

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

VICTORIA DOUGLAS, et al.

C.A. No. 27459

Appellants

v.

LYNDA HARVEY WILLIAMS

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2010-08-5640

DECISION AND JOURNAL ENTRY

Dated: May 6, 2015

SCHAFER, Judge.

{¶1} Appellants, the trustees for the bankruptcy estates of Rosemary and Victoria Douglas, appeal an order that granted summary judgment to Attorney Lynda Harvey Williams on a claim for legal malpractice. This Court reverses in part.

I.

{¶2} Victoria Douglas transferred a parcel of real property to her mother, Rosemary Douglas, during a lawsuit brought by her ex-husband, Rodd Sutton. Sutton later sued Victoria and Rosemary for fraudulent conveyance, and a jury awarded Sutton \$136,000 against Victoria and Rosemary, jointly and severally. The trial court subsequently ordered Rosemary to pay attorney fees, litigation expenses, and prejudgment interest in an agreed entry. Due to bankruptcy proceedings, however, those issues have yet to be resolved with respect to Victoria. In the meantime, Victoria and Rosemary filed an action for legal malpractice against Williams,

who represented Victoria in her divorce case and, they alleged, represented both of them with respect to the property transaction.

{¶3} Williams moved to dismiss the complaint under Civ.R. 12(B)(6) and (7) and Civ.R. 12(F), but the trial court denied that motion. After a lengthy stay due to bankruptcy proceedings, the trustees of Victoria and Rosemary’s bankruptcy estates were substituted as party-plaintiffs, and Williams filed two more dispositive motions: a motion to dismiss the complaint for lack of standing with respect to both Victoria and Rosemary under Civ.R. 12(B)(1), and a motion for summary judgment against Rosemary, in which Williams maintained that Rosemary did not have an attorney-client relationship with her. The trial court granted the first motion and ordered “that the within action be and it is hereby dismissed, without prejudice[.]” The trial court went on to consider Williams’ motion for summary judgment, however, and concluded that Williams was entitled to judgment with respect to Rosemary because “there was no attorney-client relationship between [Williams] and Rosemary Douglas and no Fiduciary Duty owed Rosemary Douglas by [Williams] in connection with the transaction giving rise to Rosemary Douglas’ claim for relief against [her].” The respective bankruptcy trustees appealed both the dismissal of the action without prejudice and the judgment with respect to Rosemary.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE ORIGINAL PLAINTIFFS LACKED STANDING AT THE TIME OF THE INITIAL FILING OF THE LAWSUIT.

{¶1} Rosemary and Victoria’s first assignment of error argues that the trial court erred by considering evidence outside the record in connection with Williams’ motion to dismiss the

complaint. As a threshold matter, therefore, we must clarify the nature of the motion to dismiss upon which the trial court ruled. The record is clear that Williams moved to dismiss the complaint in its entirety for lack of standing. The trial court granted the motion and dismissed the action in its entirety without prejudice, apparently under Civ.R. 12(B)(1) and Civ.R. 41(B)(4)(a). Although Williams moved to dismiss under Civ.R. 12(B)(6) earlier in the case, the trial court denied that motion, and it is not at issue in this appeal. With respect to the dismissal of the entire action without prejudice, therefore, this Court must first determine whether we have jurisdiction to consider the first assignment of error. *See Whitaker-Merrell Co. v. Geupel Const. Co.*, 29 Ohio St.2d 184, 186 (1972).

{¶2} Under Civ.R. 41(B)(4)(a), a dismissal for lack of subject matter jurisdiction operates as a failure other than on the merits of the case and is without prejudice. More specifically, when a complaint is dismissed for lack of standing, the dismissal is “not an adjudication on the merits and is therefore without prejudice.” *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 40. “Because there has been no adjudication,” a dismissal for lack of standing “has no effect on the underlying duties, rights, or obligations of the parties.” *Id.* Because such a dismissal does not prevent a party from refiling, it is not a final appealable order. *See Natl. City Commercial Capital Corp. v. AAAA at Your Serv., Inc.*, 114 Ohio St.3d 82, 2007-Ohio-2942, ¶ 8.

{¶3} The trial court dismissed this action on Williams’ motion without prejudice “premised on the individual plaintiffs[’] lack of standing to sue at the time of the filing of the within complaint.” This did not operate as an adjudication on the merits, and neither Victoria nor Rosemary is barred from refiling at a later time should the deficiency be cured. Accordingly,

the trial court's order is not final and appealable to the extent that it dismissed the entire action without prejudice, and this Court does not have jurisdiction to review the merits of that decision.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AGAINST ROSEMARY DOUGLAS UPON A FINDING THAT NO ATTORNEY-CLIENT RELATIONSHIP EXISTED WITH [WILLIAMS].

{¶4} Rosemary's second assignment of error argues that the trial court erred by granting summary judgment against her on her claim for legal malpractice. This Court agrees that the trial court erred, but for a more fundamental reason. As noted in our discussion of the first assignment of error, the trial court dismissed this action in its entirety without prejudice based on its conclusion that neither plaintiff had standing to bring the action yet. Having dismissed the entire action without prejudice, nothing remained upon which the trial court could enter judgment. Stated differently, by granting the motion to dismiss without prejudice, the trial court dismissed the entire action without adjudicating the merits of any part. Having done so, it was error for the trial court to adjudicate the merits of Rosemary's claim. Consequently, without taking any position on the merits of that claim, this Court sustains Rosemary's second assignment of error.

III.

{¶5} With respect to Victoria's appeal and to the first assignment of error, this Court does not have jurisdiction, and the appeal is dismissed. Rosemary's second assignment of error is sustained only to the extent set forth in this opinion. This appeal is dismissed in part, and the judgment of the Summit County Court of Common Pleas with respect to Rosemary's appeal is reversed.

Appeal dismissed in part
and judgment reversed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

JULIE SCHAFFER
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

LARRY D. SHENISE, Attorney at Law, for Appellants.

KANI HARVEY HIGHTOWER, Attorney at Law, for Appellee.