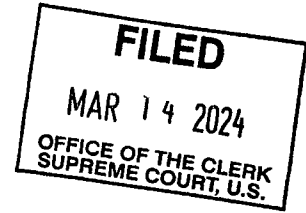


NO. 23-7040

ORIGINAL

Case No: M2022-01166-COA-R3-CV

Montgomery County NO. CC21-CV-2457



IN THE SUPREME COURT OF THE UNITED STATES

Hamid Houbbadi.

Petitioner

Vs.

Kennedy Law Firm, PLLC, Kevin Kennedy, and Gordon Rahn.

Respondent

ON PETITION FOR WRIT OF CERTIORARI

PRO-SE PETITIONER

Hamid Houbbadi
#637286
5249 Highway 67 West
P. O. Box 5000
Mountain City, Tennessee 37683

QUESTIONS PRESENTED FOR REVIEW

1. is the petitioner constitutional right to due process of law under the 14th Amendment to the United States constitution violated when the Tennessee Court of appeals did not address the proposed issue raised in appeals which is **"Denial of Due Process"**.
2. are the petitioner right to due process of law under the 14 Amendment to the United state Constitution violated when the State Court Opinion is in conflict with statute, prior decisions, and other principles of law.

PARTIES

Hamid Houbbadi.

Petitioner

Vs.

Kennedy Law Firm, Kevin Kennedy, and Gordon Rahn.

Respondent

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Cases

Lynch, 205 S.W.3d at 391
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Manning v. City of Lebanon, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003).
Volunteer Beer, Inc v. Johnson, 1997 WL 675456.
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Jordan v. Clifford 2010 WL 2075871
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Anderson v. USAA Cas. Ins. Co, 221 F. R. D. 250, 253 (D. D. C. 2004).
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Diggs v. Lasalle Nat. Bank Ass'n, 387 S.W.3d 559, 564 (Tenn. Ct. App. 2012).
Vazeen v. Sir, 2021 WL 832043
Ferrell v. Long, 2000 WL 1362321
Keller v. Colgems-EMI Music, Inc, 924 S.W.2d 357, 359 (Tenn. Ct. App. 1996).
Holsclaw v. Ivy Hall Nursing Home, Inc, 530 S.W.3d 65, 69 (Tenn. 2017).

Statute

Tenn. Code. Ann, sec 28-3-104(a)(2)

Tenn. Code. Ann, sec 28-3-109

Tenn. Code. Ann, sec 28-3-105

Rule

Federal Rule of Civil Procedure 9 (b)

TRCP. 6.04

TRCP. 6.05

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the Judgment below.

The opinion of the Highest state court reviews the merits appears at **Appendix "A"**.

Permission to appeal denied by the Tennessee Supreme Court on 6th day of March 2024 **Appendix "B"**. appellant Brief appears at **Appendix "C"**. appellees Brief appears at **Appendix "D"**. Appellant Reply Brief appears at **Appendix "E"**. Appellant application for permission to appeal appear at **Appendix "F"**. appellees answers to Rule 11 appears at **Appendix "G"**. Docketing Statement for Civil Appeals show that the proposed issue raised in Appeal is Denial of Due process appears at **Appendix "H"**.

Petitioner hereby request this honorable court to take judicial notice of appellees answer to appellant claim with the Board of Professionals Responsibility appear at **Appendix "I"**. to compare it with the opposing party attorney on the order of protection Mr. Kevin Fowler appear at **Appendix "J"**.

JURISDICTION

The date on which the highest state court decided my case was the 9th day of January 2024. A copy of that decision is printed as **Appendix A**. a timely application for permission to appeal was thereafter denied on the 6th day of March 2024. See **Appendix B**.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provision involved is the 14th Amendment to the United States constitution.

STATEMENT OF THE CASE

The facts of the case are undisputed and are not of great interest to this court in determining the question presented for the appeal. They are set forth in appellant brief. For the purpose of this appeal it is sufficient to note that the state court, denied appellant due process

ARGUMENT

question

1. is the petitioner constitutional right to due process of law under the 14th Amendment to the United States constitution violated when the Tennessee Court of appeals did not address the proposed issue raised in appeals which is “**Denial of Due Process**”.

Connotationally each litigant is entitled to his day in court, but the manner in which the state court of Tennessee applied denied to petitioner that right. Procedural due process requires “that individuals be given an opportunity to have their legal claims heard at the meaningful time and in a meaning manner.” Lynch, 205 S.W.3d at 391 (citing Logan v. Zimmerman Bruch Co, 455 U.S. 422, 429-30 (1982). Manning v. City of Lebanon, 124 S.W.3d 562, 566 (Tenn. Ct. App. 2003).

