RENDERED: NOVEMBER 6, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0857-MR

TINA ROBEY, AS ADMINISTRATOR FOR THE ESTATE OF CLARENCE STUBER; AND PAULA GRAF, AS ADMINSTRATOR FOR THE ESTATE OF CLARENCE STUBER — APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE DIANE MINNIFIELD, JUDGE
ACTION NO. 25-CI-00465

THOMAS MILLER OF MILLER, GRIFFIN, AND MARKS; AND MILLER, GRIFFIN, AND MARKS, P.S.C. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CETRULO, A. JONES, AND L. JONES, JUDGES.

JONES, L., JUDGE: The above-captioned Appellants (collectively referred to as the Estate) appeal the Fayette Circuit Court's dismissal of various civil claims they asserted against the above-captioned Appellees. Upon review, we affirm.

I. BACKGROUND

The overarching issue in this appeal is whether the circuit court properly determined, per CR[1] 12.02(f), that the Estate failed to state any claim upon which relief could be granted against attorney Thomas Miller, or vicariously against Miller's law firm, Miller, Griffin, and Marks, P.S.C. (collectively referred to as Miller and Miller's Firm). The Estate's complaint against Miller and Miller's Firm alleged the following:

> 1. The Plaintiff is an Estate opened on June 10, 2021, in Jefferson County, Kentucky District Court under probate action number 21-P-1938.
>
> 2. Mr. James Carol Worthington was appointed as the fiduciary for the Estate on June 10, 2021.
>
> 3. Mr. Worthington was an attorney licensed to practice in Kentucky whose license was suspended on February 15, 2024, by Order of the Supreme Court. Specifically, the Court held that "evidence in this case supports a probable cause belief that Worthington has misappropriated funds totaling more than $300,000 from two separate clients. Therefore temporary suspension per SCR 3.165(1)(a) is appropriate."
>
> > [*Inquiry Comm'n v. Worthington*, 686 S.W.3d 156, 158 (Ky. 2024).]
>
> 4. Mr. Worthington served as trustee for the Wayne Jones Trust.

[1] Kentucky Rules of Civil Procedure.

5. Defendant Thomas Walcutt Miller ("Defendant Miller") is an attorney licensed to practice law in the Commonwealth of Kentucky. He was admitted to the practice of law on April 1, 1974, and he was under no known form of discipline at all times relevant here.

6. Defendant Miller, Griffin, and Marks, P.S.C. ("Defendant Firm") is the real name for a Kentucky professional services corporation authorized to practice law with offices in Lexington, Kentucky.

7. This is an action for damages for legal malpractice based upon Defendant Miller's negligent actions.

8. Defendant Miller served as subsequent counsel for the Wayne Jones Trust.

9. Defendant Miller "found discrepancies in the accounting [of the Wayne Jones Trust] and asked Worthington about them. Worthington admitted to misappropriating funds totaling $184,098.95."

10. On December 31, 2020, Defendant Miller entered an agreement with Mr. Worthington to pay back the funds that Mr. Worthington had misappropriated from the trust.

11. Under SCR[2] 3.130(8.3)(a), "a lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honest, trustworthiness or fitness as a lawyer in other respects, shall inform the Association's Bar Counsel."

12. Defendant Miller had a duty as an attorney under SCR 3.130(8.3)(a) to report Mr. Worthington's admission that Mr. Worthington had misappropriated funds totaling $184,098.95, and he was negligent in that duty.

[2] Kentucky Supreme Court Rules.

> 13. Upon information and belief, at the time that Mr. Worthington admitted his misappropriation to Defendant Miller, Defendant Miller failed to comply with his duty under SCR 3.130(8.3)(a).
>
> 14. Defendant Firm is liable for the negligent acts or omissions of Defendant Miller.
>
> 15. The Defendants were otherwise negligent.
>
> 16. Defendant Miller's negligent failure to report Mr. Worthington at the time of discovery is a direct and proximate cause of the Plaintiff's injuries.
>
> 17. The Plaintiff first learned about the timing of Defendant Miller's knowledge of the matters contained in this Complaint when [the] Kentucky Supreme Court Order referenced above was published on February 15, 2024.
>
> 18. As a direct and proximate result of the Defendants as described above, the Plaintiff sustained serious injuries in an amount in excess of the minimum requirements of the jurisdiction of this Court.

See February 5, 2025 Complaint; Trial Record (TR) at 4-6 (footnotes omitted).

In their motion to dismiss, Miller and Miller's Firm argued the Estate failed to state a claim of malpractice or negligence against them because its complaint failed to demonstrate they owed the Estate any duty actionable in tort. On June 26, 2025, the circuit court agreed with Miller and Miller's Firm and entered an order dismissing the Estate's action on that basis. This appeal followed.

II. STANDARD OF REVIEW

> A motion to dismiss for failure to state a claim upon which relief may be granted admits as true the material facts of the complaint. So a court should not grant such a motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved. . . . Accordingly, the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true. This exacting standard of review eliminates any need by the trial court to make findings of fact; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief? Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue de novo.

Fox v. Grayson, 317 S.W.3d 1, 7 (Ky. 2010) (internal quotation marks, footnotes, and citations omitted).

