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Division II
State of Washington
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Case No.: 54432-6-II

**IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II**

PAULA STEVEN

Appellant,

v.

DENNIS SCHROADER, JR. and JANE DOE SCHROADER, husband
and wife; and SCHROADER LAW, PLLC, a WASHINGTON
professional limited liability company doing business as the LAW
OFFICE OF DENNIS SCHROADER

Respondents.

**RESPONDENTS' RESPONSE TO APPELLANTS' OPENING
BRIEF**

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I. INTRODUCTION

As she did in the trial court, Appellant Paula Steven both fails to provide this court any reason to reverse Judge Arend's decision, and fails to address several arguments that by themselves validate the trial court's decision. Accordingly, this appeal should be rejected and the summary judgment order affirmed.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Are the allegations of this complaint barred by issue preclusion, having been litigated and decided against Paula Steven in two prior actions? Yes.

2. Did Paula Steven present sufficient—or any—evidence to demonstrate that Dennis Schroader had violated a professional duty to her of any kind? No.

3. Did Paula Steven present sufficient—or any—evidence that, but for Dennis Schroader, she would have won her underlying case against FREQO Washington, LLC, thereby meeting her burden of proving causation in a legal malpractice action? No.

For all three of these reasons, or any one of them, the trial court's summary-judgment ruling was correct, and should be affirmed.

III. STATEMENT OF THE CASE

Long, long, ago at a place quite nearby, FREO Washington, LLC leased a house to Paula Steven. On December 9, 2015, FREO advised Steven they would not be renewing her lease because the FREO subsidiary that owned the house had decided to sell *all* of its Washington properties. CP 214. Steven's lease expired on January 31, 2016. *Id.* FREO offered her the option of either purchasing the home, or vacating it upon expiration of her lease. Steven informed FREO that she was interested in purchasing the property. Her tenancy was extended four times, solely due to her interest in purchasing the home. CP 68-73. By May 9, 2016, it appeared obvious that Steven did not intend to follow through with a purchase transaction, so FREO informed Steven that she needed to vacate the property on or before May 31, 2016. CP 214, 216. In response, Steven filed a small-claims action against FREO. On May 24, 2016, FREO reminded Steven that she needed to vacate the home by May 31, 2016. On May 31, 2016, Steven had not vacated the home.

FREO and Steven entered into settlement negotiations regarding her latest small-claims action against them. FREO delayed filing an unlawful-detainer action due to the settlement negotiations, but negotiations broke down by June 15, 2016. On June 24, 2016, FREO sent another twenty-day notice to Steven, informing her that her month-to-month tenancy would be terminated on July 31, 2016. CP 195-198. On July 31, 2016, Steven still had not vacated the home. *Id.* An unlawful

detainer and eviction summons were filed in Pierce County Superior Court on August 1, 2016.

Steven retained Dennis Schroader to defend her on August 9, 2016. CP 82-83. Steven expressly acknowledged in the retainer agreement that it was “impossible to determine precisely the nature and extent of the necessary legal services” to resolve the engagement. *Id.* In addition, during her first meeting with Schroader, at which his paralegal Amber Wood was present, he expressly told Steven he could not guarantee any particular outcome. CP 85-86, 88-89.

The show-cause hearing regarding the unlawful-detainer action was scheduled for August 12, 2016. Due to a prior scheduling conflict, Schroader was not able to attend the hearing, and he informed Steven of that fact. Gregory Magee agreed to cover the hearing for him. CP 91-92. However Magee did not show up for the hearing. CP 94. As a result of Magee's failure to cover the hearing for Schroader, it was continued to the following week and Schroader was sanctioned \$1,125.00, which he paid personally. CP 96-97. Schroader did not pass the cost of this sanction on to Steven.

At the rescheduled hearing, after Schroader had had enough time to review the plethora of documents provided to him by Steven, FREO served him with, among other documents, an affidavit from Tiffany Broberg, detailing the saga FREO had endured with Steven from December 2015 through August 2016. CP 68-73. Upon being presented

with FREO's evidence, in light of the documents Steven provided to Schroader, he advised Steven that her retaliation claim would likely not survive the show-cause hearing. CP 99-102. He advised her that even if it did survive the show-cause hearing, in his professional opinion, it would not survive summary judgment. *Id.* He advised her to settle the case, and, understanding the advice Schroader gave her, she did just that.

