[Cite as *Hillman v. Richardson*, 2023-Ohio-2594.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Steven E. Hillman,	:	
Plaintiff-Appellant,	:	No. 22AP-468 (C.P.C. No. 20CV-4658)
v.	:	(REGULAR CALENDAR)
James Watkins et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on July 27, 2023

On brief: *Stephen E. Hillman*. **Argued:** *Stephen E. Hillman*.

On brief: *Glase Law Ltd.*, and *Anthony J. Glase*. **Argued:** *Anthony J. Glase*.

APPEAL from the Franklin County Court of Common Pleas

BOGGS, J.

{¶ 1} Plaintiff-appellant, Steven E. Hillman, appeals a judgment of the Franklin County Court of Common Pleas that entered judgment in favor of defendants-appellees, Anthony Richardson, II, and James Watkins. For the following reasons, we affirm that judgment.

I. Facts and Procedural History

{¶ 2} On February 7, 2017, a fire severely damaged Watkins' Toledo, Ohio home. Allstate Insurance("Allstate"), the insurer of Watkins' home, denied his claims for both the dwelling and the personal property lost in the fire. In April 2017, Watkins hired Hillman to pursue his claims against Allstate on a contingency fee basis. On January 5, 2018, Hillman filed a complaint on Watkins' behalf against Allstate in the Lucas County Court of Common Pleas.

{¶ 3} On January 22, 2019, Allstate served Hillman with its first set of interrogatories and requests for the production of documents. Watkins' responses were due on or before February 19. On February 20, when Allstate had not received any responses from Hillman, Allstate emailed Hillman and requested that Hillman provide responses to the discovery requests by February 22. Hillman replied that he had not received the discovery requests, even though he had previously acknowledged receiving documents that were contained in the same envelope as the discovery requests. On February 25, Allstate sent Hillman another copy of the discovery requests and asked for a response on or before March 8. Again, Hillman provided no response. Consequently, on March 11, Allstate filed its first motion to compel discovery with the trial court.

{¶ 4} The trial court held a status conference on March 12. Hillman represented to Allstate that he would immediately provide the discovery responses and the verification page would follow soon thereafter. Based on this representation, Allstate withdrew its motion to compel.

{¶ 5} Hillman did not provide Allstate the discovery responses until April 8—48 days after the responses were due and almost one month after he promised them to Allstate. Watkins signed the verification page at his deposition on April 12.

{¶ 6} On May 20, Allstate served Hillman with its second set of requests for the production of documents. In these requests, Allstate asked that Watkins sign and return an Internal Revenue Service Form 4506-T, which would allow Allstate to access Watkins' tax returns for years 2012 through 2017. The responses to the second set of requests for the production of documents were due on or before June 17.

{¶ 7} On June 7, Allstate served Hillman with its second set of interrogatories and third set of requests for the production of documents. The response to these discovery requests was due on or before July 5.

{¶ 8} Hillman did not timely respond to the second set of requests for the production of documents, due by June 17. On June 19, Allstate emailed Hillman and asked that he provide the documents by June 29. Hillman did not reply to the email or supply any discovery responses.

{¶ 9} In a July 10 email, Allstate informed Hillman that he had failed to meet the deadline to respond to the second and third sets of requests for the production of

documents and the second set of interrogatories. Allstate requested that Hillman provide responses to all outstanding discovery requests within seven days. Allstate received nothing from Hillman after sending that email.

{¶ 10} On July 25, Allstate filed a second motion to compel. Hillman did not file a response to that motion. On August 9, the trial court issued an order granting the motion to compel and requiring Hillman to respond to Allstate's discovery requests by August 23. The trial court warned that failure to comply with its ruling would result in an award of sanctions, which could include dismissal of the complaint with prejudice.

{¶ 11} Hillman finally provided discovery responses on August 19—63 days after the responses were due for the second set of requests for the production of documents and 45 days after the responses were due for the second set of interrogatories and the third set of requests for the production of documents. The responses to the interrogatories were unverified, were in Hillman's handwriting, and primarily stated that Watkins did not know or could not recall the answers. Additionally, Hillman, not Watkins, had signed the Form 4506-T, which rendered the form invalid.

{¶ 12} Allstate's counsel emailed Hillman on August 20 and informed him that Allstate considered the discovery responses evasive and incomplete. Allstate demanded full and complete responses by August 23. Hillman responded by providing Allstate with a copy of two miniaturized checks, which were barely legible.

{¶ 13} On September 11, Allstate filed a motion for discovery sanctions asking the trial court to dismiss Watkins' complaint. While the motion was pending, Allstate made an offer to settle the case for $100,000. Hillman told Watkins of the offer, and he advised Watkins that the offer was too low. According to Watkins, Hillman did not tell him of the pending motion to dismiss. Watkins rejected the settlement offer.

{¶ 14} On October 2, the trial court dismissed Watkins' complaint with prejudice for failing to comply with the civil rules pertaining to discovery and the court's August 9 discovery order. The next day, Hillman filed a memorandum opposing the imposition of discovery sanctions. On October 4, Hillman sent Watkins a text message stating, "The judge just dismissed us. I will send you the judge's decision. He is wrong and I will appeal." (Sept. 23, 2022 Def.'s Ex. D.) When Watkins called Hillman to obtain an explanation for

the dismissal, Hillman did not answer his phone. Watkins then visited the courthouse and confirmed that his case was dismissed.

{¶ 15} Watkins hired another attorney, Anthony Richardson, to pursue an appeal of the trial court's judgment. In a decision dated June 19, 2020, the Sixth District Court of Appeals ruled that the trial court had abused its discretion in dismissing Watkins' complaint with prejudice. (Sept. 23, 2022 Pl.'s Ex. 2, *Watkins v. Allstate Vehicle & Property Ins. Co.*, 6th Dist. No. L-19-1235, 2020-Ohio-3397.) The appellate court concluded that the trial court erred by failing to consider whether the documents Allstate requested existed or were available to Watkins for production in a manner that would satisfy Allstate. *Id.* at ¶ 47. Given that a fire had destroyed Watkins' home, the appellate court reasoned that Watkins had "a completely plausible reason for having no other documents" to produce to Allstate. *Id.* at ¶ 44. Additionally, the appellate court held, "the trial court identified no prejudice to Allstate, based on the quality of Watkins' discovery response, sufficient to support a finding of substantial grounds for the harsh sanction of dismissal with prejudice." *Id.* Although Hillman had provided Allstate a defective Form 4506-T, Allstate advanced no claim of prejudice relative to the form, and had already questioned Watkins, under oath, on three occasions regarding the sources of his funds. *Id.* at ¶ 42. The appellate court reversed the dismissal of the complaint, and it remanded the case to the trial court. *Id.* at ¶ 76.

{¶ 16} While pursuing the appeal, Watkins also filed a grievance with the Office of Disciplinary Counsel ("Disciplinary Counsel") alleging that Hillman had engaged in unethical conduct while representing him. Disciplinary Counsel filed a complaint against Hillman before the Board of Professional Conduct ("Board"). In the complaint, Disciplinary Counsel asserted that Hillman's representation of Watkins in the Lucas County case violated Prof.Cond.R. 1.4(a)(3), which requires a lawyer to keep a client reasonably informed about the status of a matter, and Prof.Cond.R. 3.4(d), which requires a lawyer to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

{¶ 17} Both Hillman and Watkins testified at a hearing before a three-member panel of the Board. According to the Board's subsequent decision, Hillman testified that he kept Watkins informed of everything that was going on in the case and attempted to fulfill

Allstate's discovery requests by sending them to Watkins, who did not return them. The Board, however, concluded that Hillman did not inform Watkins that the trial court had granted Allstate's motion to compel or that a motion to dismiss was pending when Allstate made its $100,000 settlement offer. Additionally, the Board concluded that "there existed a breakdown in communication regarding the case such that Watkins did not comprehend the import of responding to the discovery requests or the potential consequences of not doing so. [Hillman] had a duty to convey these things to his client and did not do so with reasonable diligence." (Sept. 23, 0222 Def's Ex. E at ¶ 38, *In re Hillman*, Bd. of Prof. Conduct No. 2020-042 (Apr. 9, 2021).) Based on these conclusions and the facts set forth above, the Board determined that Hillman violated Prof.Cond.R. 1.4(a)(3) and 3.4(d). The Board recommended that the Supreme Court of Ohio suspend Hillman from the practice of law for two years with the entire suspension stayed on the condition that he commit no further misconduct.

{¶ 18} Hillman objected to the Board's findings of misconduct. The Supreme Court found that the record supported the Board's findings that Hillman's conduct violated Prof.Cond.R. 1.4(a)(3) and 3.4(d). (Def's Ex. G, *Disciplinary Counsel v. Hillman*, 168 Ohio St.3d 160, 2022-Ohio-447.) The court overruled Hillman's objections and accepted the Board's recommended sanction.

{¶ 19} The instant action began on July 20, 2020 when Hillman filed a complaint against Watkins and Richardson in the Franklin County Court of Common Pleas. In the complaint, Hillman alleged that he and Watkins entered into a fee agreement for legal services that stated that he "would receive one third of any offer or recovery made by the insurance company Allstate for the damage to the Watkins home." (July 20, 2020 Compl. at ¶ 1.) Hillman also alleged that during his representation of Watkins, Allstate made a $100,000 settlement offer, which Watkins rejected.

{¶ 20} With regard to Richardson, Hillman stated in the complaint that:

> 6. During a pretrial in Cuyahoga County the Plaintiff met the Defendant Richardson who represented he was an attorney who had clerked for the Lucas County Appeals Court. I asked him if he was interested in becoming co-counsel on the Watkins case in Toledo.

> 7. Subsequent to my discussion regarding the Watkins' fire case Mr. Richardson filed a substitution of counsel replacing the Plaintiff as attorney.
>
> 8. The Plaintiff contacted Defendant Richardson and believing that there had been a clerical error asked if the Defendant Richardson had meant to file an appearance as co-counsel instead of a substitution. His reply was no he was substituting himself and the call was ended.
>
> 9. The Defendant Richardson intentionally interfered with [the] contractual relationship between the Plaintiff and Defendant Watkins.

(Compl. at ¶ 6-9.)

{¶ 21} Hillman claimed Watkins and Richardson owed him one-third of the rejected $100,000 settlement offer, or $33,000. Hillman sought joint and several damages in that amount from Watkins and Richardson.

{¶ 22} In response to the complaint, Richardson filed a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim. Richardson argued that the facts alleged in the complaint were insufficient to establish any claim against him, including a claim for tortious interference with contract. In a decision entered July 1, 2021, the trial court granted Richardson's motion.

{¶ 23} Watkins answered the complaint and filed a counterclaim, which included claims for legal malpractice, breach of contract, fraud, intentional infliction of emotional distress, negligent infliction of emotional distress, and a violation of the Ohio Consumer Sales Practices Act. Watkins based his claims on Hillman's allegedly negligent and unprofessional representation of him during the Lucas County case.

{¶ 24} Watkins moved for summary judgment on Hillman's claim for breach of contract. In relevant part, Watkins argued that Hillman could not recover under the provision of the fee agreement that stated "[t]he attorney * * * shall be entitled to * * * thirty-three and one third percent (33 1/3%) of any offer of settlement made in relationship to the claims of the client." (Oct. 21, 2021 Def.'s Mot. for Summ. Jgmt., Ex. B.) Watkins contended that the provision was invalid because it made payment of the fee contingent upon a settlement offer, rather than the client's recovery. *See Breen v. Total Quality Logistics*, 10th Dist. No. 16AP-3, 2017-Ohio-439, ¶ 19 ("A discharged attorney cannot

recover if the client recovers nothing."); *Ruttman v. Flores*, 8th Dist. No. 66079, 1994 Ohio App. LEXIS 5362, *14 (Dec. 1, 1994) (Quotation omitted.) (holding that "compensation under a contingent fee agreement is 'dependent for its existence upon' the client receiving compensation"); Prof.Cond.R. 1.5(c) (Emphasis added.) ("A fee may be contingent on the *outcome* of the matter for which the service is rendered * * *."). On March 14, 2022, the trial court issued a decision granting Watkins summary judgment on Hillman's claim for breach of contract.

