IN THE SUPREME COURT OF OHIO

STEVE TYSON, Relator v. HON. MIA SPELLS, et al., Respondents	:	Case No. 2024-1631

RESPONDENTS HON. MIA SPELLS AND HON. EBONY WREH'S MOTION TO DISMISS

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STEVE TYSON, Relator vs. HON. MIA SPELLS, et al., Respondents	:	Case No. 2024-1631

RESPONDENTS HON. MIA SPELLS AND HON. EBONY WREH'S MOTION TO DISMISS

Come now Respondents, the Honorable Mia Spells and the Honorable Ebony Wreh, by and through counsel, and hereby move this Court for dismissal of Relator Steve Tyson's Complaint. A memorandum in support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Relator Steve Tyson ("Tyson") brings claims against Dayton Municipal Court Judge Mia Spells, Dayton Municipal Court Magistrate Ebony Wreh and United States District Court Southern District of Ohio Judge Thomas M. Rose. As evidenced by documents attached to the Complaint, Tyson's claims against Judge Spells, Magistrate Wreh and Judge Rose stem from a case filed by Michael Mills against Tyson in the Dayton Municipal Court – Case No. 2022-CVI-1048 – over which Judge Spells and Magistrate Wreh presided. Tyson would later attempt to sue Judge Spells in the Southern District of Ohio in Case No. 3:23-cv-00272, over which Judge Rose presided. He also attempted to add Judge Spells as a defendant in a state court case filed in this Court in Case No. 2023-CV-00783. Both cases have since been dismissed. (*See*, 6/13/2023 Decision Entry and Order Granting Motion to Dismiss, Montgomery County, Ohio Common Pleas Court Case No. 2023 CV 00783, attached hereto as Exhibit A1; 10/02/2024 Entry and Order Overruling Objection to Report and Recommendation; Adopting, In Full, Report and

1 *See, State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 2007-Ohio-6057, ¶ 20, 877 N.E.2d 968 ("A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.").

Recommendation, United States District Court for the Southern District of Ohio at Dayton, attached hereto as Exhibit B). Tyson's Complaint in this Court appears to seek judgement in his favor in the Dayton Municipal Court case, in addition to compensatory damages. Complaint, pg. 1.

II. LAW AND ARGUMENT

A. Legal Standard

Civ.R. 12(B)(1) "permits dismissal where the trial court lacks jurisdiction over the subject matter of the litigation." *Dunkle v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-923, 2014-Ohio-3046, ¶ 6. The standard of review for a motion to dismiss for lack of subject-matter jurisdiction, pursuant to Civ.R. 12(B)(1) is "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989).

A motion to dismiss filed pursuant to Civ.R. 12(B)(6) tests the sufficiency of the claims asserted in a complaint. *Gordon v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 17AP-792, 2018-Ohio-2272, ¶ 13. When considering a complaint against a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim, the Court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). For a court to dismiss a complaint, it must appear beyond doubt that the plaintiff can prove no set of facts entitling him to recovery. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

Tyson's Complaint should be dismissed as against Judge Spells and Magistrate Wreh for the following reasons: (1) this Court lacks jurisdiction over Tyson's civil

complaint; and (2) Judge Spells and Magistrate Wreh are entitled to judicial immunity from civil liability.

B. This Court lacks jurisdiction over Tyson's claims for damages and declaratory relief.

Tyson's Complaint seeks relief in the form of compensatory damages and declaratory relief. Article IV, Section 2 of the Ohio Constitution grants this Court original jurisdiction over the following types of cases: quo warranto, mandamus, habeas corpus, prohibition, procedendo, "any cause on review as may be necessary to its complete determination," and cases involving the practice of law. This Court does not have original jurisdiction under the Ohio Constitution over actions in the nature of compensatory damages or injunctive relief. *State ex rel. Barr v. Wesson*, 2023-Ohio-3028, 173 Ohio St.3d 94, 97, citing *State ex rel. Duncan v. Am. Transm. Sys., Inc.*, 166 Ohio St.3d 416, 2022-Ohio-323, 186 N.E.3d 800, ¶ 7 ("Because the Constitution does not grant the courts of appeals original jurisdiction to * * * grant declaratory, injunctive, or compensatory relief, the court of appeals correctly dismissed those aspects of [the] complaint").

This Court does, however, have "such jurisdiction as ancillary to other appropriate relief." *State ex rel. Police Officers for Equal Rights v. Lashutka*, 72 Ohio St.3d 185, 187, 1995-Ohio-19, 648 N.E.2d 808. A claim ancillary to other appropriate relief is a "claim that is collateral to, dependent on, or auxiliary to another claim, such as a state-law claim that is sufficiently related to a federal claim to permit federal jurisdiction over it." *State ex rel. Barr* at 98, citing Black's Law Dictionary 312 (11th Ed.2019).

Tyson's Complaint does not bring a claim for mandamus relief or any other extraordinary writ, much less allege a claim ancillary to a non-existent writ. Rather, this

Complaint is more akin to a civil action. As this Court lacks jurisdiction over Tyson's claims and requests for relief, his Complaint should be dismissed.

C. Judge Spells and Magistrate Wreh are entitled to Judicial Immunity from civil liability.

Federal law has long held that judges are immune from claims for money damages in connection with judicial acts unless there is a clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 362, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). Ohio courts are in accord with federal law. *See Wilson v. Neu*, 12 Ohio St. 3d 102, 103, 465 N.E.2d 854 (1984). In fact, Ohio recognizes that "[f]ew doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction***." *Newdick v. Sharp*, 13 Ohio App.2d 200, 201, 235 N.E.2d 529 (1867).

Judges are absolutely immune from liability for the performance of any judicial act unless there is an absence of jurisdiction. *State ex. rel. Fischer v. Burkhardt*, 66 Ohio St. 3d 189, 610 N.E.2d 999 (1993); *Kelly v. Whiting*, 17 Ohio St. 3d 91, 93, 477 N.E.2d 1123 (1985); *Wilson*, 12 Ohio St. 3d at 103-04; *Voll v. Steele*, 141 Ohio St. 293, 301, 47 N.E.2d 991 (1943); *Dalhover v. Dugan*, 54 Ohio App. 3d 55, 56, 560 N.E.2d 824 (1989). This immunity extends to state court magistrates as well. *See, Goldman v. Consumers Credit Union*, No. 1:16-CV-1372, 2017 U.S. Dist. LEXIS 88778, 2017 WL 2491754, at *6 (W.D. Mich. June 9, 2017), aff'd, No. 17-1700, 2018 U.S. App. LEXIS 3459, 2018 WL 3089811 (6th Cir. Feb. 14, 2018) ("Judicial immunity extends to state court magistrates.").

Therefore, Judge Spells and Magistrate Wreh's judicial immunity can only be overcome in two situations:

1) If they were acting in the complete absence of all jurisdiction, or

2) If the challenged actions were non-judicial.

Neither of the above situations exists here.

1. Judge Spells and Magistrate Wreh's alleged acts were within the general power of the Court.

As long as Judge Spells and Magistrate Wreh were acting with adequate jurisdiction for immunity purposes, they are immune. They would lose his immunity only if they acted in the clear absence of all jurisdiction. *See Kelly*, 17 Ohio St. 3d at 93, *citing Stump*, 435 U.S. at 356-357.

The Dayton Municipal Court, small claims division, established pursuant to §1925.01 of the Ohio Revised Code, had proper jurisdiction over small claims civil matter giving rise to this complaint. As such, Judge Spells and Magistrate Wreh had jurisdiction to preside over the underlying civil matter. Their absolute immunity cannot be challenged on this prong of the analysis.

2. Judge Spells and Magistrate Wreh's acts were quintessentially judicial.

The Ohio Supreme Court has held a judge is protected by absolute immunity when he or she is accused of acting in a judicial capacity—that is, whenever the judge was performing a function normally performed by a judge and whenever the parties were dealing with the judge in his or her judicial capacity. *State ex. rel. Fischer*, 66 Ohio St. 3d 189, 191, 1993-Ohio-187, 610 N.E.2d 999, *citing Stump*, 435 U.S. at 362.

In *Stump,* 435 U.S. at 349, judicial immunity extended to a judge who ordered a woman sterilized in alleged violation of her substantive and procedural due process rights. The Ohio Supreme Court cites *Stump* in *State ex. rel. Fischer*, 66 Ohio St.3d at 191, for the factors determining whether a judge acted in his judicial capacity. Those factors relate to the nature of the act itself (i.e., whether it is a function normally performed by a

judge), and to the expectation of the parties (i.e., whether they dealt with the judge in his judicial capacity.) *Id.*, *citing Stump*, 435 U.S. at 362.