On August 16, 2016, Paula Steven agreed to enter in to a settlement agreement with FREO Washington, LLC, to dismiss its unlawful-detainer action against her. CP 104-107. Schroader was able to procure an additional thirty (30) days for Steven to vacate the home despite the termination of her tenancy on July 31, 2016, as well as payment of the \$1,832.00 small-claims judgment with interest. *Id.* Schroader spent the better part of three hours explaining the settlement terms to Steven, changing those terms she wished to have changed, hearing her input, and negotiating the settlement terms with FREO. CP 109-111. As part of the settlement agreement, both parties agreed to "resolve all claims, known and unknown," against each other. CP 104-107. Schroader advised her that retaliation was a defense to an unlawful-detainer action, and settling the case meant releasing her retaliation defense. CP 113-118. Steven signed the settlement agreement. However, *the very next day*, she changed her tune and began her campaign of harassment against Schroader and his office (as well as opposing counsel, and judges along the way).

Steven started by alleging that Schroader didn't explain the settlement terms to her, despite the hours Schroader had spent with her explaining the relatively straightforward terms. CP 109-111. By August 22, 2016, Paula Steven began to threaten Schroader with a bar complaint. CP 120-124. By September 13, 2016, Steven convinced another attorney, Alan Ruder, to attempt to get the CR2A agreement set aside, whereupon he filed a Motion to Vacate. CP 126. The Motion to Vacate was based entirely on the false premise that Steven did not understand the terms of the settlement agreement, and that Schroader told her she could still bring a retaliation claim after signing the settlement agreement. CP 223, 225-234, 236-238. The court rejected these assertions and ruled in favor of FREO. CP 240-241, 146-148. In its ruling, the Court found that Steven's lease expired on January 31, 2016, after which Steven was in a month-to-month tenancy, and that, after discussing settlement terms, FREO and Steven entered into a settlement agreement. CP 75-78. The Court held that the CR2A agreement was to remain in effect, and, as such, Steven was guilty of unlawful detainer. CP 75-78, 146-148.

When she failed to convince the court that Schroader did not competently represent her, she filed a complaint against Schroader with the Washington State Bar Association ("WSBA") on October 13, 2016. CP 243-244. The WSBA dismissed her grievance on October 25, 2016. CP 246. Paula Steven requested a review of the dismissal of her grievance, and the dismissal was affirmed on January 19, 2017. CP 155. Steven also

filed *five* additional bar grievances against *every single attorney* involved in the unlawful-detainer action: Gregory Magee, Tiffany Broberg of FREO, and Dean von Kallenbach, Hunter Abell, and Daniel Volleth of Williams Kastner. All grievances were summarily dismissed.

By April 24, 2017, Dennis Schroader was forced file a small-claims case against Paula Steven because she continued to demand he return the entirety of her retainer, rather than just the unused sums that he had already returned in accordance with the retainer agreement. CP 157, 159, 161, 163-164, 166, 168, 187, 189-190. Mediation for the small-claims action took place on June 27, 2017, and failed, with trial subsequently set for November 13, 2017. CP 170-174. At trial, the court ruled that Schroader was entitled to keep his attorney's fees. Schroader was awarded \$2,000, split between \$1,829.72 in principal and \$170.28 in sanctions against Paula Steven. CP 176.

After Schroader prevailed on his small-claims action, Steven turned back to her bar complaints. Her campaign of harassment became so severe, with her insisting on an appeal so often, that on November 30, 2017, Douglas Ende, Chief Disciplinary Counsel, told her the WSBA would no longer be responding to *any* of her correspondence regarding the complaint against Schroader that was dismissed. CP 248.

After the WSBA cut off telephone communication with Steven on October 30, 2017, she then began to target Schroader's business. CP 250-251. On October 31, 2017, she decided to "inform" on Schroader to the

Washington Department of Labor & Industries. CP 253-255. This complaint resulted in an audit of Schroader Law, PLLC. Once that avenue reached a dead end, she returned to complaining about her results directly to Schroader. From the date of her settlement with FREO Washington, LLC, until the date this complaint was filed, Steven repeatedly accused Schroader of legal malpractice and threatened him with a legal malpractice suit *eleven* times.

Steven finally filed her baseless complaint on July 15, 2019. Schroader filed a summary judgment motion on a number of grounds, including *res judicata*, breach of duty and causation. The motion was granted in whole. Steven then appealed the decision.

IV. ARGUMENT

The instant legal malpractice claim has a number of fatal flaws, but the most glaring is that there is no evidence before the court that if Paula Steven had been able to keep her "retaliation" claim against FREO, that she would have won it. That lack of evidence establishes a causation defense appropriate for summary judgment, but it also demonstrates that Schroader's advice to accept the settlement was sound (*e.g.*, taking the benefits of the settlement in exchange for waiving a worthless claim is assuredly a good idea). Of course, two of the most pivotal issues present in the case—whether Steven understood the CR2A when she agreed to it, and Schroader's entitlement to fees for representing her—cannot even be

adjudicated in this court, because they are already subject to final judgment.

