Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-337

DECEMBER TERM, 2010

Brenda Shores	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Addison Unit
	}	Civil Division
	}	
Owen Jenkins	}	DOCKET NO. 169-6-10 Ancv
		Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Plaintiff in this attorney malpractice action appeals pro se from a trial court order dismissing her complaint for failure to state a claim. We reverse.

On June 4, 2010, plaintiff filed a handwritten two-page pro so complaint against defendant, attorney Owen Jenkins, asserting that she was suing defendant "for not doing his job" in having failed to file motions on plaintiff's behalf. Defendant moved to dismiss for failure to state a claim, and the court, in response, issued an order requiring plaintiff to provide a more definite statement, including the type of claim she was asserting and more specificity concerning "what she claims [defendant] did wrong." Plaintiff, in response, filed a two-page handwritten pleading stating that "this is my malpractice complaint," and alleging that plaintiff hired defendant, an attorney, to represent her in an action against her landlords based on the presence of mold in her apartment which had damaged her health and property; that she had paid defendant $100 to file her case in superior court; that defendant "did not do a proper job representing" plaintiff because he "did not file my case" and "failed to work on my case;" and that as a result the case was dismissed. Plaintiff indicated that she sought damages against defendant "for losing my case."

The trial court subsequently dismissed the complaint, citing plaintiff's failure to provide a more definite statement, and also denied plaintiff's motion to appoint a guardian ad litem on her behalf. This pro se appeal followed.

The standards governing a motion to dismiss for failure to state a claim are well settled. "Motions to dismiss for failure state a claim are disfavored and should be rarely granted." Bock v. Gold, 2008 VT 81, ¶ 4 (mem.). Dismissal "is proper only when it is beyond doubt that there exist no facts or circumstances, consistent with the complaint that would entitle the plaintiff to relief." Id. As we have thus explained, "the threshold a plaintiff must cross in order to meet our notice-pleading standard is exceedingly low." Id. (quotation omitted). Moreover, in reviewing a motion to dismiss, all factual allegations in the complaint, and all reasonable inferences therefrom, must be assumed to be true. Gilman v. Maine Mut. Fire Ins. Co., 2003 VT 55, ¶ 14.

Like her brief on appeal, plaintiff's pro se complaint is not artfully drafted, but it is sufficient "to give the defendant fair notice of what the plaintiff's claim is and the grounds on which it rests." Id. (quotation omitted). The complaint meets the basic elements of a legal malpractice claim, asserting essentially that defendant owed her a professional duty of care based on the fact that she had hired defendant to represent her in a landlord-tenant dispute; that he breached the duty by failing to file a complaint or otherwise represent her; that her action was dismissed as a result; and that she was damaged from the dismissal. See Hedges v. Durrance, 2003 VT 63, ¶ 6 (mem.) (lawsuit against an attorney for negligence generally requires existence of attorney-client relationship, negligence in failure to perform in accordance with established standards, and damages to plaintiff proximately caused by negligence).

Defendant here relies on evidence and allegations outside the complaint showing that plaintiff had originally filed a small-claims complaint against landlords; that she dismissed the case when defendant agreed to represent her in superior court (allegedly on a pro bono basis); that plaintiff became frustrated when defendant failed to file a complaint and discharged him; and that defendant then returned her file and filing fee. Plaintiff then reopened her small claims case, landlords filed a counterclaim, and the case proceeded to trial, resulting in a judgment against plaintiff for $2,199. Plaintiff appealed the judgment to superior court, which the superior court affirmed, and her motion to appeal to this Court was denied.

Plaintiff may, in fact, have no case here, but a court may not consider matters outside the pleadings in ruling on a motion to dismiss unless it gives notice to the parties of its intent to treat the motion as one for summary judgment, and disposes of the matter in compliance with V.R.C.P. 56. See V.R.C.P. 12(b); Nash v. Coxon, 152 Vt. 313, 314-15 (1989). Of course, nothing bars the trial court on remand from pursuing precisely this course, notifying plaintiff—in compliance with V.R.C.P. 12(c)—of its intent to take judicial notice of the record in plaintiff's unsuccessful small claims action, and affording plaintiff the opportunity to show why the record does not conclusively undermine the claim against defendant. Accordingly, we conclude that the order granting the motion to dismiss must be reversed, and the matter remanded for further proceedings.

Reversed and remanded.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice