

[Cite as *Hignite v. Glick, Layman & Assoc., Inc.*, 2011-Ohio-1698.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95782

DIANNE HIGNITE

PLAINTIFF-APPELLANT

VS.

GLICK, LAYMAN & ASSOCIATES, INC.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Bedford Municipal Court
Case No. 09 CVF 01762

BEFORE: Boyle, J., Blackmon, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: April 7, 2011

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MARY J. BOYLE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R.

11.1 and Loc.R. 11.1.

{¶ 2} Plaintiff-appellant, Dianne Hignite, appeals the dismissal of her complaint against defendant-appellee, Glick, Layman & Associates (“the dental practice”) on her claim for dental malpractice. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 3} In March 2009, Hignite filed a small claims complaint in the Bedford Municipal Court against the dental practice, alleging that she “was left in pain and agony” from improper services rendered by the dental office. She sought \$3,000 in damages. Approximately one year later, Hignite filed an amended complaint, alleging that “in October through December 2008, the Defendant, its agents, servants and/or employees negligently provided dental care and treatment.” In May 2010, the dental practice subsequently answered the complaint and asserted a counterclaim, seeking payment for services provided. Two months later, the dental practice filed a motion to dismiss the complaint, arguing that the dental practice cannot be liable for dental malpractice under a theory of respondeat superior when the statute of limitations has expired against the individual dentists. The dental practice established that Hignite failed to commence any action against the individual dentists of the practice within the one-year statute of limitations period.

{¶ 4} On July 28, 2010, the trial court treated the motion to dismiss as a motion for judgment on the pleadings and entered judgment in favor of the dental practice on Hignite’s

claim. Hignite subsequently filed a motion for reconsideration, arguing that a dental practice can be held liable for dental malpractice, despite the failure to name an individual dentist. The trial court subsequently scheduled a hearing on the motion for reconsideration but the hearing was never held. Instead, upon the dental practice's filing of a notice of dismissal of its counterclaim, the trial court issued a judgment entry on August 23, 2010, dismissing the dental practice's counterclaim, thereby disposing of all of the claims in the case.

{¶ 5} Hignite subsequently filed the instant appeal on September 21, 2010, attaching the trial court's order and opinion awarding the dental practice judgment on Hignite's complaint. She raises a single assignment of error, arguing that the trial court erred in denying her motion for reconsideration because she properly stated a claim for dental malpractice against the dental practice.

Motion for Reconsideration

{¶ 6} Before addressing the substance of Hignite's argument, we first address the dental practice's contention that Hignite's appeal should be dismissed because she is purporting to appeal a decision that the trial court never made, namely, that the trial court never ruled on the motion for reconsideration. We find the dental practice's argument misplaced. It is well settled that a motion not ruled upon is implicitly deemed denied. See

Fitworks Holdings, L.L.C. v. Pitchford, 8th Dist. No. 88634, 2007-Ohio-2517. Once the trial court entered a dismissal of the dental practice’s counterclaim, thereby disposing of all the claims, the trial court’s judgment in favor of the dental practice became final, and the motion for reconsideration was implicitly deemed denied.

{¶ 7} We further recognize if the trial court’s dismissal of Hignite’s complaint had been a final order, the trial court would have had no authority to reconsider its ruling. Under such circumstances, a motion for reconsideration is considered a legal nullity because judgments and final orders are not subject to motions for reconsideration either expressly or impliedly. *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 423 N.E.2d 1105, paragraph one of the syllabus. Indeed, “Civ.R. 60(B) dictates that a party’s ability to seek relief from a final judgment is limited to the methods expressly provided in the rules, and a motion for reconsideration is only impliedly referenced in Civ.R. 54(B).” *Syphard v. Moore Peterson/Accordia*, 7th Dist. No. 09MA151, 2010-Ohio-6501, ¶13, citing *Pitts* at 379-380. But the Ohio Supreme Court has explicitly noted that “interlocutory orders are subject to motions for reconsideration” pursuant to Civ.R. 54(B). *Pitts* at 379. Here, at the time that Hignite filed her motion for reconsideration, the trial court had not yet entered a final order — the granting of the dental practice’s motion for judgment on the pleadings was an interlocutory order. The trial court therefore had the authority to consider the motion, and