{¶ 25} The trial court held a bench trial on Watkins' claims on June 8, 2022. Hillman, Watkins, and Watkins' expert witness, John Phillips, testified at the trial. The trial court also admitted into evidence the decisions of the Lucas County Court of Common Pleas, the Sixth District, the Board, and the Supreme Court of Ohio.

{¶ 26} Watkins testified that he did not recall ever receiving interrogatories from Hillman to answer. While Hillman sent Watkins the Form 4506-T to sign, Watkins returned the form to Hillman unsigned because he did not pay taxes on his sole source of income, Supplemental Security Income benefits. When Hillman explained the form on the phone, Watkins gave Hillman verbal permission to sign it on his behalf.

{¶ 27} Watkins also testified that, while the Lucas County case was pending, Hillman told him that "everything [was] cool, everything was all right, sit back and relax." (Jun 8, 2022 Tr. at 77.) Hillman never warned him that the trial court could dismiss his case. When the dismissal occurred, Watkins "didn't know what was going on." (Tr. at 64.) After the dismissal, Watkins felt "crazy, angry, upset, sad, [and] depressed," and he sought mental health counseling. (Tr. at 67.)

{¶ 28} Hillman testified that he did not know if he ever informed Watkins that he needed to produce responses to certain discovery requests. Initially, Hillman testified he was "sure" he told Watkins about the motion to dismiss because he "spoke to [Watkins] every single day, sometimes twice a day." (Tr. at 53.) When asked a second time whether he told Watkins that there was a motion for sanctions pending that could result in the dismissal of his case, Hillman answered, "I - - I didn't - - the last part of your sentence. I told him there was a motion for sanctions, he needed to get the verification page to me. He needed to get the IRS form to me, and he just never did." (Tr. at 58.) Hillman contended

that Watkins refused to sign the verification page for the discovery responses and the Form 4506-T.

{¶ 29} John Phillips, Watkins' expert witness, testified that Hillman breached the standard of care by failing to comply with the civil rules governing discovery and by failing to keep Watkins reasonably informed about the status of his case. Phillips also criticized Hillman for suing Watkins to recover a contingent fee based upon a settlement offer that his client did not accept and delaying the return of the case file to his client for two years. Moreover, Phillips maintained that misrepresenting the status of a case to a client constituted a conscious disregard of the client's rights. According to Phillips, informing a client that a case was going well when a motion to dismiss was pending amounted to willful and malicious misconduct. Finally, Phillips testified that Watkins suffered damages in the amount of the attorney fees he expended to defend himself after firing Hillman.

{¶ 30} In a judgment entered July 13, 2022, the trial court entered judgment in favor of Watkins on his claim for legal malpractice and against Watkins on his claims for intentional infliction of emotional distress, negligent infliction of emotional distress, and the violation of the Consumer Sales Practices Act. The trial court found Watkins' claims for breach of contract and fraud were subsumed into the claim for legal malpractice. The trial court awarded Watkins $45,080 in compensatory damages. The trial court awarded Watkins $5,000 in punitive damages because it found that Hillman had displayed a conscious disregard for Watkins' rights and safety, which had a great probability of causing substantial harm.

II. Assignments of Error

{¶ 31} Hillman now appeals the July 13, 2022 judgment, and he assigns the following errors:

> [1.] The Trial Court erred by granting the Appellee Richardson's Motion under Ohio Civ. Rule 12(B)(6) for failure to state a claim.
>
> [2.] The trial court erred to the Appellant's prejudice by finding that the dismissal of Appellee Watkins' [sic] amounted to legal malpractice and the award of punitive damages.
>
> [3.] The Trial Court erred in awarding compensatory damages in that the Appellee failed to prove that the attorney fees that

> Appellee claimed were both necessary and reasonable or attributable to the Appellant.
>
> [4.] The Trial Court should have applied the doctrine of election of remedies.

III. Analysis

{¶ 32} By his first assignment of error, Hillman argues that the trial court erred in granting Richardson's Civ.R. 12(B)(6) motion to dismiss because the complaint contained sufficient factual allegations to state a claim for tortious interference with contract. We disagree.

