

State of Minnesota
In Court of Appeals

Katherine M. Rucker,

Appellant,

v.

Steven B. Schmidt and
Rider Bennett, LLP,

Respondents.

RESPONDENT RIDER BENNETT'S APPELLATE BRIEF

SKOLNICK & SHIFF, P.A.
Sean A. Shiff (#270519)
2100 Rand Tower
527 Marquette Avenue South
Minneapolis, MN 55402
(612) 677-7600

Attorneys for Appellant
Katherine M. Rucker

BASSFORD REMELE, P.A.
Lewis A. Remele (#90724)
Kevin P. Hickey (#202484)
Shanda K. Pearson (#340923)
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
(612) 333-3000

Attorneys for Respondent
Rider Bennett, LLP

ANTHONY OSTLUND AND BAER,
P.A.

Joseph W. Anthony (#2872)

Janel Dressen (#302818)

3600 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

(612) 349-6969

Attorneys for Respondent

Steven B. Schmidt

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LEGAL ISSUES

I. IS RUCKER'S CLAIM BARRED BY THE DOCTRINE OF RES JUDICATA.

District Court Held in the Affirmative.

II. IS RUCKER'S CLAIM PRECLUDED BY THE ATTORNEY IMMUNITY RULE.

District Court did not Address on Summary Judgment.

III. IS RUCKER'S CLAIM PRECLUDED BY THE ELECTION OF REMEDIES DOCTRINE.

District Court did not Address on Summary Judgment.

IV. IS RUCKER'S CLAIM PRECLUDED BY THE SATISFACTION OF THE PREVIOUS JUDGMENT AWARDING ALL OF HER DAMAGES.

District Court did not Address on Summary Judgment.

STATEMENT OF THE CASE AND FACTS

In order to avoid repetition, Respondent Rider Bennett joins in the Statement of Case, Statement of Facts and Appendix submitted by Respondent Steven Schmidt in this matter. Rider Bennett also joins in the argument submitted by Schmidt regarding res judicata.

STANDARD OF REVIEW

On appeal from summary judgment, the appellate court reviews the record to determine whether there is any genuine issue of material fact, and whether the district court erred in its application of the law. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995). There were no genuine issues of material fact as the decision below relied upon the application of a legal doctrine, res judicata, to the judicially established record in the previous fraud action. Application of the doctrine of res judicata is a question of law properly decided by the court on summary judgment. *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007); *State v. Joseph*, 636 N.W.2d 322, 326 (Minn. 2001).

ARGUMENT

The Respondents brought summary judgment motions before the district court on several legal grounds. While the decision below properly relies on res judicata, there are a number of other legal defenses raised below which preclude this claim as a matter of law. An award of summary judgment will be affirmed if it can be sustained on any ground. *See Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978) (if trial court arrives at correct decision, it may be upheld on a different legal grounds); *see also Krogness v.*

Best Buy Co., Inc., 524 N.W.2d 282, 287 (Minn. App. 1994); *Myers through Myers v. Price*, 463 N.W.2d 773 (Minn. App. 1990). Accordingly, Respondent Rider Bennett will address three additional grounds for upholding the decision below: 1) the attorney immunity rule; 2) the election of remedies doctrine; and 3) satisfaction of judgment. These legal defenses go hand-in-hand with *res judicata* because they are all based on the premise that the previous fraud action against Robert Rucker precludes this second fraud action against his attorneys.

I. RUCKER'S CLAIM IS BARRED BY THE ATTORNEY IMMUNITY RULE PRECLUDING CLAIMS AGAINST THE ADVERSE ATTORNEY.

The type of claim at issue in this case—a non-client suing the opposing lawyer—is virtually non-existent in Minnesota. For a number of compelling reasons, there is a well-established general prohibition against non-clients suing the opposing lawyer. For more than a century, the Minnesota Supreme Court has consistently recognized a qualified immunity that applies as a matter of law and protects attorneys from the claims of non-clients, especially those of adverse parties. *See, e.g., McIntosh County Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008) (recognizing rule against suing opposing attorney absent “extraordinary and extreme circumstances”); *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 378-79 (Minn. 1989) (applying rule on summary judgment dismissing fraud claim of adverse party against opposing attorney); *Marker v. Greenberg*, 313 N.W.2d 4, 5-6 (Minn. 1981) (affirming summary judgment in favor of attorney on claim by non-client); *McDonald v. Stewart*, 289 Minn. 35, 40, 182 N.W.2d 437, 440 (1970) (applying rule on summary judgment dismissing fraud claim of adverse

party against opposing attorney); *Farmer v. Crosby*, 43 Minn. 459, 461, 45 N.W. 866, 866 (1890) (affirming dismissal as to attorney), *overruled on other grounds by Erickson v. Minn. & Ont. Power Co.*, 134 Minn. 209, 158 N.W. 979 (1916).

This Court has also recognized and applied the attorney immunity rule as a matter of law. *See Williams v. Grand Lodge of Freemasonry*, 355 N.W.2d 477 (Minn. App. 1984) (applying attorney immunity rule as a matter of law); *Liedtke v. Fillenworth*, 372 N.W.2d 50 (Minn. App. 1985) (dismissing claim against opposing lawyer as a matter of law).

The rule, as stated by the Minnesota Supreme Court, provides that “an attorney acting within the scope of his employment as attorney is immune from liability to third persons for actions arising out of that professional relationship.” *McDonald*, 289 Minn. at 40, 182 N.W.2d at 440. There is no dispute that at all times Schmidt was acting within the scope of his representation of his client, thus triggering the immunity rule. There are only two narrow exceptions to this otherwise sweeping rule. *Marker*, 313 N.W.2d at 5 (“the relaxation of the strict privity requirement is very limited”). One pertains to a beneficiary of a will or trust, *see Marker*, 313 N.W.2d at 5, and the other applies when an attorney knowingly commits fraud or other malicious conduct for his or her own personal gain, *McDonald*, 289 Minn. at 40, 182 N.W.2d at 440.

While the fraud exception has been recognized in the abstract, it has virtually never been applied in more than a century of Minnesota jurisprudence. *See McIntosh County Bank*, 745 N.W.2d at 545 (citing *L & H Airco*, 446 N.W.2d at 380) (holding that

“absent *extraordinary and extreme* circumstances involving actual fraud, an attorney may not be held liable in damages to his party-opponent”) (emphasis added).

The policy reasons for this qualified immunity rule are abundantly clear. As Minnesota courts have repeatedly recognized, if attorneys are subject to liability to persons other than their clients, they will be faced with “concurrent” duties that in turn will undermine attorneys’ ethical and legal obligations to protect the attorney-client relationship and act solely in their clients’ best interests. *L & H Airco*, 446 N.W.2d at 379. An attorney must be free to take action on behalf of a client without being concerned about potential liability to non-clients who may in some way be affected by the attorney’s actions. *See Melrose Floor Co. v. Lechner*, 435 N.W.2d 90, 91 (Minn. App. 1989); *L & H Airco*, 446 N.W.2d at 379 (stating such liability “would undermine the attorney’s duty to zealously represent the client and resolve all doubts in favor of the client[,]” as well as the trust between attorney and client).

In the present case, Schmidt had the utmost duty to represent his client’s best interests in the bitterly contested divorce and zealously advocate on his behalf. If Schmidt has to be concerned about what his obligations are to his adversary and whether he may face liability to such adversary, his fiduciary and ethical obligations to his client are necessarily compromised. *See Eustis v. David Agency, Inc.*, 417 N.W.2d 295, 298-99 (Minn. App. 1987); *see also Hoppe v. Klapperich*, 224 Minn. 224, 241, 28 N.W.2d 780, 791-92 (1947). In virtually every civil case, particularly marital dissolutions, there are disputes over what information should be disclosed by the parties. Such disputes are easily transformed into a “fraud” claim as Appellant has done here.