Accordingly, Judge Spells and Magistrate Wreh's alleged judicial acts—presiding over and issuing orders in the underlying civil matter—could only be performed by a judge or magistrate; therefore, they were quintessentially judicial in nature, and their immunity cannot be challenged on this point. Because Judge Spells and Magistrate Wreh's challenged decisions in the Dayton Municipal Court case were within the jurisdiction of the Dayton Municipal Court, and the acts upon which the Complaint is based were judicial in nature, Judge Spells and Magistrate Wreh are entitled to absolute judicial immunity.

III. CONCLUSION

For the foregoing reasons, Judge Mia Spells and Magistrate Ebony Wreh respectfully requests this Court dismiss Steve Tyson's Complaint, with prejudice.

Respectfully submitted,

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PROOF OF SERVICE

Pursuant to Civ. R. 5(B)(2)(f), I served a copy of the foregoing by electronic and/or regular mail upon the following on this 16th day of December, 2024:

STEVE TYSON
6266 Shull Road
Huber Heights, OH 45424
Relator

/s/ Cooper D. Bowen
COOPER D. BOWEN (0093054)

EXHIBIT
A

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

STEVE TYSON,	CASE NO.: 2023 CV 00783
Plaintiff(s),	JUDGE MARY KATHERINE HUFFMAN (JUDGE STEPHEN A. WOLAVER, BY ASSIGNMENT)
-vs-	
MICHAEL MILLS,	
Defendant(s).	**DECISION, ENTRY AND ORDER GRANTING DEFENDANT MICHAEL MILLS MOTION TO DISMISS**

This matter is before the Court on Defendant's *Motion to Dismiss* pursuant to Civ.R. 12(B)(6) filed on April 26, 2023. On May 23, 2023[1], Plaintiff filed a *Pro Se* Motion captioned "*Request for Oral Argument, Motion in Response to Defendant's Motion, Motion to Dismiss the Defendant's Motion, Motion for Hearing on the Matter, Motion to Set a Definite Trial Date, Request for a Discovery Cut Off Date*." On May 24, 2023, Defendant filed a *Motion to Strike [Pro Se Plaintiff's late Motion*]. The matter is properly before the Court and ripe for Decision.

STATEMENT OF FACTS

As an initial matter, although the Plaintiff's responsive motion filed on May 23, 2023 was filed out of time, the Court **OVERRULES** Defendant's motion to strike. For purposes of the instant decision, the Court has reviewed the Complaint and all motions, responses and the reply.

The facts of this case are not in dispute. On February 15, 2023, Plaintiff, acting *Pro Se*, filed this action against Defendant Attorney Mills, alleging a claim arising out of Attorney Mills' representation of Plaintiff in a criminal matter. See Compl. In his Complaint, Plaintiff alleges he hired Attorney Mills "to

[1] Outside of the filing time-frame for a responsive motion.

represent him in case number 2021CRM03391 in the Miami County Municipal Court." Id. at ¶1. Plaintiff's complaint alleges Attorney Mills "was terminated prior to [Plaintiff] trying his own case and having all charges dropped and dismissed." Id. at ¶2. Plaintiff maintains Attorney Mills "only filed limited paperwork and may have made an initial hearing but never took his case to trial." Id. at ¶5. Plaintiff alleges "[t]here was no contract filed or negotiated between the plaintiff and defendant." Id. at ¶4 and Request for Relief.

Plaintiff's Complaint avers that Attorney Mills "filed a small lawsuit in the effort to recover money that he was never owed due to the fact that he failed to complete his duties[.]" Id. at ¶3. Plaintiff claims Attorney Mills filed such "small claims suit against [Plaintiff] on 03-03-2022[.]" Id. at ¶7. Plaintiff does not specify what "duties" Attorney Mills allegedly owed and "failed to complete," or damages he claims to have sustained as a proximate result of any alleged failure or deficiency on the part of Attorney Mills. See id., generally.

