigation on his own*. Specifically, Plaintiff alleged that without Defendant's assistance, and because Plaintiff did not know how to navigate the legal system, he "could not collect on damages for the PTSD[] and negligent training/supervision[.]" [RP 16 ¶ 59] Plaintiff further alleged that if Defendant had "just done his job and filed a complaint against Allsup's . . . Plaintiff would have recovered more money at trial" and that "if not for [Defendant's] negligence and complete lack of judgment[,]" Plaintiff could have prevailed on his PTSD, negligent training/supervision, and punitive damages claims. [RP 17 ¶ 61, 22 ¶ 88] It therefore appears that Plaintiff's

injury occurred at the time of Defendant's alleged errors—2013 at the latest—even though it was not until 2017 that a court declared Plaintiff did not prevail on some of his claims.

We remind Plaintiff that "the essential elements of a negligence cause of action are not the same as the facts that would form the basis of a suit." *Delta Automatic Sys., Inc.*, 1999-NMCA-029, ¶ 29. We are therefore not convinced that Plaintiff was not injured until he could prove a measurable amount of damages. Rather, "[a] client may suffer injury through loss of a legal right or harm to a legal interest even though the client has not yet ascertained the amount of his or her damages[.]" *Sharts*, 1994-NMSC-114, ¶ 12. Accordingly, although Plaintiff may not have known the measure or amount of his damages until 2017, this does not preclude a determination that Plaintiff was injured in 2013 when Defendant made the alleged legal errors and Plaintiff was forced to proceed alone.

Indeed, our Supreme Court has rejected the proposition that the "harm or loss" element of the statute of limitations test cannot be satisfied until a plaintiff's rights are ascertained by judicial decree. *See id.* ¶ 14. The Court explained, "the judicial process does not create liabilities or destroy rights, but only declares what is present through the process of determining the facts and applying the law." *Id.* (alteration, internal quotation marks, and citation omitted). Stated simply, "a judicial determination does not 'create' the injury." *Id.* (internal quotation marks and citation

omitted). Accordingly, "a right, remedy or interest is usually lost, or a liability is imposed *at the time of a lawyer's error*, even though a court does not so declare until a later date." *Id.* (emphasis added) (internal quotation marks and citation omitted); *cf. Slusser v. Vantage Builders, Inc.*, 2013-NMCA-073, ¶ 16, 306 P.3d 524 ("If a plaintiff were entitled to have all the time he needed to be *certain* his rights had been violated, the statute of limitations would never run—for even after judgment, there is no certainty." (emphasis in original) (internal quotation marks and citation omitted)).

Accordingly, we propose to affirm the district court's determination that the statute of limitations barred Plaintiff's complaint.

Issue 3: Plaintiff asserts the district court did not apply the proper standard in granting Defendant's motion to dismiss because Defendant failed to meet the burden of proof, the district court viewed the facts most favorable to Defendant, and Defendant did not present evidence to dispute the fact that Plaintiff could not prevail against Allsup's until 2017. [DS 24-25] We understand Plaintiff's ultimate contention to be that the district court did not treat as true the allegation that Plaintiff could not have prevailed in a legal malpractice suit against Defendant until 2017. [DS 19-23] *See Walsh v. Montes*, 2017-NMCA-015, ¶ 6, 388 P.3d 262 ("A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint, not

the factual allegations of the pleadings which, for purposes of ruling on the motion, the court must accept as true." (internal quotation marks and citation omitted)).

We suggest that Plaintiff has failed to demonstrate the district court erred in regard to this issue. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that the district court erred). It appears Plaintiff believes the district court did not view facts favorably to Plaintiff because the facts were not addressed in the order and because the district court denied Plaintiff's request to admit exhibits related to the Allsup's litigation. [DS 20-21, 25] However, for the reasons discussed above, the date on which Plaintiff discovered that his malpractice claim may have been viable is not relevant to the statute of limitations analysis. *See Delta Automatic Sys., Inc.*, 1999-NMCA-029, ¶ 29 ("The action accrues when the plaintiff knows or should know the relevant facts, whether or not the plaintiff also knows that these facts are enough to establish a legal cause of action." (internal quotation marks and citation omitted)). Accordingly, to the extent Plaintiff believes the district court's failure to discuss the events of 2017 in its order or its refusal to admit related exhibits was in error, we propose to disagree.

For the foregoing reasons, we propose to affirm the order of the district court.

Jacqueline R. Medina

JACQUELINE R. MEDINA, Judge

Appendix C

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

PAUL MUELLER,

Plaintiff,

v.