Moreover, allowing lawsuits by an adverse party creates satellite or serial litigation that increases the burden on the parties and the judicial system as a whole. *See Hatch v. TIG Ins. Co.*, 301 F.3d 915, 918 (8th Cir. 2002) (Court would not allow “serial litigation” based on alleged fraud or failure to disclose information in previous action). Any party who becomes dissatisfied with a legal outcome could re-litigate the matter by claiming that the opposing attorney failed to disclose something, thereby committing “fraud.” This is now the second lawsuit that has arisen out of the original divorce action, which was fully settled with Court approval. Particularly in hotly disputed and emotional divorce actions, opening the door to a party suing the opposing party’s lawyer for engaging in “fraud” with his or her client in a second action is dangerous and subject to abuse. As set forth above, there are strong policy reasons why such claims have virtually never been allowed in the history of Minnesota jurisprudence.

For these reasons, an attorney can be held liable for fraud only where the attorney “makes affirmative misrepresentations to an adversary, or conspires with his or her client, or takes other active steps to conceal the client’s fraud from the adversary.” *See Hoppe*, 28 N.W.2d at 791; *see also McDonald*, 289 Minn. at 40, 182 N.W.2d at 440. And even in these cases where the fraud exception has been recognized, it has not been applied even though there were allegations of fraud or other intentional wrongdoing against the attorney. *See McDonald*, 289 Minn. at 40, 182 N.W.2d at 440; *Langeland v. Farmers State Bank of Trimont*, 319 N.W.2d 26, 31 (Minn. 1982) (attorney not liable for intentional tort to non-client); *Maness v. Star-Kist Foods, Inc.*, 7 F.3d 704, 709 (8th Cir. 1993) (Minnesota law) (“[A]ttorney who acts within the scope of the attorney-client

relationship will not be liable to third persons for actions arising out of his professional relationship unless the attorney exceeds the scope of his employment or acts for personal gain.”).

Mere allegations or even some evidence of fraud is not sufficient to pierce the broad immunity for lawyers acting within the scope of their employment on behalf of their clients. As the case law makes clear, there must be a showing that the attorney was acting outside the scope of his employment and for his own “personal gain.” See *Maness*, 7 F.3d at 709 (citing *McDonald*, 289 Minn. at 40, 182 N.W.2d at 440). In other words, there must be more than a claim that the *client* received some benefit as a result of fraud as Rucker alleges here. The attorney himself must receive some “personal benefit” from the alleged fraud. See *Williams*, 355 N.W.2d at 480 (“[opposing attorneys] are immune from liability to third persons for actions arising out of that professional relationship since they incurred no personal benefit.”).

There is literally no evidence or even an allegation that Schmidt was acting outside the scope of his representation or for his own personal gain when he represented Robert Rucker in his divorce proceeding. In fact, Appellant expressly alleges that Schmidt was acting in connection with his representation of his client when he allegedly committed fraud. (K. Rucker dep. at 7, R-26.) Schmidt could not have possibly been acting for his own personal gain when it is undisputed he had nothing personally to gain even if we assume he obtained a better divorce settlement than his client was entitled to. Schmidt was paid on an hourly basis and would have received the same compensation no

matter what the outcome of the dissolution action. (R. Rucker dep. at 138, R-24.) If anything, he would have benefited from this proceeding not settling as early as it did.

As a matter of law, Appellant cannot meet her burden of establishing the “extraordinary and extreme” grounds for piercing the immunity for attorneys acting on behalf of their clients. *See McIntosh County Bank*, 745 N.W.2d at 545. Nor can she show that Schmidt acted for his own “personal benefit.” *See Williams*, 355 N.W.2d at 480. The decision below is properly affirmed based on the attorney immunity rule.

II. RUCKER’S CLAIM FOR DAMAGES AFTER RECEIVING FULL EQUITABLE RELIEF IS BARRED BY THE ELECTION OF REMEDIES DOCTRINE.

“The doctrine of election of remedies requires a party to adopt one of two or more co-existing and inconsistent remedies which the law affords the same set of facts.” *Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 855 (Minn. 1994). The purpose of the doctrine is to “prevent double redress for a single wrong.” *Magnusson v. Am. Allied Ins. Co.*, 290 Minn. 465, 472, 189 N.W.2d 28, 33 (1971). Election of remedies requires a plaintiff to choose whether to affirm or disaffirm an agreement. *Loppe v. Steiner*, 699 N.W.2d 342, 349 (Minn. App. 2005); *see also Rudnitski v. Seely*, 452 N.W.2d 664, 666 (Minn. 1990) (party who seeks to cancel a contract is barred by the election of remedies doctrine from seeking damages under that same contract).