A. Even if Every Allegation Were Not Barred by Issue Preclusion and Was Legally Tenable, this Case Would Fail because Paula Steven Has Not Demonstrated She Would Have Obtained a Better Result but for Dennis Schroader's Allegedly Defective Advice

The simplest grounds for affirmation comes from the fact that Paula Steven has made no real attempt to raise a triable issue of fact as to causation. This reason is enough by itself to warrant affirmation of the trial court's summary judgment.

The standard for proving a malpractice claim in Washington is well-settled: “to prove legal malpractice, four elements must be met: (1) there is an attorney-client relationship giving rise to a duty of care owed by the lawyer; (2) there is an act or omission breaching that duty of care; (3) this breach damages the client; and (4) the breach is the proximate cause of the client's damages.” *Bullard v. Bailey*, 91 Wn. App. 750, 754-55 (1998).

Legal malpractice effectively requires “a trial within a trial on the causation element,” because the trier of fact “must decide if the underlying cause of action would have resulted in a favorable verdict for the client; *only* then is the suit against the attorney viable.” *Slack v. Luke*, 192 Wn. App. 909, 916, 307 P.3d 49, 54 (2016). “When the legal malpractice

defendant presents evidence that the underlying action was without merit, the plaintiff must establish that her underlying case would survive a motion for summary judgement.” *Slack v. Luke* 192 Wn. App. at 919, 307 P.3d 55 (2016). Such a requirement is logical because “there is no reason to require a useless trial in a malpractice action involving a meritless underlying case.” *Id.*

Here, Steven's claims against FREO were not viable. While she has utterly failed to expound on the substance of those claims at every level of this case other than to call it a "retaliatory eviction," Schroader provided substantial analysis in the trial court as to why her action was never going to succeed. In short, Steven's tenancy was terminated before any of her alleged acts, and she was staying in the home only because she expressed interest in purchasing it. Also, there has been no evidence to suggest that FREO's stated reason for evicting her—that they were selling *all* of their Washington properties—was false. It is Steven's job to present a claim, with evidence creating a triable issue of fact, that she could have won at trial. Only then is the result of that claim compared to the settlement Schroader recommended she enter into—even assuming that *recommendation was faulty*—to see if she suffered harm. But Steven has never put forth a coherent theory, with evidentiary support, of a viable claim against FREO that she lost with the settlement. So her claim against Schroader fails for lack of causation, just as the trial court found.

On appeal, Steven offers literally no argument specific to this point other than the assertion that Schroader's advice caused Steven to enter into the CR2A agreement (Appellant's Br. 39) and that she "is seeking damages in the form of loss of what Steven, would have been awarded in the retaliation lawsuit, eviction costs, rent increase cost, anticipatory breach, punitive and tremble [sic] damages, and other foreseeable costs..." (Appellant's Br. 40). But that is the whole point—if Steven was never going to win the retaliation lawsuit, then she "lost" none of those things. And she does not offer the appellate court—just like she did not offer the trial court—even an explanation of how she was going to get those damages, much less win the retaliatory-eviction lawsuit.

The fact is that Steven was not going to win that lawsuit; it was frivolous, and Schroader was correct to suggest that she settle it in exchange for more time to vacate the residence and payment of the judgment. Steven has presented neither a theory nor evidentiary support for an alternative. Accordingly, the motion for summary judgment order should be affirmed.

B. The Gravamen of this Case Is Barred by Issue Preclusion

While Steven makes a significant point of discussing what she wanted to and couldn't litigate in prior litigation, she fails to accept what she *did* litigate. For example, she *did* litigate the point that her accepting of the CR2A was void because Dennis Schroader had provided her

erroneous advice about what it meant. Even assuming for a moment that is true—it isn't—the court already found that the CR2A was knowingly signed. To now allow a case to proceed that would depend on it *not* be knowingly signed is the very concern issue preclusion is intended to prevent—inconsistent results.

The same is true for her request to disgorge fees from Dennis Schroader. Schroader went to small-claims court, and was awarded \$2,000, split between \$1,829.72 in principal and \$170.28 in sanctions against Paula Steven. CP 176. That decision became final. No other court should review the amount of fees due Schroader, as doing so would be a clear second-guessing of Judge Lindstrom's decision outside the appellate process. That, again, is what the finality of issues is intended to prevent.