Cause No. D-202-CV-2020-00284

BERT PARNALL,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

THIS MATTER, having come before the Court on Defendant's Motion to Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, the Court having considered the briefs submitted by both parties and having heard oral arguments from counsel for Defendant and from Plaintiff, finds:

1. Plaintiff filed a Civil Complaint for Negligence, Res Ipsa Loquitur, Negligent Infliction of Emotional Distress, Punitive Damages, and Prima Facie Tort on January 14, 2020.
2. In lieu of filing an answer, Defendant's counsel filed a Motion to Dismiss on February 20, 2020, based on the alleged failure to state a claim upon which relief can be granted. NMRA 2020, Rule 1-012 (B)(6).
3. The statute of limitations for these torts is no more than 4 years. NMSA 1978, §37-1-4, but the present complaint was filed over 6 years after the alleged conduct occurred.
4. Under a motion to dismiss, the Court considers the factual allegations of the complaint, *see Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶2, 134 N.M. 43, 83 P.3d 181, and can only grant such a motion if Plaintiff cannot recover under any set of facts provable as alleged in the complaint. *Runyan v. Jaramillo*, 90 N.M. 629, 632, 567 P.2d 478, 481 (1977).

5. Our Supreme Court has said that "A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint, not the factual allegations of the pleadings which, for purposes of ruling on the motion, the court must accept as true." *Herrera v. Quality Pontiac*, ¶2.

6. The present motion considers whether the statute of limitations applies to bar Plaintiff's complaint where:

   a. Plaintiff alleges that he hired Defendant attorney to represent him on November 29, 2011, to secure legal services in connection with an assault Plaintiff suffered on November 14, 2011. Plaintiff's Negligence, etc., Complaint ¶¶6, 12, 13.

   b. Plaintiff had been a victim of a brutal stabbing and Defendant attorney agreed to represent him for all his claims connected to the stabbing, including the claim against Allsups store. *Id.* ¶13.

   c. The defendant attorney initially undertook to address a claim against Safeway Insurance, and states in the complaint that "Bert only took over the claim, and stated that since I was carjacked, i.e., kidnapped, I was owed for the uninsured motorist claim for the maximum amount on the policy, including property damage for theft of my property." *Id.* ¶17.

   d. Plaintiff further concedes that: "Bert knew this [i.e., settled case law in New Mexico that uninsured motorist ("UIM claim") coverage allows recovery in carjacking situations], and knew this was the only claim he wanted to represent me with. He [Mr. Parnall] had no desire to pursue anything other than a quick grab for cash for writing a settlement package to an insurance company that

would be punished 3 times damages for bad faith if they fought the claim on settled case law." *Id.* ¶18, 19.

e. "Burt would soon write a Settlement package on December 21st, 2011, to Safeway, requesting they pay for the claim in full, since the boys had intended to steal my vehicle before they entered my vehicle, and the insurance had no defense to not pay the claim." *Id.* ¶21.

f. Other allegations and claims are included in the complaint, but as relevant to the present motion, Plaintiff asserts that: "I feel I was tricked into allowing this gatekeeper, named Bert Parnall, to rob me of my uninsured motorist claim, without filing a claim against Allsup's, and therefore kidnapped justice from me because he felt that was all I deserved, just like his commercial says." *Id.* ¶41.

g. Without Mr. Parnall's assistance, Plaintiff filed a lawsuit against Allsup's in April 2013 in Metropolitan Court "for allowing the victim to be hunted off of the property of Allsup's, something Bert argued, but only to Safeway for the uninsured motorist claim." *Id.* ¶54; *see Mueller vs. Allsup*s, T-4-CV-2013-005177 (filed Apr. 18, 2013) (judicial notice is hereby taken of the Metropolitan Court filing).

h. Plaintiff alleges that he was forced to conduct his own litigation starting in April 2013, "instead of having my attorney Bert conduct the case...." *Id.* ¶59.

i. The date that Plaintiff termination Mr. Parnall's employment is not clearly stated in the Complaint, but Plaintiff's subsequent retention of other counsel to pursue the Allsup's case confirms that the relationship ended at least as of April 2013.

j. Plaintiff's actions, as alleged in the Complaint, make clear that he proceeded without Mr. Parnall's help when he filed the Metropolitan Court case, and in his subsequent pursuit of a District Court action (D-202-CV-2014-07028) (filed Nov. 11, 2014) to a jury verdict with the help of alternate counsel (Plaintiff secured a verdict of $2 million dollars, subject to a 10% comparative fault to Allsup's). Complaint at Page 20 and ¶60.

k. Plaintiff makes states his understanding as of April 2013 that Mr. Parnall only wanted to address the UIM claim, and none of his other remaining claims; Defendant attorney does not substantially dispute this allegation.