Procedural due process the Tennessee Supreme court instructed that “the very nature of a fraud claim often requires the actual hearing and viewing of witnesses whose credibility is paramount concern for the trier of facts.”

Volunteer Beer, Inc v. Johnson, 1997 WL 675456. Fraudulent intent is an issue best determined by a careful examination of the underlying facts and an evaluation of credibility of the parties and witnesses. Schorr v. Schorr 1992 WL 108617. If a witness has made false or fraudulent misrepresentations or has participated in a scheme of fraud and subsequently, is called to the witness stand, under oath, to answer questions about such activities, regardless of his or her answers, his or her demeanor under such circumstances will provide some indication as to whether the charge are true, or not.

The court of appeals mention, that the trial court resolved this case on a motion for judgment on the pleading.

On 08/25/2022 the court of appeals sent appellant a "Notice -Initiating Document" the court of appeals order appellant to (return the form of DOCKETING STATEMENT FOR CIVIL APPEALS to the Appellate Court clerk office with 15 days). See **Appendix H-** Docketing Statement for Civil Appeals. appellant clearly stated that the proposed issue to be raised in appeals is "**Denial of Due Process**"

The court of appeals ignored appellant due process issue. See **Appendix C.** Appellant Brief page 22 appellant said "he sent a letter to trial court on February 02, 2022, informing the trial court that after 48 days still no answers from Defendants. Plaintiff filed on the same day a notice of hearing setting May 09, 2022 hearing (Vol.I.P.29). plaintiff also served four witnesses with a subpoena to appear at May 09, 2022 hearing, they are: Ali Sadif, Hebba Abulsaad, Beverly Sharp, Kevin Fowler. Plaintiff received a letter and copy of defendant answer from the trial court clerk dated February 08, 2022. See a copy of the letter in the supplement appellate record (Vol.III)"

Appellant also in his appellant brief page 23 said. "certificate of service of defendant answer stated a copy of the answer was sent to plaintiff on January 14, 2022. This claim is false".

On the same page appellant said" on February, 23 2022, plaintiff filed a counterclaim reply to defendants false service claim titled "Response to Defendant Answer" (Vol.P.30-34) plaintiff request the court to order defendants to submit proof that they served plaintiff with an answer".

On April 06, 2022 appellees filed a motion to strike appellant "response to defendant answer" and to cancel or continue May 09, 2022 evidentiary hearing. On April 06, 2022 appellees filed a notice of hearing sitting May 06, 2022 for a hearing three day before the May 09, 2022 hearing were the appellant four subpoenaed witnesses were to appear. The trial court did not continue the hearing but held a hearing three days early on May 06, 2022 canceling appellant hearing and strike appellant motion. At May 06, 2022 hearing appellant informed the trial court that the appellees never serve appellant with an answer as they claim in their

certificate of service that was filed with the trial court clerk. Appellant showed the trial court the clerk letter, the trial court informed appellant that he could move to amend his complaint when it strikes appellant motion. Appellant also informed the trial court that he received appellees three motion the night before the May 06, 2022 hearing. the record show that appellees put the three motions in the mail on May 03, 2022 they are (1) supplement to motion to cancel or continue evidentiary hearing (2) motion for judgment in pleading (3) memorandum in support of a motion for judgment on the pleading. (Vol.P.47-48, 49-51, and 52-116) the trial court and court of appeal know that this act by appellees is a violation of TRCP 6.04 and 6.05. but they choose to ignore it. The court of appeals did not even mention that there was a hearing held on May 6, 2022. Appellant in his DESCRIPTION AND DESIGNATION OF RECORD ON APPEAL request the audio recording and transcript of testimony. Appellant filed a motion to supplement the record with 4 items (1) a letter from Wendy Davis, Clerk of the court dated February 8, 2022 to appellant (2) A subpoena to Kevin Fowler, legal aid, issued February 8, 2022 and (3) notice of hearing setting a May 6, 2022 in the case with certificate of service dated the 22nd of April, 2022, (4) May 06, 2022 hearing transcripts. The trial court granted the supplement motion in part the first three items and denied the transcript of the May 06, 2022 hearing because there was no court reporter present. On February 10, 2023 appellant renew his request for the audio record of the May 06, 2022 hearing. Appellees filed a motion objecting to this request because they don't want to convey what occurred at the May 06, 2022 hearing the audio recording of May 06, 2022 would show that the court informed appellant that he could move to amend. Appellant also filed a statement of evidence but the trial court denied it too. Appellant filed His motion for leave to amend on May 13,2022, the court approved appellees proposal order on May 18, 2022 granting appellees motion to strike and to cancel or continue May 09, 2022 evidentiary hearing, but did not address appellant motion for leave to amend.

