

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MORRIS F. GRIFFIN,

Plaintiff and Appellant,

v.

ASHTON R. WATKINS,

Defendant and Respondent.

B283379

(Los Angeles County
Super. Ct. No. BC570739)

APPEAL from a judgment of the Superior Court of Los Angeles County, Deirdre Hill, Judge. Affirmed.

Morris F. Griffin, in pro. per., for Plaintiff and Appellant.

Ashton R. Watkins, in pro. per., for Defendant and Respondent.

Morris F. Griffin, in propria persona, appeals from the dismissal with prejudice of his legal malpractice action against Ashton R. Watkins entered after the trial court sustained without leave to amend Watkins' demurrer. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2009, Griffin, acting in propria persona, filed a lawsuit against Charles D. Adams and Los Angeles County. In November 2010, Watkins substituted in as counsel for Griffin. On December 16, 2011, the superior court entered judgment in favor of Adams and against Griffin.

On January 4, 2013, Griffin filed a complaint in federal district court against Watkins, alleging malpractice. On January 28, 2015, Griffin filed a first amended complaint (the operative complaint) against Watkins in Los Angeles Superior Court for malpractice, retaliation, intentional infliction of emotional distress, and punitive damages.¹ The complaint alleged in full: "From September 13, 2010 to November 2, 2011, Plaintiff received attorney misrepresentation; gross negligence; and malpractice that occurred by Mr. Ashton R. Watkins."

On February 21, 2017, Watkins demurred to the complaint on the grounds that Griffin's claims were time barred and that Griffin failed to state sufficient facts to establish liability. After a hearing, the trial

¹ Griffin amended the complaint several times until he filed a fourth amended complaint on July 27, 2016. However, the court struck all amended pleadings filed after the first amended complaint.

court sustained the demurrer without leave to amend. The court found that Griffin's claims were barred by the statute of limitations. The court further found that there is no common law cause of action "for 'retaliation' in the attorney-client context and punitive damages are a remedy, not an independent basis for liability." The court therefore sustained the demurrer without leave to amend and entered a judgment of dismissal with prejudice. This appeal followed.

DISCUSSION

Griffin's brief is difficult to understand and fails to comply with the requirement that "[a]n appellate brief 'should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as [forfeited], and pass it without consideration.' [Citation.]" [Citation.] It is not the function of this court to comb the record looking for the evidence or absence of evidence to support [a party's] argument. [Citations.] [Citations.]" (*Garcia v. Seacon Logix, Inc.* (2015) 238 Cal.App.4th 1476, 1489.)

Even if not forfeited, Griffin's claim that the trial court erred is unmeritorious. "We review the ruling sustaining the demurrer de novo, exercising independent judgment as to whether the complaint states a cause of action as a matter of law. [Citation.] We give the complaint a reasonable interpretation, assuming that all properly pleaded material facts are true, but not assuming the truth of contentions, deductions, or conclusions of law. [Citation.]" (*Kan v. Guild Mortgage Co.* (2014) 230 Cal.App.4th 736, 740.) "When a demurrer is sustained without leave to

amend, ‘we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]’ [Citation.] A plaintiff may show for the first time on appeal how amendment would cure the complaint’s defects. [Citation.]” (*Id.* at pp. 740-741.) It is the plaintiff’s burden to enumerate the facts he could add to cure existing defects in his pleading to establish a viable claim. (*Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 734.)

“To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the “gravamen” of the cause of action.’ [Citation.] The nature of the cause of action and the primary right involved, not the form or label of the cause of action or the relief demanded, determine which statute of limitations applies. [Citations.]” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 412.)

Code of Civil Procedure section 340.6, subdivision (a), provides that “[a]n action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission.”² In

² Further unspecified statutory references are to the Code of Civil Procedure.

addition, “section 340.6(a)’s time bar applies to claims whose merits necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services. In this context, a ‘professional obligation’ is an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the State Bar Rules of Professional Conduct.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1236–1237.)

Griffin’s complaint alleged only that “From September 13, 2010 to November 2, 2011, Plaintiff received attorney misrepresentation; gross negligence; and malpractice that occurred by Mr. Ashton R. Watkins.” Because Griffin made no factual allegations in his complaint, it is difficult to know the basis for his claims. Nonetheless, from this statement, we conclude that Griffin’s claims are based solely on Watkins’ provision of legal services and thus are subject to section 340.6’s one-year statute of limitations. Griffin’s claim concerned Watkins’ representation of him until November 2011, but he did not file his complaint until January 2015. The trial court properly found that Griffin’s claims were time barred.³

³ We also agree with the trial court that punitive damages are not an independent basis for liability. “In California, it is settled there is no separate cause of action for punitive damages. [Citation.] Instead, a claim for punitive damages is merely an additional remedy that is dependent on a viable cause of action for an underlying tort.

Griffin contends that the four-year statute of limitations for contract claims in section 337 applies to his claim because Watkins allegedly breached an attorney contract. However, “[i]n all cases other than actual fraud, whether the theory of liability is based on the breach of an oral or written contract, a tort, or a breach of a fiduciary duty, the one-year statutory period [for legal malpractice] applies. [Citation.]” (*Levin v. Graham & James* (1995) 37 Cal.App.4th 798, 805.)

Griffin contends that he set forth facts in his pleadings to support his allegations. However, in so arguing, he lists only his causes of action, citing malpractice and misrepresentation, retaliation, intentional infliction of emotional distress, and punitive damages. These are not factual allegations. In order to prove a reasonable possibility of amending his complaint to survive demurrer, Griffin must “clearly and specifically state “the legal basis for amendment, i.e., the elements of the cause of action,” as well as the “factual allegations that sufficiently state all required elements of that cause of action.” [Citation.]’ [Citation.]” (*Aghaji v. Bank of America, N.A.* (2016) 247 Cal.App.4th 1110, 1118–1119.) Griffin has failed to meet his burden.

[Citations.]” (*569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 430, fn. 3.)

DISPOSITION

The judgment is affirmed. Watkins is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.