The election of remedies doctrine is commonly applied to fraud claims. *See Anders v. Dakota Land & Dev. Co.*, 289 N.W.2d 161 (Minn. 1980); *Hatch v. Kulick*, 211 Minn. 309, 1 N.W.2d 359 (1941). The application of the election of remedies doctrine in fraud cases is succinctly described by the Minnesota Supreme Court in *Hatch*:

It is characteristic of fraud inducing a contract that the victim ordinarily has an election of remedies. A contract so induced is voidable. The victim may affirm and, keeping what he has received, sue at law for what damage he has sustained by reason of the fraud. Or he may, in equity or by his own act, rescind the tainted contract and, returning what he has received, recover all he has parted with under the contract.

1 N.W.2d at 360 (citation omitted). The law is clear that where the plaintiff elects to rescind or set aside the contract as if it never existed, “*he is entitled to no damages.*” *Id.* at 360 (emphasis added); *see also Wayzata Enters. v. Herman*, 268 Minn. 117, 119, 128 N.W.2d 156, 158 (1964) (party obtaining cancellation of contract was precluded from seeking damages).

In *Jacobs v. Farmland Mutual Insurance Co.*, 377 N.W.2d 441 (Minn. 1985), the supreme court recognized that a party, by seeking rescission of a contract procured by fraud, had thereby “elected not to . . . sue in deceit for damages.” 377 N.W.2d at 445. While *Jacobs* addressed the issue of whether punitive damages could be awarded in an equitable action for rescission, it was necessary for the court to first address whether the plaintiff had elected the equitable remedy of rescission in order to decide whether punitive damages were available. The court clearly held that the party had elected its remedy by seeking rescission of the contract procured by fraud and was precluded from suing for damages. *Id.* at 444 (the finding of fraud “. . . entitled the plaintiffs to only that relief sought -- rescission -- and no more.”). The same is true here.

Similarly, in *Vesta State Bank v. Independent State Bank of Minnesota*, 518 N.W.2d 850 (Minn. 1994), the court held that the election of remedies doctrine precluded rescission claims where a previous action by the plaintiff had affirmed the contract at

issue. 518 N.W.2d at 856. The court held there was an “inconsistency” between seeking damages in the first action based on the contract and claiming a right to rescission in the second action. *Id.* at 856. The court held that the doctrine applied even though the subsequent claim was against different parties because the plaintiff had affirmed the contract in the first action and was now seeking the inconsistent remedy of rescission. *Id.* *Vesta* is the mirror image of the present case where plaintiff first sought rescission and then sought damages.¹

In the present case, the Complaint and all of the evidence produced in discovery makes it clear that the claim of fraud against Respondents arises out of the very same conduct at issue in the previous equitable action to set aside the judgment.² The two complaints are very similar with respect to the factual allegations. The Complaint against Respondents, however, seeks only damages. (Complaint at ¶¶ 48, 57, 63 and “Wherefore” clause, A-8-10.) While the Complaint in the first action initially made alternative damage and equitable claims for relief, at trial Appellant Katherine Rucker elected to pursue an equitable remedy to set aside the judgment to a successful conclusion. (A-137.) The court provided her with such equitable relief in setting aside

¹ The *Vesta* court did allow claims for *damages* arising out of fraud to go forward because such claims were consistent with the previous claim for damages and were thus consistent with the election of remedies doctrine.

² At the outset of the case the district court denied Respondents’ motion to dismiss under Rule 12 based on the election of remedies doctrine. This decision appeared to be based on the mistaken assumption that the previous fraud action was part of the marital dissolution proceeding, when, in fact, it was a separate civil action brought in district court. In any event, after completion of discovery, this defense was raised on a summary judgment motion, but was not ruled on by the Court. (A-134.)

the marital property settlement in the Marital Termination Agreement (“MTA”) between the Ruckers and by equitably re-distributing the marital assets. (*Id.*).

