

STATE OF MICHIGAN
COURT OF APPEALS

JACK GHANNAM,

Plaintiff-Appellant,

v

ART WEISS, SANDI SHARPE, and KATHY
GHANNAM,

Defendants-Appellees.

UNPUBLISHED

June 18, 2013

No. 310103

Oakland Circuit Court

LC No. 2012-125279-CZ

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, Jack Ghannam, appeals as of right the trial court order granting summary disposition to defendants, Art Weiss, Sandi Sharpe, and Kathy Ghannam. We affirm.

I. FACTUAL BACKGROUND

Plaintiff and his former spouse, defendant Kathy Ghannam, were involved in prior litigation pertaining to their divorce. Defendants Art Weiss and Sandi Sharpe were the lawyers representing defendant in that action. Plaintiff was dissatisfied with the judgment of divorce and filed an appeal in this Court. While that appeal was pending, plaintiff declared bankruptcy and the appeal was administratively closed. The appeal was later reopened, but was ultimately dismissed for “want of prosecution” as plaintiff “failed to ensure the timely filing of the transcript.”¹

Because plaintiff blamed defendants for the prior appeal being dismissed, he filed this instant action asserting claims for intentional infliction of emotional distress, breach of fiduciary duty, fraud, and civil conspiracy. Defendants moved for summary disposition under MCR 2.116(C)(6), (7), and (8), and the trial court granted the motion. Plaintiff now appeals.

¹ *Ghannam v Ghannam*, unpublished order of the Court of Appeals, entered February 9, 2012 (Docket No. 295791).

II. SUMMARY DISPOSITION

A. Standard of Review

“A trial court’s decision on a motion for summary disposition is reviewed de novo.” *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). “A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and permits dismissal of a claim if the opposing party has failed to state a claim on which relief can be granted.” *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253; 677 NW2d 45 (2003).² A court examines only the pleadings. *Id.* If the claims are clearly unenforceable as a matter of law, the motion should be granted. *Id.*

B. Intentional Infliction of Emotional Distress

In his complaint, plaintiff alleged count I of intentional infliction of severe emotional distress against defendants. “To establish a prima facie claim of intentional infliction of emotional distress, the plaintiff must present evidence of (1) the defendant’s extreme and outrageous conduct, (2) the defendant’s intent or recklessness, (3) causation, and (4) the severe emotional distress of the plaintiff.” *Dalley v Dykema Gossett*, 287 Mich App 296, 321; 788 NW2d 679 (2010) (quotation marks and citation omitted). As we have repeatedly recognized:

Liability for the intentional infliction of emotional distress has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. Accordingly, liability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. [*Lucas v Awaad*, 299 Mich App 345, 359; ___NW2d___ (2013) (quotation marks, brackets, and citation omitted).]

Whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous to permit recovery is generally a question of law for the court. *Lewis v LeGrow*, 258 Mich App 175, 197; 670 NW2d 675 (2003). But, if reasonable minds could differ on the subject then the issue becomes a question of fact for the jury. *Id.*

Under count I of the complaint, plaintiff repeatedly alleged that: “Defendants actions [sic], intended to prevent and conspire to prevent, the Plaintiff from pursuing his legal rights in an appeal before the Michigan Court of Appeals were extreme and outrageous, intended to cause

² Although the court did not specify under which subpart the motion for summary disposition was granted, it examined the allegations in support of plaintiff’s claims and determined that plaintiff failed to state a cognizable claim for relief. Moreover, even if the court relied on a different subpart, we can affirm summary disposition when appropriate under a different subpart. *Detroit News, Inc v Policemen & Firemen Ret Sys of City of Detroit*, 252 Mich App 59, 66; 651 NW2d 127 (2002). Thus, a review under MCR 2.116(C)(8) is appropriate.

the Defendant [sic] severe emotional distress.” However, plaintiff failed to identify the actions defendants engaged in that supposedly prevented plaintiff from pursuing his appeal.

In the general allegation section of the complaint, plaintiff claimed that it was the court reporters who refused to file his transcripts, refused to correct the defective notices unless plaintiff paid them off, and refused to accept payment when plaintiff attempted to pay with a debit or credit card. Of plaintiff’s litany of grievances set forth in the complaint, he alleged that defendants conspired with the court reporter “to refuse to allow the Plaintiff any method of delivering the check to [the court reporters], which would require them acknowledging, or signing for the receipt of the check, so they could deny ever receiving the check from the Plaintiff” and conspired “to prevent the filing of a proper Notice of Filing for the Plaintiff’s Appeal[.]”