C. And, Steven has Failed to Demonstrate any Breach of Duty by Schroader

Steven does not allege—or brief—that Schroader breached any duty to her sounding in either negligence or breach of fiduciary duty. Indeed, Steven does not even assign error to any finding that she failed to prove any duty had been breached. (Appellant's Br. 1, A 1-2.) Accordingly, all such arguments are deemed waived. *McAndrews Group, Ltd. v. Ehmke*, 121 Wn. App. 759, 765 (2004).

Instead, Steven briefs whether or not she needed an expert to make a breach-of-duty argument. As she correctly states, an expert is not necessary on breach of fiduciary duty/Rules of Professional Conduct

violations. (Appellant's Br. 43.) This is a correct statement of law, but Steven then provides no analysis for how Schroader *did* breach any Rules of Professional Conduct. Schroader briefed that issue substantively below, but given that it is not briefed—and waived—here, Schroader will not brief it again.

Steven neither argues that the breach of a negligence duty can be made without an expert, nor explains how she so proved below. The complaint and subsequent pleadings make it difficult to determine exactly what Schroader is alleged to have done wrong, but at core Steven appears to allege that Schroader should not have advised her to sign the settlement agreement at issue. As noted above, there was no harm to signing the agreement, and indeed it bought her a longer tenancy than not signing it, presenting a question as to whether a reasonable attorney in Schroader's position would have advised Steven to settle the litigation with that agreement.

In a case with an arguable legal decision made by counsel, a plaintiff must present expert testimony in order to prove a breach of duty in a legal-malpractice case. *Geer v. Tonnon*, 137 Wn. App. 838, 851 (2007). This case—where a lawyer is giving advice comparing a settlement to the efficacy of proceeding with litigation—is no different. Yet Steven has failed to present expert testimony.

And at a finer level, regarding the duty of a lawyer to explain the contents of a settlement agreement to a very experienced litigant, it is

worth noting that the language of the settlement agreement itself is not ambiguous: “the parties agree that this settlement *resolves all disputes and claims, known or unknown*, that exist or may exist concerning Steven’s rental of the property.” CP 104-107. Steven allegedly believed that this language, which she read and signed, meant it did not resolve her claim for retaliatory eviction from the property. Such an argument defies the express content of the document, but it also defies common sense. Yet Steven presents no expert witness to illustrate how a lawyer has a duty to explain obvious language to a client in these circumstances. That failure is one more hole in the claim supporting the order on summary judgment.

D. The Consumer Protection Action Fails for Lack of a Public-Interest Element

Steven does not even attempt to demonstrate a claim that meets the definition of a CPA claim, instead pointing to a Workers' Compensation audit that has nothing to do with her. In order to prevail on a claim under the CPA, a plaintiff must prove (1) an unfair or deceptive act or practice (2) occurring in trade or commerce (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784–85, 719 P.2d 531 (1986). Although a claimant may establish the first elements of a CPA claim as a result of a *per se* violation, all five elements “must be established ... in order to [to] prevail under a private CPA action.” *Id.*

The only part of Steven's brief that addresses the issue is the assertion that the retainer agreement has an hourly rate for a paralegal, who Steven contends Schroader was paying "on a piecework basis." (Appellant's Br. 41). Setting aside the fact that Steven never alleges to have actually been billed for the paralegal's time, and that she never cites her assertion that Schroader paid the paralegal on a "piecework basis," the real question is: so what? As far as Steven is concerned, if the paralegal performed work on Steven's engagement—which is not even alleged, much less supported by a citation to the record—and Schroader billed Steven for those hours at the agreed-upon rate, there was neither a deceptive act, nor did the way Schroader compensated the paralegal cause any harm to Steven. The fact that Steven uses hearsay evidence to suggest that Schroader misclassified employees for workers' compensation purposes is irrelevant to Steven, and she has no standing to bring such a claim (not to mention the entity that did have such standing did bring the claim, and resolved it).

Steven fails to show a deceptive act, fails to show potential harm to the public, and fails to show any harm to her. Therefore, the summary judgment on the CPA claim was properly granted.

V. CONCLUSION

This appeal fails as a matter of fact, but it also fails because Steven has not met her burden of briefing—with citations and evidentiary

support—that the trial court was in error. Indeed, as the trial court correctly pointed out, it could rest its decision on issue preclusion, but even if issue preclusion were not enough to terminate the entire case, issues like no breach of duty or lack of causation would allow for summary judgment. Steven fails to even brief some of these issues, leaving a number of legally sound reasons before the court for affirming the trial court's summary-judgment motion. And even if she had briefed them, the record before this court demonstrates that the trial court was correct in summarily adjudicating this case. Accordingly, Schroader respectfully requests that the decision be affirmed in full.

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DATED:

September 2, 2020 By: /s/Gregor A. Hensrude
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