l. Plaintiff's complaint can be read to state that by April 2013 Plaintiff knew Mr. Parnall made no secret that pursuing the UIM claim was the only portion of the claim that warranted Mr. Parnall's involvement.

m. As a result of these understandings by Plaintiff, it is clear that Plaintiff did not rely on Mr. Parnall's erroneous advice or assessment as of April 2013 to his detriment because he proceeded *successfully* to pursue other claims against Allsup's.

n. Plaintiff's *pro se* filing of the Metropolitan Court case confirms the alleged assertion that no attorney-client relationship continued between him and attorney Parnall after April 2013.

o. Plaintiff maintains that Mr. Parnall failed to meet the standard of care for attorneys in the legal community when he refused to pursue the remaining, non-UIM claims.

7. Based on the foregoing, it appears that if Plaintiff was to suffer any harm as a result of the alleged errors or poor advice of Mr. Parnall, the wrong and harm occurred in April 2013 for purposes of the accrual of Plaintiff's claims.

8. Plaintiff knew the factual basis for his cause of action in April 2013, which explains why Plaintiff ended his relationship with Mr. Parnall in favor of other counsel or *pro se* litigation.

9. In New Mexico "the limitations period for legal malpractice commences when (1) the client sustains actual injury and (2) the client discovers, or through reasonable diligence should discover, the facts essential to the cause of action." *Sharts v. Natelson*, 1994-NMSC-114, ¶11, 118 N.M. 721, 724, 885 P.2d 642, 645 (footnote omitted).

10. For purposes of the discovery rule, reasonable diligence means that an "injured party must act with some promptness where the acts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *Saylor v. Reid*, 132 N.E.3d 470, 473 (Ind.Ct.App. 2019), *reh'g denied* (Oct. 31, 2019).

11. As stated in *Delta v. Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶29, 126 N.M. 717, 974 P.2d 1174, 1180-81:

> The key consideration under the discovery rule is the factual, not the legal, basis for the cause of action. The action accrues when the plaintiff knows or should know the relevant facts, whether or now the plaintiff knows that these facts are enough to establish a legal cause of action. Were the rule otherwise, the discovery rule would postpone accrual in every case until the plaintiff consults an attorney.

12. As the Defendant documents at page 4 of his motion to dismiss: "Plaintiff knew the factual basis for his cause of action on or before April 2013. Compl. at para. 25 ('[Defendant] determined I did not have a claim...'; at para. 31, ('[Defendant] refused to

help me out with this complaint'); at para. 52 ('[Defendant] refused to sue Allsup's...'); and, at para. 59 ('[Plaintiff] was forced to conduct [his] own litigation')." *See also* Complaint ¶52, 54, 59, 60 and 61.

13. Plaintiff knew of the facts underlying Mr. Parnall's alleged malpractice in April 2013, more than 6 years before the present complaint was filed, which substantially exceeded the statute of limitations for any of the torts alleged by the complaint. NMSA 1978, §37-1-4.

14. Based on the Complaint's alleged facts, it is apparent on the face of the complaint that the statute of limitations ran years before Plaintiff filed the present complaint.

15. As a result, it is unnecessary to address whether a client can force an attorney to represent him in a case containing multiple causes of action where counsel decides to pursue only one claim, i.e., UIM claim. See NMRA 16-116 (NM Rules of Professional Responsibility) (allowing a lawyer to decline representation, or to withdraw from representation, for various reasons including "good cause").

16. Neither is it necessary under these circumstances to consider Plaintiff's argument that he did not discover he had a "legitimate" claim until he secured a Court order from the prior judge (Judge Huling) to compel production of a crucial piece of evidence, i.e., the Allsup's security training manual.

17. The *Sharts* case confirms that the statute of limitations is triggered by the discovery of the fact of damage; not the amount of damage, or the strength of evidence supporting the underlying cause of action. *Sharts v. Natelson*, 1994–NMSC-114, 118 N.M. 721, 724-25, 885 P.2d 642, 645-46.

18. The Defendant's motion is well-taken.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion To Dismiss For Failure To State a Claim Upon Which Relief Can Be Granted should be, and the same is hereby, GRANTED; it is therefore ORDERED that Plaintiff's Complaint is hereby DISMISSED with prejudice.

VICTOR S. LOPEZ, JUDGE
Second Judicial District, Div. XXVII

This Order may deviate from the proposed form(s) of Order originally submitted.

Submitted By:

DIXON•SCHOLL•CARRILLO•P.A.

/s/ Gerald G. Dixon
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Approved as to Form Only:

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I hereby certify that an endorsed copy of the foregoing was served/mailed to all parties on the date of filing.