Such vague and conclusory accusations of conspiracy are insufficient to sustain plaintiff’s claim. While plaintiff alleged that defendants “conspired” with the court reporters, he did not identify or explain what behavior supposedly constituted a conspiracy with the court reporters. “A complaint must contain a statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend” *Dalley*, 287 Mich App at 305 (quotation marks, citation, brackets omitted). Furthermore, “[c]onclusory statements, unsupported by factual allegations, are insufficient to state a cause of action.” *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). Because the complaint did not identify any actual conduct by defendants that prevented plaintiff from pursuing his appeal, plaintiff has failed to state a claim for intentional infliction of emotional distress. Summary disposition for count I was therefore proper pursuant to MCR 2.116(C)(8).

C. Fiduciary Duty

Plaintiff also alleged count II of breach of fiduciary duty against defendants for their alleged actions in preventing and conspiring to prevent plaintiff from pursuing his legal rights in the divorce appeal. “[A] fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another.” *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 43; 698 NW2d 900 (2005) (quotation marks and citation omitted). “When a fiduciary relationship exists, the fiduciary has a duty to act for the benefit of the principal regarding matters within the scope of the relationship.” *Id.*

While plaintiff alleged that defendants Weiss and Sharpe breached a fiduciary duty owed to him, plaintiff failed to demonstrate that any such fiduciary duty existed. Plaintiff acknowledged that defendants Weiss and Sharpe were the attorneys for defendant Kathy Ghannam. An attorney does not owe a duty, fiduciary or otherwise, to his client’s adversary. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 261; 571 NW2d 716 (1997); see also *Prentis Family Found*, 266 Mich App at 44 (“the placement of trust, confidence, and reliance must be reasonable, and placement is unreasonable if the interests of the client and nonclient are adverse or even potentially adverse.”). Therefore, plaintiff failed to state a claim for relief, and the trial court properly dismissed count II pursuant to MCR 2.116(C)(8).

D. Fraud

Next, plaintiff alleged count III fraud against defendants. “[I]n order to establish an actionable fraud claim, a plaintiff must show” the following:

(1) that defendant made a material representation; (2) that it was false; (3) that when he made it he knew it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Lawrence M Clarke, Inc v Richco Constr, Inc*, 489 Mich 265, 283-284; 803 NW2d 151 (2011) (quotation marks, citation, and brackets omitted).]

Here, plaintiff repeatedly alleged in his complaint that defendants’ “actions” in conspiring to prevent plaintiff from exercising his legal right to appeal were “intended to cause others to rely on these representations.” Plaintiff further alleged that defendants’ “actions . . . were false when made to others,” “were made recklessly,” and “were relied on by others[.]” Yet, plaintiff’s claim is premised solely on false representations that defendants allegedly made to *others*, with the intent that those others rely on the misrepresentations. “An allegation of fraud based on misrepresentations made to a third party does not constitute a valid fraud claim.” *Int’l Brotherhood of Elec Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 447; 543 NW2d 25 (1995). Therefore, plaintiff failed to state a claim for fraud, and the trial court properly dismissed count III under MCR 2.116(C)(8).

E. Conspiracy

Lastly, plaintiff alleged count IV conspiracy against defendants. “A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means.” *Advocacy Org for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365, 384; 670 NW2d 569, 580 (2003) (quotation marks and citation omitted). “However, a claim for civil conspiracy may not exist in the air; rather, it is necessary to prove a separate, actionable tort.” *Advocacy Org for Patients & Providers*, 257 Mich App at 384 (quotation marks and citation omitted). As discussed above, plaintiff failed to allege a cause of action for intentional infliction of emotional distress, breach of fiduciary duty, or fraud. Plaintiff failed to articulate any behavior on the part of defendants that caused the court reporters to file defective notices, to demand payment to correct the defective notices, or to refuse to accept payment from plaintiff. Thus, plaintiff has failed to establish any actionable tort, and has therefore failed to state a claim for conspiracy. Plaintiff’s claim for conspiracy was properly dismissed under MCR 2.116(C)(8).

III. CONCLUSION

Summary disposition was properly granted to defendants for plaintiff's claims of intentional infliction of emotional distress, breach of fiduciary duty, fraud, and conspiracy. We have reviewed any remaining arguments in plaintiff's brief and found them to be without merit. We affirm.³

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

³ While defendants request sanctions for filing a frivolous action under MCR 2.114, this issue is not preserved for appellate review because it was never addressed or decided by the trial court. See *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005).