STATE OF MAINE
SUPEREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-25-570

JEFFREY HASKELL,

Appellant,

v.

ROBERT KINE, ESQ., et al,

Appellees.

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT
DOCKET NO. BCD-CIV-2023-00032
(CUMBERLAND)

BRIEF OF APPELLANT JEFFREY HASKELL

Jeffrey Bennett, Esq.
Brooke J. Bailey, Esq.
Attorneys for Appellant
Legal-Ease, LLC
Two City Center, 4th Floor
Portland, Maine 04101
service@legal-ease.com

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the trial court erred by granting summary judgment after expressly finding that Plaintiff suffered emotional distress and that Defendant owed and violated fiduciary and professional ethical duties, by resolving the severity of the distress and the egregiousness of the conduct as matters of law rather than determining whether reasonable factfinders could differ. (App. 14-25).

INTRODUCTION

This appeal seeks review of the entry of summary judgment in favor of Defendant, Robert Kline, Esq., an attorney whom the trial court expressly found owed fiduciary duties to Plaintiff, breached those duties, and violated the Maine Rules of Professional Conduct. (App. 15, 18-20). The court further acknowledged that Plaintiff suffered emotional distress that was real and "more than minor." (App. 18). Nevertheless, the court concluded, at the summary judgment stage, that the emotional distress was not sufficiently severe and that the attorney's misconduct was not sufficiently egregious to permit recovery as a matter of law. (App. 14-25).

In doing so, the court exceeded the limited role of summary judgment. Rather than determining whether the evidence was sufficient to permit reasonable jurors to find severe emotional distress and/or extreme or outrageous conduct, the court weighed the degree of Plaintiff's suffering and the seriousness of Defendant's misconduct and resolved those questions itself. Maine law is more limited at the Rule 56 stage.

This case presents both a straightforward appeal and an opportunity to clarify the relationship between attorney ethics and civil liability. When a court determines that an attorney owed and violated the highest duties imposed by law of loyalty, fidelity, and candor, and the harm to the client flows directly from the breach, the assessment of severity and egregiousness ordinarily must be reserved for the jury.

Because genuine issues of material fact exist, summary judgment must be vacated and the case remanded for trial.

STATEMENT OF THE FACTS

Plaintiff Jeffrey Haskell retained Defendant, Robert Kline, Esq. to represent him in litigation arising from his employment. At the same time, Defendant represented Haskell's employer in matters directly adverse to Haskell's interests. Defendant failed to disclose his conflicts of interest, failed to obtain informed consent, and continued to represent the employer on matters adverse to Haskell while also representing Haskell.[1] (App. 165-197).

[1] Of significance, Kline secretly consulted with Haskell's employer on terminating Haskell's employment without informing Haskell and while representing Haskell. (App. 165-197 generally, and specifically 181-185 and 191-197).

For purposes of summary judgment, the trial court found that there was no dispute that Defendant owed fiduciary duties to Plaintiff and that Plaintiff generated a *prima facie* case that Defendant breached those duties. (App. 15, n.1). The court further determined that Defendant violated professional ethical rules governing conflicts of interest and attorney fidelity, loyalty and candor. (App. 15, 18-20).

The record reflects that Defendant withheld material information from Haskell, took litigation positions adverse to Haskell and favorable to Haskell's employer in the very same civil action in which Defendant represented Haskell, and more than once aligned himself with the employer's interests against Haskell. (App. 165-197). The trial court acknowledged that, if a jury accepted Plaintiff's version of events, "a jury could conclude that Plaintiff had reason to believe that Defendant worked against Plaintiff while Defendant was still Plaintiff's attorney and abandoned him during the litigation." (App. 19).

As a result of Defendant's conduct, Plaintiff suffered severe emotional distress. Plaintiff testified to depression, anxiety, shame, sleep disturbance, physical symptoms, and strain on his marriage. (App. 186-187, 198-206). His wife submitted an affidavit corroborating observable changes in Plaintiff's emotional condition. (App. 207-209). The court acknowledged that Plaintiff's emotional distress "impacted his life and is more than minor." (App. 18).