Theresa R. Romero
TCAA to Judge Victor S. Lopez

Appendix D

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

February 15, 2022

NO. S-1-SC-39141

PAUL MUELLER,

Plaintiff-Petitioner,

v.

BERT PARNALL,

Defendant-Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-502 NMRA, and the Court having considered the foregoing and being sufficiently advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED; and

IT IS FURTHER ORDERED that the Court of Appeals may proceed in *Mueller v. Parnall*, Ct. App. No. A-1-CA-39254 in accordance with the Rules of Appellate Procedure.

IT IS SO ORDERED.

WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 15th day of February, 2022.

Jennifer L. Scott, Clerk of Court
Supreme Court of New Mexico

By _____ Deputy Clerk

I CERTIFY AND ATTEST:
A true copy was served on all parties or their counsel of record on date filed.

Brittney Muñoz
Clerk of the Supreme Court
of the State of New Mexico

Appendix E

RE: Pursuing other resources

Paul Mueller <undocumentedgringo@hotmail.com>
Mon 1/23/2012 9:12 AM
To: bert@parnalllaw.com <bert@parnalllaw.com>

1 attachments (6 KB)
image003.jpg;

everything looks good but i have a quick question. you said i owed a settlement of around 1800 to presbyterian, but i have a 2400 dollar bill from unm. are they the same bills or are they separate? also, would it not be cheaper for me to have the crime reparation fund pay my medical bill with the settlement and split up the rest, or is it better to negotiate the bill from unm down? i'm a little confused on if i owe presbyterian(which they are just my ins)or if i owe unm or both. the crime reparation fund wants some more info so if it would be cheaper for me to use them to pay the 2400 and then split up the settlement after then i would rather do that. let me know what you think? thanks

---

From: Bert@ParnallLaw.com
To: undocumentedgringo@hotmail.com
CC: file@ParnallLaw.com
Subject: Pursuing other resources
Date: Thu, 19 Jan 2012 15:44:40 -0700

Paul, I wanted to memorialize some of the items we discussed today, to make sure we are on the same page with respect to the various avenues of resources, and which claims are viable in my opinion.

Concerning the claim on your automobile Uninsured Motorist coverage, we should be able to recover your UM coverage of $25,000.00 now that we have some medical documentation. We will have to pay (after negotiation) Presbyterian Health Plan's subrogation claim. I actually just got a call from the subrogation department, and we were able to negotiate a reimbursement of $1,800.00.

Concerning other potential claims, the one claim that may be fruitful is a claim against Rikki Maestas' parents for strict liability of a minor's malicious personal injury (capped at $4,000.00, plus attorney fees), and possibly Negligent Supervision of a Minor – IF one of the parents' has liability insurance that would pay for their liability. If there is no home, or no liability insurance, it is not worth pursuing a claim against them because it will be long and costly to get a judgment against them. And even then, collection against the judgment would be difficult. I will hire an investigator to find out what homes the Maestas parents may own.

Exhibit

A

Ultimately, if we are able to recover against the "uninsured motorist," Safeway may have a subrogation claim against that recovery, given their payment on behalf of the uninsured motorist. In this respect, I advise only pursuing a claim against the parents for their negligence, and not against Rikki for his intentional acts. Plus, it will be more difficult to trigger insurance coverage if we allege claims of intentional injury.

Concerning any claims against the Rivera parents, that may be more difficult because Rivera has not even been charged. Even if he is charged, the statute on personal injury may require that he actually commit the injury. There may be something there, but I am not confident.

Concerning whether there is a claim against Allsups, we discussed this at length. I understand your point about the fact that Allsups should have thrown the loiterers off their property, so as not to have to leave the choice up to you. Allsups could have liability were the attack to have happened at its location. But since you invited the two juveniles into your car, I anticipate any defense attorney would prevail in a defense of Allsups by pointing out that where you did not believe they would become violent, Allsups had no higher duty to know or foresee they would become violent.

Concerning the prosecution or judicial system's obligation to keep Maestas off the streets once he violently attacked his brother, I see your point -- but there can be no claims there because of Prosecutorial and Judicial immunity.

I do advise you to let the prosecutor know you are ready and willing to prosecute, and that Maestas should serve adult time in prison. But I caution you to be cooperative, given that the first prosecutor and you had some friction.

As far as the press goes (including your discussions with the Governor and her office, or future discussions with the media), I advise you not to mention the civil claim. It is perfectly legitimate for you to make a claim for "money" to reimburse you for your damages. But there are many unthinking readers who will think it's "only about the money."