Appellant Katherine Rucker’s testimony in this case clears up any doubt that the claims she alleges in this case arise out of the very same conduct at issue in the previous equitable action to set aside the stipulated property settlement. (K. Rucker dep. at 14-19, R-28-29; *see also* Dressen Aff., Ex. 7, Dep. Ex. 22, Resp. No. 9, R-60.) Rucker admitted in her deposition that her damages were the exact same as those she alleged in her lawsuit against Robert Rucker. (K. Rucker dep. at 14-15, R-28.) When Rucker was asked why she did not also sue Schmidt when she sued her ex-husband, she could only respond by stating that she relied upon her attorneys to make that decision. (K. Rucker dep. at 35, R-32.)

In short, Rucker elected her remedy when she sued Robert Rucker and obtained full equitable relief against him, even though she was aware of all facts that supposedly support her current claims against Respondents. After the court provided full and complete equitable relief by setting aside the MTA and recalculating her marital distribution, Appellant cannot now attempt to recover damages based upon the same set of operative facts. Rucker has clearly, unequivocally and successfully elected her remedy to pursue equitable relief in the previous action to set aside the judgment entered pursuant to the MTA. It is clear under such circumstances that a plaintiff “is entitled to no damages.” *Hatch*, 1 N.W.2d at 360.

III. RUCKER'S CLAIM IS BARRED BY HER ADMISSION THAT HER CLAIM WAS FULLY SATISFIED.

The Satisfaction of Judgment Rucker filed with the Court in the first fraud case prohibits her from seeking any additional damages from Respondents. Minnesota law unambiguously provides that “[o]nce a satisfaction of judgment is filed with the district court, that judgment ‘ceases to have any existence.’” *Herubin v. Finn*, 603 N.W.2d 133, 137 (Minn. App. 1999) (quoting *Dorso Trailer Sales, Inc. v. Am. BodyTrailer, Inc.*, 482 N.W.2d 771, 773 (Minn. 1992)). Accordingly, a satisfaction of judgment has the legal effect of preventing a party from “changing his mind and seeking the court’s aid in recovering payment.” *Hanson v. Woolston*, 701 N.W.2d 257, 263 (Minn. App. 2005). In *Dorso Trailer*, the Minnesota Supreme Court held that a satisfaction of judgment precluded a subsequent action alleging that the opposing attorney had failed to disclose the existence of a law which controlled the outcome of the action. 482 N.W.2d at 773; *see also Vesta State Bank v. Indep. State Bank of Minn.*, 518 N.W.2d 850, 855 (Minn. 1994) (“[w]here more than one remedy exists to deal with a single subject of action, but they are not inconsistent, nothing short of full satisfaction of the plaintiff’s claim waives any of such remedies.”).

Here, after the release was executed, Appellant’s attorney filed a Satisfaction of Judgment that expressly states that the full amount awarded in the previous fraud lawsuit against Robert Rucker is “paid and satisfied in full.” (Dressen Aff. Ex. 14, R-109). The Satisfaction of Judgment references that the judgment is against Robert Rucker, but it is for the full amount of the judgment which reflected full and complete relief awarded by

the court for the alleged fraud in the marital termination. (*Id.*). Despite the fact that partial satisfactions of judgment are commonly used, the pleading filed by Rucker is entitled "Satisfaction of Judgment" and contains no language indicating that it is a partial satisfaction against only Mr. Rucker, or that it does not apply to others who may be responsible for the judgment amount. (*Id.*). The Satisfaction of Judgment filed by Rucker is a full and complete satisfaction of all damages sought in the previous action, which include the damages sought in this action.