Despite these findings, the court concluded on a paper record that Plaintiff's emotional distress was not "so severe that no reasonable person could be expected to endure it" and that Defendant's ethical violations were not sufficiently egregious to permit recovery as a matter of law. (App. 18). Summary judgment entered on all remaining claims. (App. 25).

SUMMARY OF THE ARGUMENT

The trial court erred by granting summary judgment after expressly finding evidence of emotional distress and professional misconduct. Rather than performing the limited gatekeeping function contemplated by Maine law, the trial court went beyond its gatekeeping role.

First, the trial court misapplied *Garland v. Roy* and *Deane v. Central Maine Power Co.* by conflating threshold screening with merits determination. Once the trial court determined that Plaintiff suffered emotional distress and that Defendant violated the highest fiduciary and ethical duties imposed by law, its gatekeeping role was complete. The severity of that distress and the egregiousness of the lawyer's misconduct were questions for the jury.

Second, the trial court improperly elevated the standard for extreme and outrageous conduct by relying on Restatement examples involving threats to life or liberty, effectively imposing a requirement that emotional distress claims arise only from terror or physical danger. Maine law does not impose such a rigid standard, particularly in the context of fiduciary betrayal.[2]

Third, the trial court misapplied *Lyman v. Huber* by treating the absence of medical treatment or expert testimony as a practical prerequisite to recovery. Maine precedent makes clear that emotional distress may be proven through lay testimony and inferred from the nature of the defendant's conduct.

Finally, the cases cited by the trial court as examples of non-egregious conduct involved ordinary commercial or political disputes and did not involve serious ethical violations within a fiduciary attorney-client relationship.

Because reasonable jurors could differ on the issues of severity and egregiousness, summary judgment was improper.

ARGUMENT

I. The Trial Court Misapplied *Garland* and *Deane* by Weighing Severity and Egregiousness After Finding Evidence of Both

The trial court's decision rests on Maine precedent addressing emotional distress and the court's gatekeeping role. Properly understood, those cases do not support summary judgment here. Instead, they confirm that once threshold evidence of

[2] See, e.g., *Northern Mattress Co., Inc. v. Bernstein Shur Sawyer & Nelson*, BCD-WB-CV-09-07, Order on Cross-Motions for Summary Judgment (Me. Bus. & Consumer Ct., May 3, 2010) (Attorneys found liable for assisting one client with terminating the employment of its other client).

severe emotional distress and wrongful conduct exists, the degree of severity and egregiousness is a question for the jury.

In *Garland v. Roy*, the Law Court explained that emotional distress damages in attorney-misconduct cases require egregious conduct and severe distress, and that the severity of the distress may be inferred from the egregiousness of the conduct, and that courts perform a gatekeeping function to screen out claims based on ordinary upset or purely economic harm. *Garland v. Roy,* 2009 ME 86, 976 A.2d 940. That gatekeeping role was reaffirmed in *Deane v. Central Maine Power Co.*, where the Court stated that the trial court must determine "in the first instance whether the defendant's conduct may reasonably be regarded as so extreme and outrageous to permit recovery." *Deane v. Central Maine Power Co.,* 2024 ME 72, 322 A.3d 1223.

Both cases describe a threshold inquiry, not a weighing of degree. Where reasonable minds could differ, the issue must be submitted to the jury.

Here, the trial court expressly found that Defendant owed fiduciary duties to Plaintiff and that Plaintiff made out a prima facie case of breach. (App. 15, n.1.) The court further determined that Defendant violated significant common law and professional ethical obligations of fidelity, loyalty, candor and honesty owed to Plaintiff. (App. 15, 18-20). It acknowledged that Plaintiff suffered emotional distress that "impacted his life and is more than minor," and that a jury could conclude Defendant worked against Plaintiff while still acting as his attorney. (App. 18).