Appellees again three day before July 14, 2022 hearing. On July 11, 2022 they filed another three motions (1) response to motion for appointment of counsel (2) response to motion for leave to amend (3) reply in support of motion for judgment on the pleading. (Vol.II.P. 142-144, 145-148, and 149-154) the certificate of those motions show that appellees put the motions in the mail on July 11, 2022 appellees know that it's impossible for appellant to receive the

motions before the July 14, 2022 hearing, the trial court showed its bias by this leeway not ones but twice to appellees on May 6, 2022, and on July 14, 2022 hearings. On July 21, 2022 appellants filed a request of time to file supplement response motion for judgment on the pleading and amendment because he did not receive appellant motion until the July 14, 2022 hearing is over (Vol.II.P.156-160). the trial court also did not address appellant May 18, 2022 discovery motion, nor the request of time to supplemental response to appellees July 11, 2022 motions. Appellant clearly was denied his due process right.

The court of appeals did not address this important issue regarding Denial of due process.

Appellant is well aware that Tenn. Code. Ann, sec 28-3-104(a)(2) governs action and suits against attorney for malpractice. The one-year statute of limitations applicable to legal malpractice claims not to fraud or breach of contract.

Appellant sued his former attorney for Breach of contract and Fraud (TR.1. P.1-6). But the trial court and court of appeals agree that appellant claims sounded in legal malpractice claims. See court of appeals opinion is attached.

Question

2. are the petitioner right to due process of law under the 14 Amendment to the United States Constitution violated when the State Court Opinion is in conflict with statute, prior decisions, and other principles of law.

Breach of Contract

Under Tennessee Law the essential of any breach of contract claim included (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the Breach of the contract, Arc LifeMed, Inc v. AMC-Tennessee, Inc, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005)

Under Tennessee law a cause of action for breach of contract accrues when one contracting party demonstrates a clear, total repudiation of the contract. Wilkins v. Third Nat'l Bank in Nashville, 884 S.W.2d 758, 761 (Tenn. Ct. App. 1994).

The Tennessee Supreme Court has explained, in breach of contract action claimant must prove the existence of valid enforceable contract in performance amounting to a breach and damages caused by the breach. See *Fed Ins. Co v. Winters*, 354 S. W. 3d 287, 291 (Tenn. 2001).

In the case at bar appellant paid appellee Kevin Kennedy and enter into contract to represent appellant in Divorce and on October 9, 2018 hearing on the order of protection, and to file a motion for exclusive possession of appellant resident (appellant is the sole owner of the resident). At the October hearing appellees agree to continue the October 9, 2018 hearing with the opposing party without appellant authorization and they made false statement which appellant rely on that statement and left the court room. Appellant have no reason to not believe his attorney that day October 9, 2018, but after appellant received a copy of the October 9, 2018 order continue the order of protection, he sent a letter to appellee Kennedy on January 3, 2021 accusing them they were not honest and take advantage of him because they withheld that they amended the order of protection and lie about the judge was running late and the interpreter cannot wait for the judge arrival. The October 9, 2018 order and Mr. Fowler testimony said nothing about the judge running late. Its crystal clear that appellee Kennedy who request the Continued and intentionally did not move to file a motion for exclusive possession of appellant house because he know appellant wife and believe they carry an affair. There is no explanation to why the appellee made a false statement and trick appellant to sign the contract as receipt. The evidence showed that appellees did not performed the service appellant paid them for. Instead they were working with the opposing party to damage appellant. which they did destroy appellant life forever.

The court of appeals reject in *Jordan v. Clifford* 2010 WL 2075871 that a claim for breach of contract, is actually a mislabeled claim for legal malpractice. appellant rely on *Jordan v. Clifford*, 2010 WL 2075871 According with *Jordan* case appellant claim is a breach of contract not legal malpractice there was no fell below the standard care or neglect as an element of legal malpractice, but there was intentionally and knowingly that appellees were working in their interest and the opposing party interest.

Fraud

Federal Rule of Civil Procedure 9 (b) requires, in allegation fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Fed. R. Civ. P. 9(b). the complaint must therefore “state the time, Place and Content of the false misrepresentations, the fact misrepresented and what was retained or given up as a consequence of the fraud. Kowal v. MCI Commc’ns Corp, 16 F.3d 1271, 1278 (D. C. Cir. 1994). In other words, “requires that the pleader provide the ‘who, what, when, where, and how’ with respect to the circumstances of the fraud.” Anderson v. USAA Cas. Ins. Co, 221 F. R. D. 250, 253 (D. D. C. 2004). If a pleading fails to satisfy the heightened requirements of Rule 9(b), courts should freely grant leave to amend. See Firestone v. Firestone, 76 f.3d 1205, 1209 (D. C. Cir. 1996). Accordingly, Courts “should reserve dismissal with prejudice for extreme situations where pleader has had the opportunity to cure any deficiencies but either has not or cannot do so” Anderson, 221 F. R. D. at 253.