we cannot summarily dismiss her assignment of error. Compare *Miles Landing Homeowners Assn. v. Harris*, 8th Dist. No. 88471, 2007-Ohio-3411 (recognizing that a motion to reconsider a final order is a legal nullity and trial court does not err in denying motion).

{¶ 8} We now turn to the merits of Hignite’s assignment of error.

Judgment on the Pleadings

{¶ 9} The gravamen of Hignite’s sole assignment of error is that the trial court erred in granting judgment in favor of the dental practice on her claim for dental malpractice. We review an order granting judgment on the pleadings de novo, applying the same standard of review the trial court used. *Vinicky v. Pristas*, 163 Ohio App.3d 508, 2005-Ohio-5196, 839 N.E.2d 88, ¶13. “The determination of a motion for judgment on the pleadings is limited solely to the allegations in the pleadings and any writings attached to the pleadings. Pursuant to Civ.R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.” (Internal quotations and citations omitted.) *Id.*

{¶ 10} Hignite contends that the trial court erroneously relied on the Ohio Supreme Court’s decision in *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, in granting judgment in favor of the dental practice. In *Wuerth*, the court addressed the issue of a law firm’s liability for legal malpractice. Applying the same reasoning used in the context of medical malpractice suits, the court held that (1) a law firm does not engage in the practice of law and therefore cannot commit legal malpractice; and (2) a law firm is not vicariously liable for legal malpractice unless one of its principals or associates is liable for legal malpractice. *Id.* at paragraphs one and two of the syllabus. Relying on *Wuerth*, the trial court granted judgment in favor of the dental practice, recognizing that the dental practice “could not possibly be found vicariously liable for malpractice if [Hignite] did not sue any of the named dentists individually.” The trial court further noted that Hignite could no longer name the individual dentists because the statute of limitations on any action against them had run.

{¶ 11} Although Hignite does not dispute the holding in *Wuerth*, she argues that subsequent Ohio Supreme Court cases have contradicted this holding. Specifically, she relies on two disciplinary cases wherein the Ohio Supreme Court approved consent decrees enjoining the respondents from engaging in the unauthorized practice of law. See *Ohio State Bar Assn. v. Am. Foreclosure Specialists, L.L.C.*, 124 Ohio St.3d 300, 2010-Ohio-148,

921 N.E.2d 1053, and *Ohio State Bar Assn. v. United Fin. Sys. Corp.*, 124 Ohio St.3d 301, 2010-Ohio-143, 921 N.E.2d 1054. Contrary to Hignite’s argument, we find no basis to conclude that the Ohio Supreme Court’s sanctioning of entities for the unauthorized practice of law overrules or conflicts with *Wuerth*.

{¶ 12} We likewise find Hignite’s reliance on the Ohio Supreme Court’s recent decision in *Squires Sanders & Dempsey, L.L.C. v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, 937 N.E.2d 553, for this same proposition to be misplaced. Again, the court does not even mention *Wuerth*, let alone address a law firm’s liability for legal malpractice. Hignite has extracted isolated sentences from the opinion for the proposition that the court implicitly recognizes that a law firm, and not just the attorneys, can practice law. She therefore contends that a dental practice can be found to engage in services provided by its dentists. The context of the language reveals, however, that the court was referring to the services rendered by the attorneys.

{¶ 13} Consistent with the holding in *Wuerth*, we find that the trial court did not err in granting judgment in favor of the dental practice. Given that Hignite is unable to demonstrate that any of the individual dentists were liable for dental malpractice, we agree that the dental practice therefore cannot be held liable.

{¶ 14} Hignite’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR