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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2167**

Amanda Mazzocchi,
Appellant,

vs.

Goldstein Law Office, P. A.,
Respondent.

**Filed September 7, 2010
Affirmed
Lansing, Judge**

Hennepin County District Court
File No. 27-CV-09-5275

Craig A. Goudy, Cox, Goudy, McNulty & Wallace, P.L.L.P., Minneapolis, Minnesota
(for appellant)

Charles E. Jones, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

Amanda Mazzocchi appeals from the district court's dismissal of her legal-malpractice claim against the attorneys who negotiated her marital-termination

agreement. Mazzocchi argues that her responses to the defending attorneys' interrogatories satisfied the statutory requirement of the expert-disclosure affidavit required by Minn. Stat. § 544.42, subds. 2, 4 (2008), and that even if they did not, she was entitled to sixty days to cure any deficiencies. Because Mazzocchi's responses did not meet the minimum requirements for the affidavit of expert disclosure, we affirm.

F A C T S

In April 2004 Amanda Mazzocchi retained attorneys from Goldstein Law Offices to represent her in her marital-dissolution action. Mazzocchi and Wesley Bertch, her husband, agreed to split their assets equally through a marital-termination agreement (MTA). Mazzocchi knew that Bertch owned 12,000 stock options from Life Time Fitness, his employer, which would vest in three to four years, and that Life Time was planning an initial public offering during the summer of 2004. Mazzocchi, her attorney, and Bertch met in early June 2004 to discuss the MTA, including the division of assets. At the meeting, Bertch said that the options were rumored to be worth \$33,600 after taxes.

The initial draft of the MTA proposed splitting Bertch's investments with Mazzocchi, but in the final agreement, Bertch retained ownership of the assets and made an additional property settlement payment to Mazzocchi that included half the estimated value of the stock options. The MTA also resolved custody, child support, spousal maintenance, and division of real estate and debts, among other issues. Mazzocchi and Bertch signed the MTA on June 29, 2004. Life Time issued its initial public offering the

same day. On October 8, 2004, the district court entered a judgment and decree that incorporated the terms of the MTA and dissolved the marriage.

In August 2005, Mazzocchi learned that Bertch had purchased a new home worth approximately \$700,000 with the proceeds of some of his stock options. The record indicates that after all the stock options had vested, their value was \$185,907. In February 2008 Mazzocchi sued Goldstein Law Offices for malpractice. She alleged that her attorneys were negligent in valuing the stock options and advising her on how to ensure that she was compensated for half their value. Mazzocchi served an affidavit of expert review on Goldstein Law Offices as required by Minn. Stat. § 544.42, subds. 2, 3 (2008). In April 2008 Mazzocchi answered Goldstein Law Offices' interrogatories, which included a request to identify any testifying expert and to describe the content of the expert's testimony. Mazzocchi's response to this question referred to her other answers, her complaint, and enclosed documents.

Goldstein Law Offices moved for dismissal on the ground that Mazzocchi failed to provide the expert disclosure affidavit required by Minn. Stat. § 544.42, subds. 2, 4 (2008). On July 20, 2009, the district court concluded that Mazzocchi's interrogatory responses did not satisfy the statutory requirement, but the district court allowed Mazzocchi to correct the deficiencies within sixty days based on the safe-harbor provision in the statute. Goldstein Law Offices requested permission to move for reconsideration of the district court's order and judgment, and the district court granted the request. Goldstein Law Offices argued that Mazzocchi was not entitled to the benefit of the sixty-day, safe-harbor provision because her responses to the interrogatories failed

to meet the minimum requirements established by the supreme court in *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 214 (Minn. 2007).

Mazzocchi submitted supplemental answers to the interrogatories on September 18, 2009. But on September 30, the district court amended its July 20 order and judgment to eliminate the sixty-day period it had granted Mazzocchi, and it dismissed her claims with prejudice.

Mazzocchi appeals the judgment of dismissal, arguing that her responses to the interrogatories satisfied the statutory requirements for an expert-disclosure affidavit; that even if they did not, she was entitled to the sixty-day period to cure the deficiencies; and that the district court erred in allowing Goldstein Law Offices to move for reconsideration of the July 20 order and judgment.