Under Tennessee law a cause of action for fraud the plaintiff must prove (1) that the defendant made a representation of a present or past fact;(2) that the representation was false when it was made;(3) that the representation involved a material fact;(4) that the defendant either knew that the representation was false or did not believe it to be true or that the defendant made the representation recklessly without knowing whether it was true or false;(5) that the plaintiff did not know that the representation was false when made and was justified in relying on the truth of the representation; and(6) that the plaintiff sustained damages as a result of the representation. Diggs v. Lasalle Nat. Bank Ass’n, 387 S.W.3d 559, 564 (Tenn. Ct. App. 2012).

The court of appeal reject in Vazeen v. Sir, 2021 WL 832043 that a fraud sounded in legal malpractice, the court of appeals explained that not every claim challenging the conduct of a lawyer is a professional malpractice claim.

In the case at bar appellant Hamid Houbbadi rely on Vazeen v. Sir, 2021 WL 832043 case and appellees rely on Ferrell v. Long, 2000 WL 1362321 case, the Ferrell case did not apply to this case because in that case the attorney did preformed the job he was paid for, he filed motion for acquittal or new trial and argue those motion on August 13, 2003, the court denied the motion on March 17,1004. The only thing Mr. long admitted he did not deposit the \$7,500.00

fee into an escrow account at the post-conviction hearing on February 28, 2007 which Mr. Ferrell did not prejudice or injured by this act.

In appellant case he clearly stated a claim of fraud and provided, the who, what, when, and how. {who = is Kevin Kennedy and Gordon Rahn}. {what = tricks and false statement}. {when = October 1, 2018 and October 9, 2018}. {how= that appellee Kennedy at October 1, 2018 meeting trick appellant in signing the contract as a receipt, he did not informed appellant that the contract is an hourly rate of \$250 per hour instead of the total fee of \$2500, and he did not informed appellant that the contract under the name of appellee Rahn, and he did not include the \$1000 appellant paid toward the \$2500 fee. All this happened in the presence of Appellant friend Ali Sadif. Appellee Kennedy never informed appellant that appellee Rahn who will represented appellant at October 9, 2018.

At October 9, 2018 hearing on the order of protection both appellee where present in the court room, appellee Rahn come to appellant and informed him that they reset the hearing until November 13, 2018, because the judge was running late and the interpreter can not wait. On December 7, 2020 appellant attorney on the criminal case give appellant a box full of papers. Appellant finds in that box, the October 9, 2018 order continue the hearing by agreement of parties. At October 9, 2018 Appellee Rahn never mention that they amended the order of protection. on January 3, 2021 appellant sent a letter to appellee Kennedy informing them that they are were not honest and take advantage of appellant who does not speak good English, and ask him for full refund. On January 11, 2021 appellee Rahn sent a reply to appellant January letter and check of \$1000. Appellant filed a complaint with the board of professional responsibility in to which appellees filed an answer they attached a copy of the contract. In their answer this time they claim that the opposing party attorney Mr. Kevin Fowler request interpreter for his client, and it become evident a hearing with the interpreter present was not going to happened that day October 9, 2018. This claim is entirely false the interpreter was present at October 9, 2018 hearing, appellant serve her with a subpoena. After appellant was sure that appellees defraud him, he filed this action of fraud and breach of contract. In their answer to this action they change their story to what they told the appellant on October 9, 2018 that the judge was running late and the interpreter cannot wait. At appellant criminal trial

Mr. Fowler testify for the state regarding October 9, 2018 order of protection, Mr. Fowler testify that appellant attorney who request the continue, Mr. Fowler did not recall why the appellant attorney request the continue, Mr. fowler also testify that him who drafted and signed the October 9, 2018 order on behalf of appellant attorney, Mr. fowler also said that the interpreter was at the court room on October 9, 2018 and she give him interpretation services to his client. Mr. Fowler did not know why appellant Rahn did not sign the order when it was in his hand for review}.