Appellant Katherine Rucker understood the amount of her losses and knew that she had been awarded the full amount of her claim against Robert Rucker. (K. Rucker dep. at 63, R-37.) Moreover, it is undisputed that Mr. Rucker could have satisfied the entire judgment amount. (R. Rucker dep. at 136, R-23.) The fact that Appellant decided for whatever reason to accept significantly less than the full judgment in settlement does not change the fact that she expressly acknowledged that the entire judgment reflecting all of her claimed losses from the fraud was satisfied. Because Appellant represented to the court in a public filing that her entire judgment against Robert Rucker for marital fraud was fully satisfied, she is precluded from seeking additional relief from Respondents arising out of that judgment.

Rucker cannot escape the legal effect of the voluntary settlement and Satisfaction of Judgment based on her use of a post-verdict *Pierringer* release when Robert Rucker was financially able to satisfy the entire judgment. In *Dairyland Insurance Co. v. Starkey*, 535 N.W.2d 363 (Minn. 1995), a passenger of a motor vehicle sued the motorist for personal injuries arising out of an automobile accident. The motorist defendant

brought a third-party claim against the driver of the plaintiff's vehicle. *Id.* at 363. The jury verdict found defendant 60% at fault, and the third-party defendant 40% at fault. *Id.* Before the judgment but post-verdict, the plaintiff accepted payment from the defendant in exchange for a settlement and *Pierringer* release. *Id.* at 364. Plaintiff then filed for uninsured motorist ("UIM") benefits for the 40% fault attributed to the third-party driver. *Id.* The insurance company offered to pay the difference (about \$1,500) between the verdict and the settlement amount plaintiff accepted from defendant. *Id.*

The *Starkey* Court considered whether Plaintiff was entitled to UIM benefits after settling post-verdict with defendant, an insured tortfeasor, for less than the verdict amount where there was sufficient liability insurance to satisfy the entire verdict. *Id.*

The Court, in denying plaintiff's entitlement to UIM benefits, reasoned as follows:

Starkey chose to pursue her arbitration claim against the UIM carrier *after* the jury had returned a verdict determining liability and damages, and after her settlement with the insured tortfeasor for slightly less than the verdict, even though there was sufficient liability insurance to cover the verdict. This distinction from *Galloway* is critical. When Starkey settled with the insured joint tortfeasor, she knew what her damages were, she knew the apportionment of fault among the tortfeasors, and she knew there was sufficient liability coverage in the Erickson policy to cover her damages. As the trial court noted, Starkey could have received 100% of her entitlement from Erickson as a joint tortfeasor, but instead chose to accept only 95% "in an attempt to grab \$20,000 more" from the UIM carrier. ...

We therefore conclude that Starkey is not entitled to UIM benefits after settling post-verdict with the insured, when the insured had sufficient liability insurance to cover the entire verdict.

Id. at 364-65.

The legal principles underpinning the *Starkey* court's decision are applicable to the instant facts. Here, the court returned its decision, and Rucker settled with Robert Rucker

for an amount less than the judgment amount. Like in *Starkey*, Rucker knew the amount of her damages and was awarded the full amount of her damages against Robert Rucker. (K. Rucker dep. at 63, R-37.) Also like *Starkey*, Mr. Rucker testified that he could have satisfied the entire judgment. (R. Rucker dep. at 136, R-23.) Since Rucker voluntarily chose to settle her claims post-verdict in exchange for Robert Rucker foregoing an appeal, when Robert Rucker was financially capable of satisfying the judgment in full, she should be precluded from seeking the same damages from Respondents.

Moreover, the Settlement Agreement provided that Rucker was preserving claims, “if any,” against other potential defendants. (Dressen Aff., Ex. 13 at 2, R-102.) There was no acknowledgment that Rucker, in fact, had valid claims remaining against any other parties. Accordingly, the *Pierringer* release cannot “preserve” claims that were extinguished by the full Satisfaction of Judgment filed by Rucker as to the entire judgment amount.

CONCLUSION

For the foregoing reasons, Respondent Rider Bennett respectfully requests a decision upholding the determination below in all respects.

BASSFORD REMELE
A Professional Association

Dated: 1/27/09

By Kevin P. Hickey

Lewis A. Remele, Jr. (License #90724)
Kevin P. Hickey (License #202484)
Shanda K. Pearson (License #340923)
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

ATTORNEYS FOR RESPONDENT
RIDER BENNETT, LLP