III. ANALYSIS

Liberally construed, the Estate's complaint attempted to assert the following claims against Miller and Miller's Firm: (1) malpractice; (2) negligence *per se* based upon violations of Kentucky Supreme Court Rule (SCR) 3.130; and (3) common law negligence. Each of these claims required the Estate to show Miller and Miller's Firm owed it a duty actionable in tort. And, to reiterate, the circuit court dismissed each of these claims on the premise that the Estate's complaint, on its face, failed to make such a showing.

Whether a duty exists is a legal question for the court. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky. 1992). On appeal, the Estate does not argue the circuit court erred by dismissing its malpractice claims. Nor, for that matter, could the Estate do so. A legal malpractice claim in Kentucky requires a plaintiff to prove, among other essential elements,[3] a duty stemming from "an employment relationship between the plaintiff and the attorney[.]" *Lawrence v. Bingham, Greenebaum, Doll, L.L.P.*, 567 S.W.3d 133, 138 (Ky. 2018). Here, the Estate never hired Miller or Miller's Firm, and it never alleged or argued it was the intended beneficiary of any services performed by them. Accordingly, the "duty" element was lacking, and the Estate failed to assert a legally cognizable claim of malpractice against Miller or Miller's Firm.

The Estate's negligence *per se* claim[4] is also untenable. Within the legal parameters of negligence *per se*, a person injured by the violation of a

[3] "A legal malpractice claim in Kentucky requires a plaintiff to prove: (1) an employment relationship between the plaintiff and the attorney; (2) the attorney neglected his or her duty to exercise the ordinary care that a reasonably competent attorney acting in the same or similar circumstances would exercise and; (3) the attorney's negligence was the proximate cause of the plaintiff's damages." *Lawrence v. Bingham, Greenebaum, Doll, L.L.P.*, 567 S.W.3d 133, 138 (Ky. 2018) (citations omitted).

[4] *Common law negligence* requires proof that the defendant owed the plaintiff a duty of care, that the defendant breached that duty, and that an injury proximately resulted from the breach. *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 88–89 (Ky. 2003) (citations omitted). Moreover, the standard of care applicable to a common-law negligence action is that of ordinary care – that is, "such care as a reasonably prudent person would exercise under the circumstances." *Slusher v. Brown*, 323 S.W.2d 870, 872 (Ky. 1959). *Negligence per se*, by contrast, is a negligence claim with a statutory (or regulatory) standard of care substituted for the common law standard of care. *See Real Estate Mktg., Inc. v. Franz*, 885 S.W.2d 921, 927 (Ky. 1994), *overruled on other*

Kentucky statute, or by the violation of a regulation that is consistent with its enabling legislation and applies to the safety of the citizenry, may recover from the offender such damages as he sustained by reason of the violation. *See St. Luke Hosp., Inc. v. Straub*, 354 S.W.3d 529, 534-35 (Ky. 2011). SCR 3.130 is a judicial rule of professional conduct, not a Kentucky statute or regulation, and therefore a negligence *per se* claim cannot be predicated upon it. Indeed, *no* civilly actionable duty could be derived from that judicial rule because "the Rules of Professional Conduct do not create a private cause of action." *Rose v. Winters, Yonker & Rousselle*, *P.S.C.*, 391 S.W.3d 871, 873-74 (Ky. App. 2012). Accordingly, any duties created by SCR 3.130 cannot form the basis of a negligence *per se* claim.[5]

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grounds by Giddings & Lewis, Inc. v. Indus. Risk Insurers, 348 S.W.3d 729, 741 (Ky. 2011). Kentucky Revised Statute (KRS) 446.070 codifies the doctrine of negligence per se and provides: "[a] person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

[5] As a caveat, while SCR 3.130 does not create duties actionable in tort, it is relevant for purposes of assessing whether an existing duty has been *breached* because it informs the standard of conduct that an attorney owes to clients or the other intended beneficiaries of their services. To that effect, the Preamble to SCR 3.130 states the following:

> XXI. Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to

As for the Estate's common law negligence claim, its thesis is that "[b]y his silence Miller allowed Worthington to continue to practice law and *foreseeably* steal from other uninformed clients." Appellants' Brief at 2 (emphasis added). Taken objectively, the Estate is arguing that Worthington's alleged misappropriation from the Wayne Jones Trust made it foreseeable that Worthington would misappropriate sums from his other clients; and that Miller, who knew of Worthington's alleged misappropriation from the Wayne Jones Trust, therefore had a duty to either warn Worthington's existing and prospective clients about Worthington's misappropriation, or protect them from suffering the same fate as the Wayne Jones Trust.

However, foreseeability alone does not create a duty actionable in tort. *See Shelton v. Kentucky Easter Seals Soc., Inc.*, 413 S.W.3d 901, 913 n.45 (Ky. 2013). Furthermore, Kentucky law has never imposed a duty to aid one in peril absent a special relationship between the parties. *See Grimes v. Hettinger*, 566 S.W.2d 769, 775 (Ky. App. 1978). Here, the Estate's complaint bears no indication that a special relationship existed between itself and Miller or Miller's Firm. The Estate never hired Miller, and it never alleged or argued that it was the intended beneficiary of any services performed by Miller or Miller's Firm.

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seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Accordingly, the Estate failed to demonstrate Miller or Miller's Firm owed it an actionable duty for purposes of its common law negligence claim, and the circuit court properly dismissed this claim as well.

IV. CONCLUSION

Considering the forgoing, we AFFIRM the June 26, 2025 Order of the Fayette Circuit Court dismissing the Estate's Complaint.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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