On May 13, 2022, Appellant filed a motion for leave to amend to included Mr. Fowler testimony transcript, but the court denied the motion contrary to the federal and Tennessee Rule of Civil Procedure which is the courts should freely grant leave to amend.

statute of limitations of breach of Contract

under Tennessee law, statute of limitation of breach of contract claim is subject to six-year statute of limitation for breaches contract. See 28-3-109. Statute of limitation begins to run "when a plaintiff discovers, or in the exercise of reasonable care and diligence, should have discovered his injury and the cause thereof." City State Bank v. Dean Witter Reynolds, Inc, 948 S.W.2d 729, 735 (Tenn. Ct. App. 1996)." the plaintiff is deemed to have discovered the right of action when the plaintiff becomes aware of facts sufficient to put a reasonable person on notice that he or she has suffered an injury as a result of the defendant wrongful conduct." Pero's and spaghetti House v. Lee, 90 S.W.3d 614, 621 (Tenn.2002).

appellees intentionally and knowingly did not performed the service appellant paid them for which is to represent him not to work for the opposing party and to file a motion for exclusive possession of appellant house which they intentionally and knowingly refuse to the so instead they amended the October 9, 2018 order to allow the opposing party to take possession of appellant house which she was not living in it at the time of October 9, 2018 hearing she was living in Nashville.

The state court wrongly apply the Tenn. Code Act. 28-3-104(a) which apply to legal malpractice claim. The court of appeals reject in Jordan v. Clifford 2010 WL 2075871 that a claim for breach of contract is actually a mislabeled claim for legal malpractice. According with Jordan case appellant claim is a breach of contract not legal malpractice there was no fell below the

standard care or neglect as an element of legal malpractice, but there was intentionally and knowingly that appellees were working in their interest and the opposing party interest.

statute of limitations of Fraud

Under Tennessee law, the court must determine the appropriate statute of limitations to apply “according to the gravamen of the complaint rather than designation as an action for tort or contract,” *Keller v. Colgems-EMI Music, Inc*, 924 S.W.2d 357, 359 (Tenn. Ct. App. 1996).

Under Tennessee law, fraud is subject to the three-year Statute of limitation. Tenn. Code Ann. 28-3-105. See *Jackson V. WMC Mortg. Corp*, 2013 WL 5550228. Statute begins to run “when a plaintiff discovers, or in the exercise of reasonable care and diligence, should have discovered his injury and the cause thereof.” *City State Bank v. Dean Witter Reynolds, Inc*, 948 S.W.2d 729, 735 (Tenn. Ct. App. 1996).” the plaintiff is deemed to have discovered the right of action when the plaintiff becomes aware of facts sufficient to put a reasonable person on notice that he or she has suffered an injury as a result of the defendant wrongful conduct.” *Pero's and spaghetti House v. Lee*, 90 S.W.3d 614, 621 (Tenn.2002).

In this case the trial court and the Court of appeals did not followed the law and accepted the appellees argument, while refusing to allow appellant a proper and fair hearing of his case when the trial court canceled The May 09, 2022 hearing which appellant served four (4) witnesses with a subpoena to appear and testify. The cancelation of May 9, 2022 hearing and scheduling a hearing three days early on May 6, 2022 was extremely prejudice appellant, Appellant did not have an opportunity to fully present his case. The trial court and the court of appeals showed no interest into inquiring into the legal obligations. The trial court and the court of appeals relayed completely on the state of their decision and not even addressing appellant arguments and evidences.

In Tennessee, litigant “have a fundamental right to a fair trial before an impartial tribunal.” *Holsclaw v. Ivy Hall Nursing Home, Inc*, 530 S.W.3d 65, 69 (Tenn. 2017).

Also, Tenn. Const. Art. VI. Sec 11.

The court of appeals incorrectly stated that the gravamen is that (1) appellees agree to continue the ex-parte order of protection on October 9, 2018 (2) failing to move the general

sessions court for an order granting Appellant exclusive use of his marital residence. At their essence, these are claims that appellees conduct fell below the appropriate professional standard of care.

The gravamen in this case is that appellee Kevin Kennedy Know appellant wife and that he takes appellant case just to take care of her. there was no fell below the appropriate professional standard of care, instead appellees intentionally and knowingly trick appellant and make a false statement regarding the continue of October 9, 2018 hearing to defraud appellant and to benefit themselves. The state court wrongly apply the Tenn. Code Act. 28-3-104(a) which apply to legal malpractice claim. The court of appeal reject in Vazeen v. Sir, 2021 WL 832043 that a fraud sounded in legal malpractice, the court of appeals explained that not every claim challenging the conduct of a lawyer is a professional malpractice claim.

CONCLUSION

For the forgoing reason your appellant prays this honorable Court will find that the trial court and the Tennessee Court of Appeals denied him due process clause under United States Constitution and grant him any relief this honorable Court deems just.

Respectfully submitted



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