{¶ 33} A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11. In construing a complaint upon a Civ.R. 12(B)(6) motion, a court must presume that all factual allegations in the complaint are true and make all reasonable inferences in the plaintiff's favor. *Id.* at ¶ 12; *Valentine v. Cedar Fair, L.P.*, 169 Ohio St.3d 181, 2022-Ohio-3710, ¶ 12. To grant the motion, the court must conclude that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to the relief sought. *Alford v. Collins-McGregor Operating Co.*, 152 Ohio St.3d 303, 2018-Ohio-8, ¶ 10. Appellate court review of a trial court's decision to dismiss a claim pursuant to Civ.R. 12(B)(6) is de novo. *Lunsford v. Sterilite of Ohio, L.L.C.*, 162 Ohio St.3d 231, 2020-Ohio-4193, ¶ 22.

{¶ 34} Ohio is a notice pleading state. *Doe v. Greenville City Schools*, ___ Ohio St.3d ___, 2022-Ohio-4618, ¶ 7. Notice pleading under Civ.R. 8(A) and (E) requires only that a complaint set forth sufficient facts to give a defendant fair notice of the plaintiff's claim. *Byrd v. Meyer*, 10th Dist. No. 21AP-578, 2022-Ohio-1827, ¶ 14. Thus, "the failure to set forth each element of a cause of action with crystalline specificity does not subject a complaint to dismissal." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 81 (1989). However, the complaint must contain direct allegations on every material point necessary to sustain a recovery on a legal theory or contain allegations from which inferences fairly may be drawn that evidence on these material points will be introduced at trial. *Thomas v. Delgado*, 3d Dist. No. 12-22-06, 2022-Ohio-4235, ¶ 79; *Evans v. Ohio Atty. Gen.*, 4th Dist. No. 20CA3927, 2021-Ohio-1146, ¶ 8; *Klan v. Med. Radiologists, Inc.*, 12th Dist. No.

CA2014-01-007, 2014-Ohio-2344, ¶ 13; *Deutsche Bank Natl. Trust Co. v. Moore*, 6th Dist. No. E-11-081, 2012-Ohio-5549, ¶ 5; *Welch v. Finlay Fine Jewelry Corp.*, 10th Dist. No. 01AP-508, 2002 Ohio App. LEXIS 503 (Feb. 12, 2002). " 'In other words, if there is no hint in the pleadings of proof of a particular point necessary to enable the pleader to prevail, the pleader has failed to provide the notice required by the rule.' " *Evans* at ¶ 8, quoting *Strahler v. Vessels*, 4th Dist. No. 11CA24, 2012-Ohio-4170, ¶ 10.

{¶ 35} A party is liable for tortious interference with a contract if it " 'intentionally and improperly interferes with the performance of a contract * * * between another and a third person by inducing or otherwise causing the third person not to perform the contract.' " *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 418-19 (1995), quoting 4 Restatement of the Law 2d, Torts, Section 766 (1979). The elements of a claim for tortious interference with contract are: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) lack of justification, and (5) resulting damages. *Fred Siegal Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171 (1999), paragraph one of the syllabus. To establish the fourth element, lack of justification, a plaintiff must prove that the defendant's interference with another's contract was improper. *Id.* at paragraph two of the syllabus.

{¶ 36} In this case, the trial court found that the complaint did not allege any facts from which the court could find or infer that Richardson intentionally procured the breach of a contract or the lack of justification. Construing the factual allegations in the complaint in Hillman's favor, we conclude that he pleaded facts establishing the existence of a contract, namely a fee agreement for legal services between himself and Watkins. We next infer from the allegations in the complaint that Richardson became aware of the existence of that agreement when Hillman explained to Richardson that he represented Watkins in a "fire case" and asked Richardson if he had interest in becoming co-counsel. (Compl. at ¶ 6-7.) At this point, however, Hillman's complaint flounders.

{¶ 37} The third element of the claim for tortious interference with contract requires a plaintiff to demonstrate the wrongdoer's intentional procurement of the contract's breach. *Fred Siegel Co.* at paragraph one of the syllabus. Based on the allegations in the complaint, we infer that Watkins fired Hillman as his attorney and instead hired Richardson to represent him in the Lucas County case. However, a client has a right to terminate an

existing attorney-client relationship and hire a new attorney. *Id.* at 176, 180. Consequently, Watkins' discharge of Hillman could not breach the fee agreement, regardless of whether Richardson intentionally procured the discharge. However, that conclusion does not end our analysis.