D E C I S I O N

“A district court’s decision to dismiss a malpractice claim for noncompliance with statutory requirements [for] submission of expert affidavits will be reversed only upon an abuse of discretion.” *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 468 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006); *see also Brown-Wilbert, Inc.*, 732 N.W.2d at 215 (reviewing dismissal of malpractice action for abuse of discretion). But the applicability and construction of a statute are questions of law that we review *de novo*. *Lake Superior Ctr. Auth.*, 715 N.W.2d at 468.

To bring a suit alleging professional malpractice or negligence, a plaintiff must serve two affidavits on the defendants: an affidavit of expert review and an affidavit of expert disclosure. Minn. Stat. § 544.42, subs. 2-4. Mazzocchi served an affidavit of

expert review and her compliance with that requirement is not at issue in this appeal. Goldstein Law Offices argues that she failed to provide an affidavit of expert disclosure.

The affidavit of expert disclosure must be served on the defendants within 180 days of commencement of the action. *Id.*, subd. 2(2). The affidavit “must be signed by the party’s attorney and state the identity of each person whom the attorney expects to call as an expert witness . . . , the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.” *Id.*, subd. 4. Answers to interrogatories can satisfy this requirement if they include the required information. *Id.*

In a recent case interpreting the expert-disclosure provision, the Minnesota Supreme Court concluded that to meet the minimum standards set out in the statute, the affidavit must provide meaningful information that “(1) identif[ies] each person the attorney expects to call as an expert; (2) describe[s] the expert’s opinion on the applicable standard of care, as recognized by the professional community; (3) explain[s] the expert’s opinion that the defendant departed from that standard; and (4) summarize[s] the expert’s opinion that the defendant’s departure was a direct cause of the plaintiff’s injuries.” *Brown-Wilbert, Inc.*, 732 N.W.2d at 219. The supreme court stated that “answers to interrogatories that merely repeat or incorporate the *attorney’s* conclusory allegations about [professional] malpractice are not sufficient to meet the minimum standards for an affidavit of expert disclosure.” *Id.* A plaintiff who does not meet these minimum standards is not entitled to notice of any deficiencies or the additional sixty days to remedy the problems. *Id.* at 215-16. In providing these standards, the supreme court

sought to balance the dual legislative objectives of providing for the early dismissal of frivolous claims and avoiding dismissal of meritorious claims over minor technicalities. *Id.* at 217.

Mazzocchi argues that her answers to Goldstein Law Offices' interrogatories satisfied the statutory requirement. Goldstein Law Offices' interrogatories asked Mazzocchi to identify each expert she expected to call to testify at trial, the facts on which they based their opinions, and the substance of the opinions they are expected to express. Mazzocchi answered, "Experts will be disclosed in accordance with the [district] court's order for trial. However, Patrice M. Rico, Esq. is expected to testify as an expert. See plaintiff's answer to interrogatories number[ed] 1, 2, and 16, the documents produced herewith[.]"

Mazzocchi's response to interrogatory 1 stated that Rico had knowledge of paragraphs five through eight of the complaint and listed several documents given to Rico. The referenced paragraphs of the complaint state that the stock options were valued at \$33,600 for the purposes of the MTA, that they were much more valuable than this amount, that Goldstein Law Offices accepted the value given by Bertch without independent review, that Goldstein attorneys did not propose an equal division of the value of these assets, that Goldstein Law Offices did not "meet the standard of reasonable care of a specialist in the area of family law required under the circumstances," and that Mazzocchi suffered damages in the form of an "inadequate and unfair" property settlement as a result of the negligence.

Interrogatory 2 asked what facts support the allegations that Goldstein Law Offices was negligent and the identity of every person who has knowledge of these facts. Mazzocchi's answer summarized the facts that were known about the stock options at the time the MTA was drafted and negotiated, the subsequent market value of the options, and the fact that Goldstein's files did not reveal any investigation into the value of the options and Mazzocchi did not recall any follow-up. Mazzocchi then stated that Goldstein Law Offices was negligent in failing to pursue discovery or investigate the value of the options; failing to advise Mazzocchi of certain procedures and methods for valuing stock options in the course of litigation; and failing to monitor Life Time Fitness's initial public offering. Mazzocchi concluded that the negligence of Goldstein Law Offices prevented Mazzocchi from "obtaining an appropriate valuation of the stock options" through an agreement or court order and that she suffered damages in the amount included in a separate document.