Those findings satisfied the threshold inquiry described in both *Garland* and *Deane*. At that point, the court's gatekeeping role was complete. The remaining questions, whether the distress was sufficiently severe, or the conduct sufficiently egregious for the distress to be inferred, were for the jury.

Instead, the court concluded on a paper record that the emotional distress and misconduct were "not enough" as a matter of law. (App. 14-25). That determination required the court to weigh the degree of harm and seriousness of the misconduct, but without the benefit of live testimony. Rule 56 was not designed or intended for such weighing. See *Estate of Smith v. Cumberland County*, 2013 ME 13, 60 A.3d 759 (on summary judgment, the court must view the evidence in the light most favorable to the non-moving party and may not weigh evidence or assess credibility).

II. *Deane* Is Materially Distinct Because This Case Involves Blatant Attorney (Fiduciary) Betrayal, Not Generalized Economic Anxiety

In *Deane*, the plaintiffs' emotional distress arose from fear of a potential utility shutoff and related financial uncertainty. The Court emphasized that the distress was generalized, anticipatory, and not the result of extreme or outrageous conduct. *Deane*, 2024 ME 72.

This case is fundamentally different. Here, the trial court found a fiduciary attorney-client relationship, breaches of the highest duties of loyalty, honesty, fidelity and candor, and ethical duties, and emotional harm caused directly from that attorney misconduct. (App. 14-25). Unlike the generalized economic anxiety in *Deane*, Plaintiff's distress arises from intentional betrayal by his own attorney during active representation - a relationship defined by the highest ethical duties in the law of trust, loyalty, honesty and reliance.

Once the court acknowledged both fiduciary misconduct and resulting emotional harm, *Deane* required the matter to proceed to the jury if reasonable minds could differ.

III. The Trial Court Improperly Elevated the Outrageousness Standard and Misapplied *Lyman*

The trial court elevated the outrageousness standard beyond Maine law by relying on Restatement illustrations involving threats to life or liberty and reasoning that Plaintiff's distress did not rise to that level. (App. 20). Those illustrations are examples, not requirements. Maine law does not impose a rigid rule that emotional distress must arise from terror, physical danger, or threats to life.

The outrageousness inquiry is contextual and depends heavily on the relationship between the parties. Attorneys are fiduciaries, and clients must trust in and rely on them for undivided loyalty, candor, and protection of vital interests. Conduct that may be merely offensive in an arm's-length commercial setting may be utterly intolerable when committed by a lawyer who owes and violates undivided allegiance and candor owed to the client. Here, the court acknowledged the significant ethical violations and a record from which a jury could find that Defendant worked against his own client. (App. 19). Reasonable jurors could find that the attorneys' conduct was extreme and outrageous.

The court likewise misapplied *Lyman v. Huber* by treating the absence of medical treatment or expert testimony as effectively dispositive. *Lyman v. Huber,* 2010 ME 139, 10 A.3d 707. *Lyman* does not establish a categorical requirement of expert proof. Plaintiff testified to anxiety, depression, sleep disturbance, physical symptoms, and marital strain, all experiences within ordinary understanding. (App. 186-187, 198-206). His wife corroborated those changes. (App. 207-209).

Maine law recognizes that emotional distress may be proven through lay testimony and inferred from the nature of the defendant's misconduct. See *Vicinire v. Ford Motor Credit Co.*, 401 A.2d 148, 155 (Me. 1979); *Latremore v. Latremore*, 584 A.2d 626 (Me. 1990). By treating the absence of treatment or expert proof as dispositive, the trial court imposed an evidentiary burden inconsistent with those precedents.

IV. Maine and National Authorities Confirm that these Issues Should Have Been Presented to a Jury

The trial court relied on cases such as *Schelling* as an example of conduct insufficiently outrageous to support emotional distress claims. (App. 18). *Schelling v. Lindell*, 2008 ME 59, 942 A.2d 1226. That decision involved an ordinary political dispute and conduct lacking deception or fiduciary betrayal. It did not arise within an attorney-client relationship and did not involve allegations that an attorney violated core duties of loyalty and candor owed to a client.