{¶ 38} In a case involving a contract terminable at will, like this one, a termination of the contract could never amount to breach of the contract. A plaintiff, therefore, could never prove a defendant intentionally procured a breach by inducing a third party to end the contractual relationship. Nevertheless, the existence of a contract terminable at will does not preclude a finding that the defendant tortiously interfered with the contractual relationship and, therefore, is not dispositive of the claim. *Id.* at 178. In a case involving one attorney soliciting a client's business from another attorney, the Supreme Court concluded that the outcome of the claim "should be determined by applying the relevant legal tests as defined in Section 766 et seq. of the Restatement." *Id.* Section 766 prohibits the wrongdoer from "inducing or otherwise causing the third person not to perform the contract." "The word 'inducing' refers to the situations in which A causes B to choose one course of conduct rather than another." 4 Restatement, Section 766, Comment h.

{¶ 39} Here, Hillman did not allege in the complaint that Richardson did anything to cause Watkins to discharge Hillman. Nor did Hillman make any allegations from which we can infer that Richardson's words or actions caused Watkins to discharge Hillman. The complaint, therefore, omits factual allegations on the necessary material point that Richardson induced Watkins to terminate his contract with Hillman.

{¶ 40} Even if the third element had been met, the fourth element is not satisfied. The fourth element of the claim for tortious inference with contract requires the plaintiff to demonstrate a lack of justification. *Fred Siegel Co.* at paragraph one of the syllabus. A client's right to change their legal representation triggers the availability of the justification of fair competition because, by law, legal representation contracts are terminable at will. *Id.* at 180; *Eichenberger v. Chilton-Clark*, 10th Dist. No. 17AP-809, 2019-Ohio-3343, ¶ 32. Where an existing contract is terminable at will and where all the elements of the justification of fair competition are met, "a competitor may take action to attract business, even if that action results in an interference with another's existing contract." *Fred Siegel Co.* at 179.

{¶ 41} Hillman failed to include any factual allegations in his complaint that even suggested that Richardson acted outside the bounds of fair competition in agreeing to represent Watkins. Hillman alleged solely that "Richardson intentionally interfered with [the] contractual relationship between the Plaintiff and Defendant Watkins." (Compl. at ¶ 9.) However, "[o]nly *improper* interference with a contract is actionable." (Emphasis added.) *Fred Siegel Co.* at 176. Absent either a direct allegation of impropriety or an allegation that supports an inference of impropriety, Hillman has not established that Richardson engaged in tortious conduct.

{¶ 42} Given that Hillman failed to allege or imply facts on material points necessary to find Richardson liable for tortious interference with contract, he has failed to state a claim. Accordingly, we conclude that the trial court did not err in granting Richardson's Civ.R. 12(B)(6) motion, and we overrule Hillman's first assignment of error.

{¶ 43} By the second assignment of error, Hillman asserts that the trial court erred in finding legal malpractice occurred and awarding punitive damages. Hillman, however, does not set forth any argument in support of this assignment of error.

{¶ 44} An appellant's brief must include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." App.R. 16(A)(7). The appellant, not the appellate court, bears the burden of constructing the legal arguments necessary to support the appellant's assignments of error. *Truist Bank v. Eichenberger*, 10th Dist. No. 22AP-334, 2023-Ohio-779, ¶ 63; *Isreal v. Franklin Cty. Commrs.*, 10th Dist. No. 21AP-131, 2022-Ohio-1825, ¶ 19. If an appellate court cannot discern a party's arguments, then it cannot grant relief. *Jabr v. Burger King*, 10th Dist. No. 21AP-463, 2022-Ohio-773, ¶ 10. Thus, an appellate court may disregard any assignment of error that is not argued separately in the brief as required under App.R. 16(A). App.R. 12(A)(2); *Truist Bank* at ¶ 63.