The final interrogatory referred to in Mazzocchi's expert-disclosure response asked which terms of the MTA were "inadequate and unfair" and what terms should have been used instead. Mazzocchi stated that the stock options were undervalued and resulted in an unfair property settlement; that the options that vested before the court entered judgment should have been divided equally; and that the court should have retained jurisdiction over the options that vested after entry of judgment and determined a division of property after they vested.

Mazzocchi's interrogatory responses met the first requirement of *Brown-Wilbert* to disclose the name of a testifying expert. But the interrogatory responses and the

incorporated portions of the complaint do not state the standard of care that the expert believes applies to this case. Paragraph 7 of the complaint states that attorneys from Goldstein Law Offices “failed to meet the standard of reasonable care of a specialist in the area of family law under the circumstances” and the other interrogatory responses state only Mazzocchi’s or her attorneys’ conclusions about how the Goldstein attorneys were negligent. The *Brown-Wilbert* court, however, specifically rejected the incorporation of an attorney’s conclusory allegations, holding that it is not a means of satisfying the expert disclosure requirement. 732 N.W.2d at 219. And Mazzocchi’s complaint does not state the appropriate standard of care in the context of a settlement agreement that resolves numerous issues and must also take into account Mazzocchi’s nonlegal considerations in reaching an agreement. The information provided by Mazzocchi on the expert’s opinion of the applicable standard of care is too vague to show that her malpractice claim is meritorious.

Brown-Wilbert also requires plaintiffs to explain the expert’s opinion that the defendant failed to meet the standard of care and that the departure caused the plaintiff’s injuries. *Id.* The court explained that the affidavit should “set out how the *expert* will use th[e] facts to arrive at opinions of malpractice and causation.” *Id.* (quoting *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 192 (Minn. 1990)). Mazzocchi’s responses do not explain what the expert believes should have happened in the course of the settlement and why the expert believes Mazzocchi could have received a more favorable settlement in the context of all of the terms being negotiated. Instead, the response incorporates a conclusory statement on causation and general statements that

Goldstein attorneys were negligent in not investigating the value further. Without fact-based details on the expert's opinion—not just the conclusory opinion of Mazzocchi's lawyer—Mazzocchi's interrogatory responses fail to distinguish her complaint from frivolous claims.

Finally, Mazzocchi argues that the district court erred in allowing Goldstein Law Offices to move for reconsideration of the July 20 order. The district court decided to reconsider its judgment and to amend it by removing the provision that allowed Mazzocchi sixty days to correct the deficiencies in her expert-disclosure affidavit.

A motion for reconsideration is allowed only “by express permission of the court, which will be granted only upon a showing of compelling circumstances.” Minn. R. Gen. Pract. 115.11. The district court has the discretion to reconsider its previous decision and will likely do so “only where intervening legal developments have occurred . . . or where the earlier decision is palpably wrong in some respect.” *Id.*, 1997 advisory cmt. Goldstein Law Offices argued that, under *Brown-Wilbert*, only those parties whose expert-disclosure affidavits meet the minimum standards can be afforded sixty days to correct any technical deficiencies. Consequently, allowing sixty days despite Mazzocchi's failure to meet these minimum standards was inconsistent with the holding of *Brown-Wilbert*. The district court acted within its discretion when it reconsidered its decision in order to align its legal conclusions with supreme court caselaw.

Because Mazzocchi's interrogatory responses did not meet the minimum standards set forth in *Brown-Wilbert* and Minn. Stat. § 544.42, subd. 4, and the district court was

within its discretion to reconsider its earlier judgment in the face of legal error, the district court did not abuse its discretion in dismissing Mazzocchi's claim with prejudice.

In light of our decision to affirm the district court's dismissal of Mazzocchi's claim, we need not reach Goldstein Law Offices' alternative argument that it was entitled to summary judgment.

Affirmed.