Finally, I left it for you to consider writing a simple letter saying thank you to the Ritchies. I know they probably acted and spoke inappropriately, but they ultimately helped out and tried to stop the bleeding. Plus, if this does get any more press coverage, it might be better to make that point of contention a non-issue. We can also consider giving partial reimbursement to the Ritchies for anything they had to replace. This is your call. You can think about this and let me know when we next speak.

Exhibit
A

Nice to see you today, and good luck in your recovery.

Bert

Bertrand R. Parnall
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PARNALL LAW

Exhibit A

Appendix F

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

PAUL MUELLER,

Plaintiff,

v.

No. D-202-CV-2014-07028

ALLSUP'S CONVENIENCE STORES, INC., ROBERT CHAVEZ, EARL CLARK, and FREDERICK DOTSON,

Defendants.

AFFIDAVIT OF TED L. HARTLEY

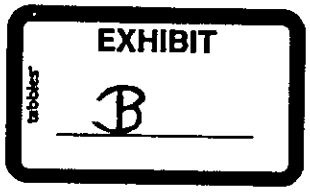
I, Ted J. Hartley, being first duly sworn, and upon oath, in support of Defendants' Response to Plaintiff's Motion for an Order to Show Cause, hereby deposes and states:

1. I have known Lonnie and Barbara Allsup, the founders and owners of Allsup's Convenience Stores, Inc., for more than 40 years. During that time, I have provided counsel to them in various matters, including personal injury lawsuits.

2. Within the last year, Mrs. Allsup's requested that I assist her in the lawsuit filed by Plaintiff. Over that time, I have been provided with substantial information regarding the case, and I have had numerous discussions with Mrs. Allsup and counsel for Defendants.

3. Prior to the settlement conference with Bruce McDonald on October 11, 2016, Mrs. Allsup's designated me as the representative with final settlement authority to settle Plaintiff's claims on behalf of Defendants.

4. Prior to the settlement conference, I reviewed information to prepare for the conference. I also had several telephone conversations with and met with counsel for Defendants.



5. Going into the settlement conference, my intent was to see if Plaintiff had new information to support his claims. I also wanted to see whether Mr. McDonald's evaluation of the case was different than my evaluation. If new information was obtained and/or Mr. McDonald's evaluation of the case was different than mine, I was prepared to enter settlement negotiations with Plaintiff. However, I did not obtain any new information from Plaintiff and Mr. McDonald's evaluation was no different than mine. Accordingly, I made the decision not to present Plaintiff with a settlement offer.

FURTHER AFFIANT SAYETH NAUGHT.

Ted L. Hartley

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF CURRY)

SUBSCRIBED AND SWORN to before me on this 26 day of October, 2016, by Ted L. Hartley.

Notary Public

My commission expires:
12/30/18

OFFICIAL SEAL
SHARI ALLEN
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires: 12/30/18

Appendix G

From: Bert Parnall
Sent: Monday, May 19, 2014 7:49 AM
To: Paul Mueller <undocumentedgringo@hotmail.com>
Cc: 'file@parnalllaw.com' <file@parnalllaw.com>
Subject: RE: have to case with supreme court decision

Paul, I'm sorry but I cannot help you. As discussed before, we have closed our file.

Bert Parnall

From: Paul Mueller [mailto:undocumentedgringo@hotmail.com]
Sent: Sunday, May 18, 2014 8:49 PM
To: Bert Parnall
Subject: have to case with supreme court decision

So I did lose my District Court appeal, but I did do an appeal to the Court of Appeals. Hoping they would change their opinion on the rodriguez v del sol shopping center. I got lucky and the supreme court made a ruling that should change my case. The decision says that foreseeability can no longer be used in determining duty. The judge ruled my event not a foreseeable event so there was no duty to myself, but with the new ruling I should be granted a right to continue my case. The only thing Rodey will argue is that I was not kidnapped but my act was voluntary and not the responsibility of Allsup's. Thanks to fighting hard, the other boy James is expected to go on trial for kidnapping in august so I don't see how the Rodey law firm argues this successfully. I fought for a trial and I should get it. He will be found guilty for sure.
This may not be your area of law but no other lawyer would take this. I have my docketing statement almost done, and it acceptable for me to write it since I know the facts well, but to write the legal brief is hard for me even with this new case law. I don't want to screw up. My case could again make millions. With the change in foreseeability as an issue in determining duty I believe a jury sides for me easy. The grand jury cried and forced their way through cops to tell me sorry. One million for every stab wound. It is possible with a good lawyer. I believe I can win something myself but this is hard to fight without the proper tools. For me to go further than the appeal would only be done if that was my only option. I don't want to quite. I believe in what I'm doing.

EXHIBIT
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