{¶ 45} With regard to his second assignment of error, Hillman merely states, "Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will, or a spirit of revenge, *or* (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm." (Emphasis sic.) (Appellant's Brief at 11.) Hillman has correctly

reiterated the definition of "malice" applicable to R.C. 2315.21(C)(1), which governs when a party may recover punitive damages. *See Malone v. Courtyard by Marriott*, 74 Ohio St.3d 440, 445-46 (1996). The trial court found that Hillman's actions met the second part of this definition: he displayed a conscious disregard for Watkins' rights and safety, which had a great probability of causing substantial harm. Hillman does not articulate how or why the trial court erred in reaching that finding. We cannot make Hillman's argument for him. Accordingly, due to Hillman's lack of argument and failure to comply with App.R. 16(A), we overrule Hillman's second assignment of error.

{¶ 46} By his third assignment of error, Hillman argues that the trial court erred in granting compensatory damages to Watkins. We disagree.

{¶ 47} Hillman first contends that error committed by the Lucas County Court of Common Pleas—not any legal malpractice on his part—caused the damage Watkins suffered. According to Hillman, the Sixth District's reversal of the trial court's judgment showed that "the Trial Court was plainly wrong and not the Appellant herein." (Appellant's Brief at 12.)

{¶ 48} This argument requires us to review the manifest weight of the evidence. Appellate courts will only reverse a judgment as being against the manifest weight of the evidence if it is not supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280 (1978). In determining whether the record contains the necessary evidence, an appellate court weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20. However, when conducting its review, an appellate court "must always be mindful of the presumption in favor of the finder of fact." *Id.* at ¶ 21. Appellate courts give deference to the trial court's factual findings because "the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 49} To establish a claim for legal malpractice, a plaintiff must show: (1) the attorney owed a duty to the plaintiff, (2) a breach of the duty in that the attorney failed to conform to the standard required by law, and (3) a causal connection between the conduct

complained of and the resulting damage. *Vahila v. Hall*, 77 Ohio St.3d 421 (1997), syllabus. The analysis of causation in legal malpractice cases "should be made in accordance with the tort law relating to proximate cause" and "should focus on the facts of the particular case." *Id.* at 426, quoting *Krahn v. Kinney*, 43 Ohio St.3d 103, 106 (1989). Under tort law, an injury is the proximate result of negligence if it is "the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances." *Mussivand v. David*, 45 Ohio St.3d 314, 321 (1989).

{¶ 50} Here, Watkins' expert witness testified that Hillman failed to meet the standard of care when he did not comply with the discovery rules and timely respond to Allstate's discovery requests. As a result of Hillman's noncompliance, Allstate moved to compel the discovery responses and, ultimately, moved to sanction Watkins through dismissal of his action. The expert witness explained that Watkins' damages included the cost of hiring an attorney to represent him in the appeal of the trial court's decision granting Allstate's motion to dismiss.

{¶ 51} The trial court could accept this testimony and disregard Hillman's claim that Watkins was responsible for the delays and other difficulties in responding to discovery. The imposition of a sanction, including the dismissal of an action, is a natural and probable consequence of repeated disregard of discovery rules and deficient compliance with a court order compelling discovery. Civ.R. 37(B)(1)(e) ("If a party * * * fails to obey an order to provide or permit discovery * * * the court may * * * [d]ismiss[ ] the action or proceeding in whole or in part."). While the Sixth District later found the trial court erred in granting the dismissal, that does not mean a dismissal was an unforeseeable sanction given Hillman's misconduct. Moreover, the Sixth District merely determined that Hillman's misconduct was not so egregious as to warrant a dismissal of Watkins' case; it did not excuse Hillman of all misconduct. Consequently, the trial court did not err in concluding that Hillman's legal malpractice proximately caused Watkins damages in the form of attorney fees paid to pursue an appeal of the dismissal.

{¶ 52} Next, Hillman argues that the invoice Watkins introduced into evidence to prove the amount of the attorney fees Richardson charged for the appeal constituted hearsay. At trial, however, Hillman did not object to the invoice based on hearsay. "An objection to the admissibly of evidence on one ground does not preserve objections to the evidence on other

grounds for purposes of appeal." *State v. Vu*, 10th Dist. No. 09AP-606, 2010-Ohio-4019, ¶ 30; *accord May v. Copeland*, 192 Ohio App.3d 1, 2010-Ohio-6493, ¶ 41 (5th Dist.) ("Where a party makes a specific objection to the introduction of evidence, the party is considered to have waived all other grounds for excluding the evidence."). Therefore, Hillman has waived an objection on hearsay grounds.