With respect to the criminal matter for which Plaintiff alleges he hired Attorney Mills to "defend" him, Compl. at ¶¶1, 5, Plaintiff alleges that "all charges" were "dropped and dismissed." Id. at ¶2. The docket of the case indicates the matter was bound over to the common pleas court and then dismissed by the State without prejudice on December 10, 2021.[2]

Regarding the "small claims suit," Plaintiff claims Attorney Mills filed the suit on March 3, 2022. Compl. at ¶7. The docket in the case indicates Plaintiff thereafter filed a counterclaim on March 14, 2022.[3] On June 9, 2022, the Dayton Municipal Court granted judgment to Attorney Mills as to all pending claims. Plaintiff filed objections on June 13, 2022, which the court overruled by entry dated September 20, 2022.

On the front page of Plaintiff's Complaint, he states what he wants to happen in the case as "Michael Mills to be sanctioned for professional misconduct and the return of money paid to him for incomplete legal work." Compl.

In Attorney Mills' motion to dismiss, he contends that Plaintiff's claim against Attorney Mills is barred under res judicata principles because Plaintiff's claim was a compulsory counterclaim in the Dayton Municipal small claims suit for fees Attorney Mills filed against Plaintiff. In addition, Attorney Mills contends that Plaintiff's claim is time because the action is filed outside of the one (1) year statute of limitations. Finally,

[2] See *State v. Tyson*, Miami County Court of Common Please Case No. 2021CR00462.
[3] See *Mills v. Tyson*, Dayton Municipal Court Case No. 2022CVI001048.

Attorney Mills argues that Plaintiff fails to set forth any facts as to any specific duty Attorney Mills allegedly breached, or damages proximately resulting therefrom, in order to state a claim against Attorney Mills.

LAW AND ANALYSIS

I. MOTION TO DISMISS

Civ.R. 12(B)(6) provides that, in lieu of an answer, a defendant may move to dismiss a complaint for failure to state a claim upon which relief can be granted. "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *State ex rel. Hanson v. Guernsey County Bd. of Comm'rs*, 65 Ohio St. 3d 545, 1992-Ohio-73, 605 N.E.2d 378 (1992). "'In construing a complaint upon a motion to dismiss for failure to state a claim, [the court] must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the nonmoving party. Then, before [the court] may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Sacksteder v. Senney*, 2d Dist. No. 24993, 2012 Ohio 4452, quoting *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

The Second District Court of Appeals has held that where documents "are attached to or are incorporated into a complaint," a court "may also consider the documents." *Rose v. Primc*, 2d Dist. Montgomery No. 29025, 2021-Ohio-3054, citing *State ex rel. Washington v. D'Apolito*, 156 Ohio St.3d 77, 2018-Ohio-5135, 123 N.E.3d 947, ¶10. In this case, Plaintiff has incorporated by reference his criminal proceedings and the small claims lawsuit in Dayton Municipal Court that Attorney Mills filed against him into his Compliant. Therefore, the Court may properly consider the dockets of such cases. See id.

II. COMPULSORY COUNTERCLAIM, CIV.R. 13(A) & RES JUDICATA

It is well settled in Ohio that "[a] claim against an attorney for actions taken in his professional capacity is a claim sounding in legal malpractice no matter how artfully the pleadings attempt to raise some other claim." *Omega Riggers & Erectors, Inc. v. Koverman*, 2016-Ohio2961, 65 N.E.3d 210, ¶22. "'An action against one's attorney for damages resulting from the manner in which the attorney represented the client constitutes an action for malpractice ***, regardless of whether predicated upon contract or tort or whether for indemnification or for direct damages. *** Malpractice by any other name still constitutes malpractice.'" Id., quoting *Pierson v. Rion*, 2d Dist. Montgomery No. 23498, 2010-Ohio-1793, ¶14. See, also, *Gullatte v. Rion*,

145 Ohio App.3d 620, 626, 763 N.E.2d 1215 (2d Dist.2000) (explaining "malpractice by any other name still constitutes malpractice" and "may consist of either negligence or breach of contract.").

Civ.R. 13(A) instructs that "a pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." The Ohio Supreme Court has established a "logical relations" test to determine whether a claim is a compulsory counterclaim. *Rettig Ents. v. Koehler*, 68 Ohio St.3d 274, 1994-Ohio-127, 626 N.E.2d 99, paragraph two of the syllabus; see also, *Geauga Truck & Implement Co. v. Juskiewicz*, 9 Ohio St.3d 12, 457 N.E.2d 827 (1984). Specifically, "the "logical relation" test, which provides that a compulsory counterclaim is one which is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts, can be used to determine whether claims between opposing parties arise out of the same transaction or occurrence." Id.