This case is materially different. The trial court expressly found that Defendant owed significant fiduciary duties to Plaintiff, that Plaintiff made out a prima facie case of breach, and that Defendant violated multiple common law and professional ethical obligations. (App. 15, 18-20). It further acknowledged a record from which a jury could conclude that Defendant worked against his own client while still purporting to act as his attorney, and that Plaintiff suffered emotional distress that was "more than minor." (App. 18-19).

Maine courts have allowed similar attorney-misconduct claims to proceed to trial. In *Northern Mattress Co. v. Bernstein Shur*, No. BCD-WB-CV-09-07, Order on Cross-Motions for Summary Judgment (Me. Bus. & Consumer Ct. May 3, 2010), the court denied summary judgment on claims arising from an attorney's disloyal conduct toward a client and permitted the case to proceed where emotional distress damages were sought. The conduct at issue here, where the trial court found a prima facie fiduciary breach and ethical violations, presents at least as strong a basis for a jury determination.

Courts throughout the country likewise recognize that emotional distress damages may arise from an attorney's breach of fiduciary duty, particularly where the misconduct involves disloyalty, deception, or misuse of confidential information, and that such claims are ordinarily for the factfinder. See, e.g., *Perez v. Kirk & Carrigan*, 822 S.W.2d 261, 266–67 (Tex. App. 1991) (mental anguish damages recoverable where attorney breached fiduciary duty by disclosing client's confidential statement); *Stanley v. Richmond*, 35 Cal. App. 4th 1070, 1097 (1995) (jury could award emotional distress damages based on attorney's conflict of interest and breach of fiduciary duties); *Bell v. Clark*, 653 N.E.2d 483, 490 (Ind. Ct. App. 1995), adopted, 670 N.E.2d 1290 (Ind. 1996) (upholding emotional distress damages where attorney engaged in disloyal conduct toward client).

These authorities reflect a consistent principle: when an attorney's breach of loyalty and candor causes emotional harm, the severity of that harm and the egregiousness of the conduct are questions for the jury.

Even if this Court concludes that the trial court correctly applied existing precedent, this case illustrates the need for clarification of the governing standard. The trial court found that Defendant violated fiduciary and ethical duties owed to his client and that Plaintiff suffered emotional distress that was real and more than minor, yet concluded that no recovery was possible as a matter of law. If Maine law requires actual threats to life, liberty, or physical safety, before a client may recover emotional distress damages caused by an attorney's breach of the highest duties imposed by law, that standard warrants clarification. The attorney-client relationship is one of the highest trusts recognized in the law, and emotional harm resulting from intentional and disloyal conduct is both foreseeable and impactful. Maine's doctrine should not be applied so rigidly that it effectively shields all attorneys by eliminating any remedy for emotional harm arising from fiduciary betrayal.

CONCLUSION

The trial court exceeded its role by weighing the degree of emotional distress and egregiousness after determining that Plaintiff's claims crossed the threshold for consideration. Because reasonable jurors could differ on those questions, summary judgment was improper.

The judgment should be vacated and the case remanded for trial.

DATED in Portland, Maine on the 24th day of February 2026.

Respectfully Submitted,
Jeffrey Haskell,
By counsel,

/s/ Jeffrey Bennett
____

Jeffrey Bennett, Esq. #7223
Brooke J. Bailey, Esq. #6760
Legal-Ease, LLC
Two City Center, 4th Floor
Portland, Maine 04101
service@legal-ease.com

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2025 I served true copies of the above Appellant's Brief and Appendix, by providing electronic copies and paper copies to Appellee's Counsel: James Bowie, Esq. and Matthew Wahrer, Esq.

/s/ Jeffrey Bennett
____

Jeffrey Bennett, Esq., #7223