

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DOLMAYAN, AN INDIVIDUAL,
Appellant,
vs.
DAVID E. DOXEY, AN INDIVIDUAL;
DAVID J. WINTERTON, AN
INDIVIDUAL; AND DAVID J.
WINTERTON & ASSOCIATES, LTD., A
NEVADA PROFESSIONAL
CORPORATION,
Respondents.

No. 64089

FILED

SEP 10 2015

THOMAS K. LINDENMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a legal malpractice action. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Respondent David E. Doxey, who worked for respondent David J. Winterton & Associates, LTD., represented appellant John Dolmayan in a matter concerning a roughly \$2 million judgment entered against Dolmayan and in favor of a bank following a loan default. The loan was secured by a collection of comic books, toys, and action figures. In that action, the district court entered an order appointing a receiver, and it later approved the receiver's proposal to liquidate the collection by selling it at a public online auction. Following the auction, Dolmayan signed a waiver releasing the bank and receiver from liability related to the collection and he was allowed to take possession of personal property. Dolmayan filed the underlying action alleging legal malpractice and alter ego and contending that respondents failed to communicate the receiver's requests that Dolmayan, who had collected and sold comics for over 20 years, assist in the marketing, pricing, and sale of the collection to

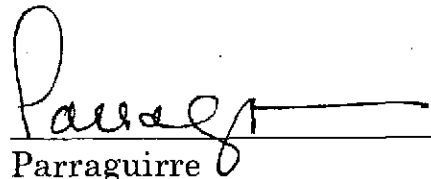
maximize revenues and that the auction was conducted without appropriate advertising expertise. He also alleged respondents failed to advise him about the release, including that it precluded him from seeking damages against the bank or receiver. The district court granted summary judgment in respondents' favor because Dolmayan did not disclose an expert witness who could attest to breach of the standard of care or provide additional evidence to support his allegations, including that but for respondents' negligence, he would have obtained a more favorable result in the judgment action and that he suffered damages. Dolmayan appeals.


Having considered the briefs and record on appeal, we conclude that the district court correctly found that expert testimony was required for Dolmayan to establish the elements of his legal malpractice claim, including breach of the standard of care, causation, and damages. *Allyn v. McDonald*, 112 Nev. 68, 71-72, 910 P.2d 263, 266 (1996) (explaining that "expert evidence is generally required in a legal malpractice case to establish the attorney's breach of care" and noting that expert testimony also may be required on the causation element); *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 667-68, 765 P.2d 184, 185 (1988) (legal malpractice is grounded on "an attorney-client relationship, a duty owed to the client by the attorney, breach of that duty, and the breach as proximate cause of the client's damages").

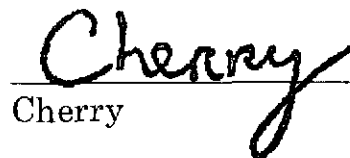
Here, Dolmayan did not allege and the record does not support that respondents did nothing in representing him in the judgment proceedings, such that breach would be obvious and thus not require expert testimony. *Allyn*, 112 Nev. at 71, 910 P.2d at 266 (recognizing an exception to the rule requiring expert opinion when the breach "is so

obvious that it may be determined by the court as a matter of law or is within the ordinary knowledge and experience of laymen"). Instead, Dolmayan alleged that respondents failed to adequately communicate with him and that but for that inadequate communication, gross sales would have been much greater and he would not have signed the release. Under the circumstances, expert opinion was necessary to establish the allegations central to Dolmayan's legal malpractice claim, including the adequacy of respondents' communication, whether the collection would have been sold by a different method had the receiver discussed the collection with Dolmayan, and whether that method would have yielded a greater return. *Id.* at 71-72, 910 P.2d at 266. Because Dolmayan did not disclose an expert witness before discovery closed, we perceive no error in the district court's summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Cherry

cc: Hon. Douglas Smith, District Judge
Israel Kunin, Settlement Judge
Callister & Associates
Morris Polich & Purdy, LLP/Las Vegas
Eighth District Court Clerk