"All existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action." Id, at paragraph one of the syllabus. "Civ. R. 13(A) explicitly bars the later filing of compulsory counterclaims which were not set forth and adjudicated in the original suit." *Rettig Enterprises*, 68 Ohio St.3d at 278. "Failure to assert a compulsory counterclaim pursuant to Civ.R. 13(A) constitutes res judicata." *Lenihan v. Shumaker*, 9th Dist. Summit C.A. No. 12814, 1987 Ohio App. LEXIS 6693, at *4 (May 6, 1987), citing *Interstate Steel Erectors, Inc. v. H. & L. Wolff, Inc*. (1984), 17 Ohio App. 3d 173. Moreover, "'res judicata principles *** apply to prevent parties and those in privity with them from modifying or collaterally attacking a previous judgment'" concerning a compulsory counterclaim for legal malpractice. *Reese v. Wagoner & Steinberg, Ltd*., 6th Dist. Lucas No. L-10-1156, 2011-Ohio-2440, ¶ 20, quoting *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St. 3d 375, 2007 Ohio 5024, ¶34, 875 N.E.2d 550.

Under Civ.R. 13(A), a claim for malpractice is a compulsory counterclaim to a claim for unpaid fees. *Harper v. Anthony*, 8th Dist. Cuyahoga No. 100082, 2014-Ohio-214, discretionary appeal not allowed by *Harper v. Anthony*, 139 Ohio St. 3d 1406, 2014-Ohio-2245, 2014 Ohio LEXIS 1283, 9 N.E.3d 1063 (May 28, 2014).

Similar to *Harper*, in this case the original action initiated by Attorney Mills against Plaintiff in the Dayton Municipal Court was for unpaid legal fees. Plaintiff filed a counterclaim in that court and was required to litigate his compulsory counterclaim for a return of money from Attorney Mills for legal services allegedly not earned. If Plaintiff did file the instant claim for money in the Dayton Municipal matter, then his instant claim is res judicata. However, if Plaintiff did not raise this instant claim for the return of his money in the Dayton Municipal Court, then he was required to because it is a compulsory counterclaim. Therefore, again, this issue is res judicata and barred.

III. STATUTE OF LIMITATIONS

Ohio courts generally hold that "[a] motion to dismiss based on the statute of limitations may be granted where the defect is apparent on the face of the complaint[.]" *Velotta v. Leo Petronzio Landscaping, Inc*., 69 Ohio St.2d 376, 379, 433 N.E.2d 147 (1982), paragraph three of the syllabus; see also, *Gessner v. Vore*, 2d Dist. No. 22297, 2008-Ohio-3870 (dismissal affirmed when face of complaint demonstrated a clear statute of limitations bar to the claims for relief).

The statute of limitations applicable to legal malpractice actions is set forth in R.C. 2305.11(A) which states, in relevant part, that "[a]n action for * * * legal malpractice * * * shall be commenced within one year after the cause of action accrued * * *." See, also, *Zimmie v. Calfee, Halter & Griswold*, 43 Ohio St.3d 54, 56-57, 538 N.E.2d 398 (1989). "An action for legal malpractice accrues and the statute of limitations begins to run when there is a cognizable event whereby the client discovers or should have discovered that his injury was related to his attorney's act or non-act and the client is put on notice of a need to pursue his possible remedies against the attorney or when the attorney-client relationship for that particular transaction or undertaking terminates, whichever occurs later." *Zimmie* at 58.

"Constructive knowledge of facts, rather than actual knowledge of their legal significance, is enough to start the statute of limitations running under the discovery rule." *Collett v. Steigerwald*, 2d Dist. Montgomery No. 22028, 2007-Ohio-6261, ¶16, quoting *Flowers v. Walker* (1992), 63 Ohio St.3d 546, 549, 589 N.E.2d 1284. "Moreover, the injured person does not have to 'be aware of the full extent of the injury before there is a cognizable event. Instead, it is enough that some noteworthy event, the cognizable event, has occurred which does or should alert a reasonable person' of the legal malpractice." Id., quoting *Zimmie*, 43 Ohio St.3d at 58.