{¶ 53} Additionally, even if the invoice were excluded from evidence, the record supports an award of damages in the amount of Richardson's attorney fees. Watkins testified that he paid Richardson $5,000 to represent him in the appeal.

{¶ 54} In summary, Watkins proved that Hillman's malpractice caused him to suffer damages that included the cost of hiring an attorney to appeal the dismissal of the Lucas County case. According to the evidence adduced at trial, that cost amounted to $5,000. Consequently, we overrule Hillman's third assignment of error.

{¶ 55} By Hillman's fourth assignment of error, he argues that the trial court should have applied the doctrine of election of remedies. We disagree.

{¶ 56} "An election of remedial rights is a choice made with knowledge between two inconsistent substantive rights, either of which may be instituted at the instance of the chooser, who cannot, however, enjoy both." *Frederickson v. Nye*, 110 Ohio St. 459, 466 (1924). For the doctrine of election of remedies to apply, two remedies must exist at the same time. *Berry v. Javitch, Block & Rathbone, L.L.P.*, 127 Ohio St.3d 480, 2010-Ohio-5772, ¶ 22. One of the purposes behind the doctrine of election of remedies is to prevent a double recovery. *Mike Castrucci Ford Sales, Inc. v. Hoover*, 12th Dist. No. CA2007-02-022, 2008-Ohio-1358, ¶ 18.

{¶ 57} In this case, Hillman argues that the doctrine of election of remedies required Watkins to choose between filing a grievance against him with Disciplinary Counsel and suing him for legal malpractice. Hillman contends that the trial court erred in allowing Watkins to pursue a legal malpractice action after the Supreme Court had sanctioned him for his misconduct in the Lucas County case. We are not persuaded by Hillman's argument.

{¶ 58} A disciplinary action does not serve as a remedy for a client harmed by an attorney's misconduct in either purpose or function. Disciplinary actions against lawyers are instituted "to protect the public interest and to ensure that members of the bar are competent to practice a profession imbued with the public trust." *Fred Siegel Co.*, 85 Ohio

St.3d at 178; *accord Disciplinary Counsel v. Johnson*, 113 Ohio St.3d 344, 2007-Ohio-2074, ¶ 84 quoting *Ohio State Bar Assn. v. Weaver*, 41 Ohio St.2d 97, 100 (1975) (Further quotation omitted.) (" 'In a disciplinary matter, the primary purpose is not to punish an offender; it is to protect the public against members of the bar who are unworthy of the trust and confidence essential to the relationship of attorney and client; it is to ascertain whether the conduct of the attorney involved has demonstrated his unfitness to practice law, and if so to deprive him of his previously acquired privilege to serve as an officer of the court.' "). Thus, the purpose of a disciplinary action is to protect the public at large, not any specific individual.

{¶ 59} More importantly, a disciplinary action does not offer a wronged client any recovery for harm caused by an attorney's malpractice. The discipline that may be imposed on a lawyer for a violation of a disciplinary rule does not include monetary compensation to a wronged client. Gov.Bar.R. 12(A). Here, contrary to Hillman's claim that the Board found Watkins was not harmed, the Board actually found that Watkins "was vulnerable and suffered harm as a result of [Hillman's] misconduct." *In re Hillman*, Bd. of Prof. Conduct No. 2020-042, ¶ 42 (Apr. 9, 2021). The sanction the Supreme Court imposed on Hillman did nothing to remedy that harm.

{¶ 60} Given that disciplinary actions do not provide wronged clients with a remedy, they must seek their remedy in a tort action. *See Fred Seigel Co.* at 178 (holding that, unlike a disciplinary action, a tort action "provides a means of redress to individuals for damages suffered as a result of tortious conduct"). The doctrine of election of remedies does not apply when there is only one remedy at issue. Accordingly, we overrule Hillman's fourth assignment of error.

IV. Conclusion

{¶ 61} For the foregoing reasons, we overrule Hillman's four assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER and EDELSTEIN, JJ., concur.