

## **APPENDIX**

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**1a**

**FILED**

**United States Court of Appeals**

**Sixth circuit**

**Apr 2, 2024**

**KELLY L. STEPHENS, Clerk**

**NOT RECOMMENDED FOR**  
**PUBLICATION**

**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

JOHN MEYER,	)	
Plaintiff-Appellant,	)	
v.	)	No. 23-5552
John Pellegrin,	)	
Dedendant-Appellee.	)	

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**ON APPEAL FROM THE UNITED STATES**  
**DISTRICT COURT FOR THE MIDDLE**  
**DISTRICT OF TENNESSEE**

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Before: BOGGS, WHITE, AND THAPAR,  
Circuit Judges.

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John Meyer, a pro se Ohio plaintiff, appeals the district court's judgment dismissing his legal-malpractice complaint. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is needed. See Fed. R. App. P. 34(a). We affirm for the reasons that follow.

In March 2017, Meyer, an Ohio citizen, was arrested in Gallatin, Tennessee, and charged with shoplifting TurboTax software from a local Walmart store. John Pellegrin, a Tennessee attorney, represented Meyer in the state criminal proceedings. Meyer ultimately pleaded guilty to theft of property valued at less than \$1,000, a misdemeanor, and was sentenced to 11 months and 29 days in jail.

Meyer completed his sentence and then, invoking the district court's diversity-of-citizenship jurisdiction, see 28 U.S.C. 1332, filed a legal-malpractice complaint against Pellegrin. Meyer claimed that Pellegrin committed numerous errors, including failing to subpoena relevant evidence, giving him incorrect legal advice during plea negotiations, and not

following through on his request to petition the trial court for early release to a halfway house. Pellegrin moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that Meyer failed to state a legal-malpractice claim against him because Meyer had not obtained post-conviction relief from his conviction. See *Gibson v. Trant*, 58 S.W.3d 103, 116 (Tenn. 2001). At Meyer's request the district court stayed the proceedings while Meyer pursued state post-conviction relief. The Tennessee Court of Criminal Appeals subsequently affirmed the trial court's denial of Meyer's post-conviction ineffective-assistance-of-counsel claim. See *Meyer v. State*, No.M2021-00712-CCA-R3-PC, 2022 WL 2294254 (Tenn. Crim. App. June 27, 2022).

Next, the district court granted Meyer's motion to reopen the case and ordered him to show cause why his malpractice claim should not be dismissed because he did not obtain post-conviction relief. Meyer responded, and the district court adopted a magistrate judge's report and recommendation that concluded that Meyer's failure to obtain post-conviction relief was fatal to his malpractice claim. Accordingly, the court dismissed Meyer's complaint with prejudice.

On appeal, Meyer argues that Gibson was wrongly decided and is distinguishable from his case. Alternatively, Meyer suggest that we follow the Ohio rule, which does not require reversal of the plaintiff's conviction as a prerequisite to a legal-malpractice action against a criminal defense attorney. See *Krahn v. Kinney*, 538 N.E.2d 1058, 1061 (Ohio 1989).

On de novo review, *Gen. Motors, LLC v. FCA US, LLC*, 44 F.4th 548, 558 (6th Cir. 2022), cert. denied, 143 S. Ct. 1749 (2023), we affirm. In diversity cases, federal courts must apply the substantive law of the forum state, in this case, Tennessee. *Cash-Darling v. Recycling Equip., Inc.*, 62 F.4th 969, 974 (6th Cir. 2023). Additionally, because Pellegrin is a Tennessee attorney whose alleged malpractice occurred in Tennessee before a Tennessee state court, Tennessee has the most significant relationship to the claim and the parties. See *Fowler v. McCarter, Catron & East, PLLC*, No. 3:16-cv-02835, 2017 WL 1021297, at\*5-6 (M.D. Tenn. Mar.16,2017); *O'Boyle v. Shulman*, No. 3:09-CV-169, 2010 WL1408444, at \*4 (E.D. Tenn. Apr. 4, 2010); cf. *Eakes v. Caudill*, No. 23-5325, 2023 WL6236747, at \*2 (6th Cir. Sept. 13, 2023) (holding that Kentucky had the most significant relationship to a former prisoner's legal-malpractice claim against his trial attorney because it concerned a Kentucky lawyer who

allegedly committed malpractice in Kentucky). Accordingly, Tennessee law applies to Meyer's legal-malpractice claim.

Under Tennessee law, "a plaintiff cannot prevail in a 'criminal malpractice' case against his defense lawyer unless he proves that he obtained post-conviction relief." Gibson, 58 S.W.3d at 117. Meyer's shoplifting conviction has not been reversed; consequently, his malpractice claim against Pellegrin fails as a matter of law. We have no authority to consider whether the Tennessee Supreme Court wrongly decided Gibson. See *Wild Eggs Holdings, Inc. v. State Farm Auto Prop. & Cas. Ins. Co.*, 48 F.4th 645, 648 (6th Cir. 2022) ("A court sitting in diversity must apply 'the law of the state's highest court.'" (quoting *Brown Jug, Inc. v. Cincinnati Ins. Co.*, 27 F.4th 398, 402 (6th Cir. 2022))). Finally, Meyer cites no authority to support his argument that Gibson does not apply under the facts of this case.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

s/ \_\_\_\_\_

Kelly L. Stevens, clerk

6a

United States District Court  
For the Middle District of Tennessee

FILED

May 15, 2023

Lynda M. Hill

Clerk of Court

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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John Meyer,	)	
Plaintiff,	)	
v.	)	No. 3:19-cv-00413
John Pellegrin,	)	Judge Aleta A.
Defendant.	)	Trauger

**MEMORANDUM and ORDER**

Before this court is plaintiff John Meyer's timely Objection (Doc. No. 47), under Federal Rule of Civil Procedure 72(b)(2), to the



Magistrate Judge's Report and Recommendation ("R&R") (Doc. No. 47), which recommends the dismissal of the plaintiff's legal malpractice claims against the lawyer who represented him in state criminal proceedings and the dismissal of this case in its entirety, with prejudice. The defendant, John Pellegrin, has filed a Response in opposition to the Objection. (Doc. No. 49.)

Under Rule 72(b)(2), the district court must review de novo any portion of a report and recommendation "that has been properly objected to." Fed. R. Civ. P. 72(b)(3). An objection is "properly" made if it is sufficiently specific to "enable the district judge to focus attention on those issues---factual and legal---that are at the heart of the parties' dispute." *Thomas v Arn*, 474 U.S. 140, 147 (1985). In conducting its review, the district court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." *Id.*

In the thorough and thoughtful R&R, the Magistrate Judge lays out the procedural and factual history of this case and concludes that the plaintiff's legal malpractice claims must be dismissed based on *Gibson v. Trant*, 58 S.W.3d 103 (Tenn. 2001). In that case, the Tennessee

Supreme Court adopted a bright-line rule: “(A) plaintiff cannot prevail in a criminal malpractice case against his defense lawyer unless he proves that he has obtained post-conviction relief.” *Id.* At 117. The plaintiff pursued post-conviction relief in his criminal case, and relief was denied. Accordingly, the Magistrate Judge recommends that the plaintiff’s legal malpractice claims now before this court be dismissed.

The plaintiff’s Objection reiterates the same argument in response to the Magistrate Judge’s Order directing the plaintiff to show cause why the Complaint should not be dismissed following the state courts final denial of post-conviction relief. The plaintiff argues, in sum, that his malpractice claims were not actually addressed in his post-conviction proceedings. (Doc. No. 41.) He asserts that “his case is different” from Gibson and that Gibson is “wrong and/or does not apply” to his case (See Doc. No. 44, at 1; see also Doc. No. 48, at 1.)

The court is not persuaded. First, as the Magistrate Judge noted, this court is bound by a controlling decision of the state’s highest court. *Burniac v. Wells Fargo Bank, N.A.*, 810 F.3d 429,436 (6<sup>th</sup> Cir. 2016). The plaintiff offers no authority to support the creation of an exception that would apply to his situation. Moreover, the

plaintiff has not shown that his factual circumstances differ substantially from those of the plaintiff in Gibson. Although the plaintiff claims that the state post-conviction court did not address the allegations of legal malpractice that he is pursuing here, because they were effectively moot by the time he pursued his post-conviction claims, all of the plaintiff's allegations, like those in Gibson, "can be reduced to the charge that he suffered damage because his lawyer induced him to plead guilty involuntarily." Gibson, 58 S.W.3d at 117. Because the post-conviction court determined that Gibson's plea was not involuntary, the Tennessee Supreme Court held that Gibson was estopped from arguing to the contrary in his legal malpractice case. Here, too, the post-conviction court determined that Meyer's plea was not involuntary as a result of ineffective assistance of counsel. See Meyer v. State, No. M2021-00712-CCA-R3-PC, 2022 WL 2294254, at \*4 (Tenn. Crim. App. June 27, 2022) (the "failure to advise a defendant of the collateral, non-punitive consequences of his guilty plea do not render the plea invalid" (citing Ward v. State, 315 S.W.3d 461, 472 (Tenn. 2010)), app. denied (Tenn. Jan. 12, 2023). Under Gibson, Meyer is barred from pursuing malpractice claims against his criminal attorney.

The court finds, in short, that the plaintiff has not distinguished the facts of his case from the operative facts in Gibson and that, even if he had, this court is still bound by Gibson to deny relief. The court, therefore, **ACCEPTS** the R&R in its entirety. The plaintiff's legal malpractice claims are **DISMISSED**, and this case is **DISMISSED WITH PREJUSTICE** in its entirety.

This is the final Order in this case, and the Clerk shall enter judgment in accordance with Federal Rule of Civil Procedure 58.

It is so **ORDERED**.

s/ \_\_\_\_\_

ALETA A. TRAUGER

United States District Judge

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