Here, Plaintiff argues that:

> In his Complaint, Plaintiff specifically states Mr. Mills "was terminated prior to [Plaintiff] trying his own case and having all charges dropped and dismissed." Compl. at ¶2. (Emphasis added.) Plaintiff maintains Mr. Mills "only filed limited paperwork and may have made an initial hearing but never took his case to trial." Id. at ¶5. (Emphasis added.) The criminal court docket indicates the matter was dismissed on December 10, 2021. See Ex. A.
>
> Based upon Plaintiff's own Complaint allegations, any cause of action accrued prior to the dismissal entry filed by the criminal court on December 10, 2021. By Plaintiff's own admissions, the attorney-client relationship terminated, as Attorney Mills was "terminated prior to [Plaintiff] trying his own case and having all charges dropped and dismissed." Compl. at ¶2. Moreover, Plaintiff was necessarily aware, at the time of such dismissal, of Attorney Mills' alleged failure to "take his case to trial." Id. at ¶5. His action here, filed on February 15, 2023, was filed more than one year from the date a legal malpractice claim would have accrued and is time barred.

The Court agrees. Therefore, Plaintiff's current action against Attorney Mills is time barred on the statute of limitations as it was filed more than one (1) year after the alleged legal malpractice.

IV. FAILURE TO STATE A CLAIM

In order to establish a claim for legal malpractice, a complainant must show that: (1) the attorney owed him a duty or obligation, (2) there was a breach of that duty or obligation and the attorney failed to conform to the standard required by law, and (3) there was a causal connection between the offensive conduct and the resulting damage or loss. *Pierson*, 2010-Ohio1793 at ¶17, citing *Vahila v. Hall*, 77 Ohio St.3d 421, 1997 Ohio 259, 674 N.E.2d 1164, syllabus.

Under Ohio law, dismissal is proper where a plaintiff fails to "sufficiently plead[] the element of duty or the violation thereof essential to stating a cause of action for legal malpractice." *Treft v. Leatherman*, 74 Ohio App.3d 655, 659, 600 N.E.2d 278. "A plaintiff must prove that she suffered the loss or damage she alleges, and that the defendant attorney's alleged negligent conduct was the cause of the loss or damage." *Crespo v. Harvey*, 2d Dist. Montgomery No. 25236, 2012-Ohio-5312, ¶ 9, citing *Environmental Network Corp. v. Goodman Weiss Miller, L.L.P.*, 119 Ohio St.3d 209, 2008 Ohio 3833, 893 N.E.2d 173. "The absence from the complaint of any statement even suggesting that the claimed action or non-action on the part of the [defendant] was a proximate cause of any damages resulting to or sustained by plaintiff[] *** is fatal to plaintiff[']s] being granted any relief against the defendant ***." *Fahrig v. Atkins*, 2d Dist. Montgomery Case No. CA 6592, 1980 Ohio App. LEXIS 12846, at *11 (Apr. 9, 1980).

Regarding the duty element, Attorney Mills argues that Plaintiff's Complaint does not specify what the duty was that was owed to Plaintiff. In addition, Attorney Mills points out:

> Plaintiff states that Attorney Mills "only filed limited paperwork and may have made an initial hearing but never took his case to trial." Id. at ¶5. To the extent "taking his case to trial" is the duty alleged, Plaintiff specifically states that Attorney Mills "was terminated prior to [Plaintiff] trying his own case and having all charges dropped and dismissed." Id. at ¶2. (Emphasis added.) There can be no duty in the absence of an attorney-client relationship.
>
> Regarding damages, Attorney Mills argues:
>
> From the face of the Complaint, Plaintiff does not allege damages resulting from Attorney Mills' alleged deficient performance. He simply alleges Mr. Mills "never completed his duty to [Plaintiff]." Compl. at ¶7. In fact, from the face of the Complaint, Plaintiff alleges he prevailed in his criminal case, stating Attorney Mills "had been terminated prior to the plaintiff trying his own case and having all charges dropped and dismissed." Id. at ¶2. (Emphasis added.)
>
> Plaintiff's allegation that Attorney Mills later filed an action to "recover money that he never was owed" does not allege damages proximately caused by any alleged deficiency in Attorney Mills' representation. Plaintiff's Complaint fails to set forth necessary facts demonstrating the requisite elements of a professional malpractice claim, warranting dismissal.

Again, the Court agrees. The Court has reviewed Plaintiff's Complaint in its entirety and does not see any facts pled which would state the requisite duty owed by Attorney Mills or any facts alleged which would show his damages proximately caused by any alleged deficiency in performance. Therefore, dismissal of the legal malpractice claim is warranted.

V. CONCLUSION

Based upon the above and forgoing, and taking all factual allegations in the Complaint as true, it appears beyond doubt that Plaintiff can prove no set of facts warranting a recovery in this case, therefore, the Court **GRANTS** Attorney Mills motion to dismiss. The case is **ORDERED DISMISSED**.

SO ORDERED:

JUDGE STEPHEN A. WOLAVER

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NO JUST REASON FOR DELAY FOR PURPOSES OF CIV.R. 54. IN ACCORDANCE WITH APP.R. 4, ANY PARTY INTENDING TO APPEAL THIS DECISION SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

To the Clerk of Courts:

Pursuant to Civ.R. 58(B), please serve upon all parties not in default for failure to appear Notice of Judgment and its date of entry upon the journal.

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

LINDSAY M. JOHNSON
(937) 222-2424
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Copies of this document were sent to all parties listed below by ordinary mail:

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Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2023 CV 00783

Case Title:
STEVE TYSON vs MICHAEL MILLS

Type:
Decision

So Ordered,

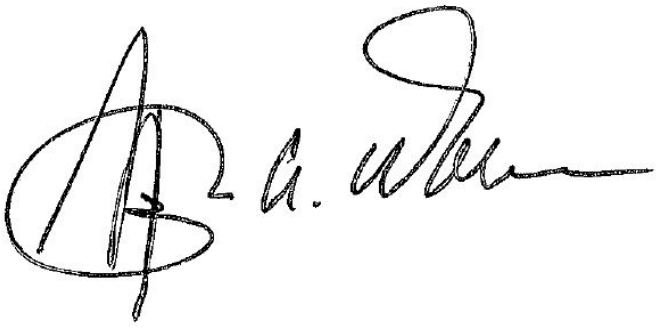

EXHIBIT
B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

STEVE TYSON,	:	
	:	
Plaintiff,	:	Case No. 3:23-cv-272
	:	
v.	:	Judge Thomas M. Rose
	:	
JUDGE MIA SPELLS,	:	Magistrate Judge Caroline H. Gentry
	:	
Defendant.	:	
	:	

ENTRY AND ORDER OVERRULING OBJ. TO REPORT AND RECOMMENDATION (DOC. NO. 11); ADOPTING, IN FULL, REPORT AND RECOMMENDATION (DOC. NO. 9); AND, TERMINATING THIS CASE ON THE COURT'S DOCKET

Presently before the Court are the Report and Recommendation (the "Report") (Doc. No. 9) issued by Magistrate Judge Caroline H. Gentry and the Obj. to Report and Recommendation (the "Objection") (Doc. No. 11) filed by Plaintiff Steve Tyson ("Tyson"). In her Report, Magistrate Judge Gentry recommends dismissing the instant action without prejudice based on Tyson's failure to timely serve the named Defendant with his Complaint (Doc. No. 1-2). Tyson's Objection consists of a single sentence, which reads, "Mia Spells case with me has time out she is not a judge in this case anymore."

If a party objects within the allotted time to a United States magistrate judge's report and recommendation, then the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* The

Court "may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

Based on Tyson's Objection, it is unclear to the Court whether Tyson in-fact objects to the dismissal of this case. One reading of Tyson's Objection could lend itself to the understanding that because Defendant Mia Spells is no longer presiding over any case involving Tyson, Tyson no longer has any quarrel with the Defendant.

However, to the extent that Tyson argues he should not be penalized for failing to serve the Defendant because he cannot determine where to serve her, Tyson's Objection is not well-taken. The Court has made a *de novo* review of the record in this case and a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). Upon said review, the Court finds that Tyson, as plaintiff, "is responsible for having the summons and complaint served within the time allowed by [Fed. R. Civ. P.] 4(m)." Fed R. Civ. P. 4(c)(1). Tyson has abdicated this responsibility and his Objection is, therefore, **OVERRULED**. The Court **ACCEPTS** the findings and recommendations made by the magistrate judge, **ADOPTS** the Report and Recommendation (Doc. No. 9) in its entirety, and **DISMISSES** the present action **WITHOUT PREJUDICE**. The Clerk is directed to **TERMINATE** this case on the Court's docket.

DONE and **ORDERED** in Dayton, Ohio, this Thursday, October 3, 2024.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE