

**STATE OF MAINE
SUPREME 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)**

REPLY 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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INTRODUCTION

Unsurprisingly, Appellees’ brief focuses on reframing rather than defending the trial court’s decision. The trial court did not find an absence of fiduciary breach or emotional harm. To the contrary, it held that there was no dispute that “Defendant owed fiduciary duties and that Plaintiff generated a prima facie case that Defendant breached those duties.” (App. 15). It further recognized that a jury *could conclude* Kline “worked against Haskell while still acting as his attorney and abandoned him during the litigation” (App. 19) and that Defendant “violated his obligations of loyalty” and operated under a conflict of interest. (App. 20). Those findings reflect evidence of disloyal conduct within an ongoing attorney-client relationship from which a reasonable jury could regard as extreme and outrageous. The court also acknowledged that Haskell, as a result of Kline’s conduct, suffered emotional distress that “impacted his life” and was “more than minor” and that Kline’s conduct would naturally be expected to cause emotional distress (App. 18–19).

This case is unusual because the trial court acknowledged both wrongdoing and resulting harm yet still resolved the degree of those issues as a matter of law. That is not the limited role of summary judgment. As recognized in *Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 26, 48 A.3d 774 and reiterated in *Deane v. Cent. Maine Power Co.*, 2024 ME 72, ¶ 41, 322 A.3d 1223, 1237, “in the context of summary judgment on a claim for intentional infliction of emotional

distress, it is for the court to determine in the *first instance* whether the defendant's conduct *may reasonably be regarded* as so extreme and outrageous to permit recovery.” That is precisely the inquiry required here: the trial court acknowledged a record from which a jury *could conclude* Kline worked against Haskell while acting as his attorney, violated his obligations of loyalty, and abandoned him. (App. 19-20). In the context of a fiduciary attorney-client relationship, (defined by duties of loyalty, candor and trust) a reasonable jury could regard such conduct as extreme and outrageous.

Once the trial court acknowledged a record from which a jury could find fiduciary misconduct and/or resulting emotional distress, the question under *Deane* was whether that conduct “may reasonably be regarded” as extreme or the resulting distress sufficiently severe, and *not* whether the court itself found those elements satisfied as a matter of law.

ARGUMENT

I. THE TRIAL COURT MISAPPLIED *DEANE* BY RESOLVING WHETHER THE CONDUCT AND RESULTING DISTRESS COULD “REASONABLY BE REGARDED” AS SUFFICIENT AS A MATTER OF LAW.

Appellees are correct that a trial court must determine whether the facts alleged are sufficient, as a matter of law, to satisfy the elements of a claim. But where Appellees err is that at summary judgment, that inquiry is limited to whether a

reasonable jury could find those elements, not whether the court itself, on a paper record, is persuaded. *Id.*; *Lougee* and *Deane*.

Haskell does not dispute that severe emotional distress or egregious attorney conduct are the required prongs to support an attorney malpractice case in Maine.¹ Nor does Haskell contend that the court lacks a gatekeeping role. Rather, Haskell argues that once evidence exists from which a reasonable jury could find egregious conduct and/or severe emotional distress, particularly in the context of fiduciary betrayal, the court may not usurp the role of the jury and resolve the degree of that distress as a matter of law.²

Here, the trial court held that Haskell generated a *prima facie* case of fiduciary breach and recognized that a jury could conclude Kline violated his obligations of loyalty and acted against his own client during representation. (App. 15, 19, 20). It likewise acknowledged emotional distress would naturally be expected from Kline's

¹ See *Garland v. Roy*, 2009 ME 86, ¶ 24, 976 A.2d 940. However, importantly, *Garland* arose in the context of alleged professional negligence, **not** a claim grounded in fiduciary disloyalty. That distinction is significant. Claims based on ordinary attorney negligence may involve errors in judgment or omissions that, while actionable, do not inherently implicate the personal trust and reliance central to the attorney–client relationship. By contrast, a breach of fiduciary duty involves disloyal conduct within a relationship defined by trust, confidence, and reliance, where emotional harm is a foreseeable consequence of the breach. At a minimum, that distinction informs whether the conduct may reasonably be regarded as egregious and whether the resulting distress could be found sufficiently severe.

²For comparison, in personal injury cases, courts routinely deny summary judgment where a plaintiff presents evidence of pain, suffering, or emotional harm, even though the severity of those injuries is disputed. The fact that reasonable jurors could differ as to the extent of the harm requires submission to the factfinder, rather than resolution as a matter of law. The same principle applies here.

conduct, and that the distress Haskell experienced was “more than minor” and impacted Haskell’s life. (App. 18–19). That is a case where malice may be inferred or found, not a “no evidence” case in which no reasonable jury could find for Haskell.

Haskell also presented evidence of anxiety, depression, sleep disturbance, physical symptoms, and strain on his marriage, corroborated by his spouse. (App. 186–187, 198–206, 207–209).³ A reasonable jury could find that this combination of psychological and physical symptoms satisfies the governing standard particularly when viewed in light of the fiduciary disloyalty that caused it.

By concluding that the emotional distress and attorney betrayal and misconduct were “not enough” as a matter of law, the trial court unnecessarily weighed the degree of harm and the seriousness of Kline’s fiduciary breaches and usurped the role of the jury.

³ To the extent Appellees suggest that Haskell’s failure to seek therapy or a formal diagnosis undermines his claim, Maine law does not impose a categorical requirement that a plaintiff pursue medical or psychological treatment to recover for emotional distress. See, e.g., *Latremore v. Latremore*, 584 A.2d 626 (Me. 1990) (upholding emotional distress damages based on lay testimony). Nor does the duty to mitigate require a plaintiff to undertake treatment that is unreasonable under the circumstances or that the plaintiff declines for legitimate personal reasons. Haskell testified that he had prior negative experiences with therapy, which informed his decision not to pursue treatment here. (App. 152, 173, 186). At a minimum, whether Haskell’s response to his injuries was reasonable is a question for the factfinder.

II. **DEANE IS MATERIALLY DISTINCT AND DOES NOT COMPEL SUMMARY JUDGMENT.**

The Appellees’ and the trial court’s reliance on *Deane v. Central Maine Power Co.* is misplaced. Primarily, and significantly, *Deane* is **not** a case concerning an attorney-client relationship, nor any fiduciary relationship.⁴ In *Deane*, the plaintiffs’ emotional distress arose from generalized fear of a potential utility shutoff and related financial uncertainty. The Law Court emphasized that under those circumstances, severe emotional distress could not be inferred from the extreme or outrageous conduct. *Deane*, 2024 ME 72, ¶¶ 54-58. These are important distinctions.

This case is fundamentally different than *Deane*. It involves ***intentional fiduciary disloyalty and deception*** by a member of the Maine Bar against his entirely reliant client during active representation in what was a high stakes or “bet the farm” context to the client, all occurring in a relationship defined by the highest duties imposed by law of loyalty, candor, and trust, and not an arm’s length commercial relationship between a utility company and a customer. The trial court acknowledged a record from which a jury could conclude that Kline worked against Haskell while

⁴ The fiduciary nature of the attorney–client relationship is critical to this analysis. Unlike the arm’s-length context in *Deane*, a client is subservient and completely reposes their trust and confidence in counsel’s loyalty, candor, and judgment. When that trust is intentionally breached, emotional harm to the subservient client is not incidental but a foreseeable and natural consequence of the violation. That context must inform whether the conduct may reasonably be regarded as extreme and whether the resulting distress could be found sufficiently severe. In that setting, the relationship itself informs both the nature of the conduct and the expected impact of its breach.

acting as his attorney, violated his obligations of loyalty, and abandoned him. (App. 19). Unlike the generalized economic anxiety in *Deane*, Haskell's distress arises from an intentional betrayal by a fiduciary where profound emotional harm is foreseeable.

Appellees' argument improperly separates the severity of the distress from the conduct that caused it. The severity of emotional distress cannot be evaluated in a vacuum; it must be considered in light of the conduct and relationship that produced it. A jury could reasonably find that emotional harm resulting from a lawyer's intentional fiduciary betrayal meets the governing standard.

Appellees' characterization of the record completely understates and sanitizes the nature of the conduct at issue. Viewed in the light most favorable to Appellant, as required, the record (including internal emails, handwritten contemporaneous notes, and deposition testimony) reflects more than a failure to act or ordinary professional negligence. It reflects evidence from which a jury could find that Kline maintained divided loyalties, failed to disclose material conflicts, and took positions at times undermining (and at other times adverse to) Haskell in the litigation in which he represented Haskell, and even participated, covertly, in Haskell's termination by Kline's other client, Pratt Abbott. The record further reflects that Kline advised and aligned with Pratt Abbott's interests, harming Haskell's interests, while serving as Haskell's attorney, and Kline did so while concealing his involvement from Haskell.

The trial court itself acknowledged that a jury could conclude Kline “worked against Plaintiff while Defendant was still Plaintiff’s attorney and abandoned him during the litigation” (App. 19) and “violated his obligations of loyalty” to Haskell and presented a conflict of interest. (App. 20). A reasonable jury *could regard* such conduct as a serious breach of the fiduciary duties of loyalty and candor that define the attorney–client relationship and, in that context, as extreme and outrageous sufficient to survive summary judgment.

The Law Court in *Deane* further observed that it “ha[s] not yet decided a case in which the nature of the extreme and outrageous conduct alone was enough to satisfy the element of severe emotional distress,” and that such an inference is available only in “very narrow” circumstances. *Id.* ¶¶ 55–56 (quoting *Lyman v. Huber*, 2010 ME 139, ¶ 22). That observation does not support summary judgment here. Rather, it underscores that Maine law can recognize the circumstances like those presented in this case, where an attorney’s intentional breach of fiduciary duties causes “more than minor” emotional distress that “impacted [the client’s] life.”

The governing standard in Maine should not be understood to require that a breach of fiduciary duty by an attorney towards a client must arise to the level of extreme “horror” reflected in *Restatement* illustrations involving threats to liberty or family. (App. 20). Such a rigid formulation effectively immunizes the attorney-

fiduciary and renders meaningless the heightened duties imposed on attorneys within the attorney–client relationship.

III. APPELLEES’ RELIANCE ON *LYMAN* IS MISPLACED.

Appellees overstate the holding of *Lyman v. Huber*. While *Lyman* notes that “[i]n most instances, proof of objective symptoms will require expert testimony,” it does not establish a categorical requirement. *Lyman*, 2010 ME 139, ¶ 23, 10 A.3d 707. The Court expressly recognized that such cases are “remote,” but not impossible. Appellees’ emphasis on the phrase “*will require expert testimony*” ignores the limiting language “*in most instances.*” *Lyman* thus makes clear that expert testimony is often helpful, not mandatory. Thus, the absence of expert testimony, alone, was not a basis to grant summary judgment.

Here, Haskell presented evidence of emotional distress through lay testimony and corroboration, including sustained psychological and physical symptoms. (App. 186–187, 198–206, 207–209) and his distrust of prior mental health treatment (App. 152, 173, 186); *See also, infra*, nt. 3. Whether that evidence satisfies the governing standard is a question for the factfinder, particularly at the summary judgment stage where all reasonable inferences must be drawn in Appellant’s favor.

IV. APPELLEES’ AUTHORITIES ARE UNPERSUASIVE.

Appellees’ (and the trial court’s) reliance on cases such as *Thorton v. Squyres*, 317 Ark. 374, 877 S.W.2d 921 (1994) does not support entry of summary judgment

in this case. *Thornton* involved an attorney's failure to act, specifically, the non-filing of an answer, which resulted in a default judgment and adverse custody consequences. The harm there arose as a result of those downstream consequences, not because of deception and disloyalty directed at the client. This case, by contrast to *Thornton*, involves an attorney's intentional betrayal against his client, and included undisclosed conflicts of interest, divided loyalties, and even loss of employment. The differences are not merely of degree, but of kind. A reasonable jury *could regard* the attorney's conduct here as atrocious, and certainly more egregious than in *Thornton*. Although the consequences to the client in *Thornton* were significant, there was nothing hidden or concealed about the attorney's conduct like there is here.

Similarly, as previously argued in Appellant's brief, the cases cited by Appellees such as *Garland*, *Abbondanza*, and *Hoffman* do not involve comparable or intentional fiduciary betrayal within an attorney-client relationship (citations omitted).

V. APPELLEES' CAUSATION ARGUMENT DOES NOT PROVIDE A BASIS TO AFFIRM.

Appellees' causation argument provides no basis to affirm. The trial court did not grant summary judgment on causation grounds, and Appellees' attempt to rely on

that theory is an unconvincing effort to obtain affirmance on a ground not reached below.

To the extent the Court considers the issue, Haskell incorporates herein and relies upon his Opposition to Defendants’ Motion for Summary Judgment (at App. 146-207) to not necessarily expand the appellate record as Appellees have chosen to do. Put simply, Appellees’ “case within a case” theory is inapplicable and one that the trial court did not feel worth opining on. Haskell’s claim arises from Kline’s egregious breaches of fiduciary duties, and includes disloyalty, undisclosed conflicts, abandonment, and compromising his own clients’ employment – it does not arise from the outcome of the underlying litigation. Maine law recognizes that such breaches are independently compensable. See, *Niehoff v. Shankman & Associates Legal Ctr., P.A.*, 2000 ME 214, ¶ 9, 763 A.2d 121, 124.

VI. APPELLANT’S AUTHORITIES SUPPORT THE SAME PRINCIPLES RECOGNIZED BY MAINE LAW.

Appellees’ criticism of Appellant’s cited authorities misses the point. Haskell does not rely on any single case as dispositive. Rather, these authorities collectively reflect a consistent principle that is worth the consideration of the Law Court: where there is evidence of extreme attorney misconduct that involves breaches of fiduciary duties and causes emotional harm, resolving the claim should be for the factfinder.

Any other outcome effectively immunizes attorneys and fiduciaries from liability and renders meaningless the heightened duties imposed on attorneys and fiduciaries.

The cases cited in Appellant's brief support that Maine law is consistent with these principles. Appellees' assertion that these authorities are irrelevant overlooks the purpose for why they are cited. Cases such as *Latremore v. Latremore*, 584 A.2d 626 (Me. 1990) confirm that emotional distress may, in appropriate cases, be established through lay testimony and reasonable inference, and that expert testimony is not categorically required (citing *Vicinire v. Ford Motor Credit Co.*, 401 A.2d 148, 155 (Me. 1979)). It is respectfully submitted that, this is one of those appropriate cases because there is a rational explanation for why the Appellant did not receive mental health treatment (App. 152, 173, 186) and the attorney's conduct was such that severe emotional distress is a foreseeable consequence of the breach.

Moreover, Appellant's citation to decisions from other jurisdictions serves only to confirm that courts routinely treat claims involving attorney disloyalty, deception, or misuse of confidential information as presenting jury questions when supported by evidence.

VII. THIS CASE WARRANTS CLARIFICATION OF THE GOVERNING STANDARD.

Even if this Court concludes that the trial court correctly applied existing precedent, *this case highlights the need for clarification*. The trial court found evidence of fiduciary and ethical violations and resulting emotional distress, yet concluded that no recovery is possible as a matter of law.

The trial court's reasoning, which requires circumstances of extreme "horror" as reflected in *Restatement* illustrations, before damages may be recovered, operates to immunize attorneys and render meaningless the heightened duties imposed on attorneys. The attorney-client relationship is sacred, one of the highest trusts recognized in the law, and civil remedies must be available for clients in cases where that sacred trust is intentionally breached by the attorney.

CONCLUSION

The trial court exceeded its limited role at summary judgment by weighing the degree of emotional distress and egregiousness after determining that Plaintiff's claims crossed the threshold for consideration. Because reasonable jurors could conclude that Kline's conduct was egregious and that severe emotional distress could be inferred, summary judgment was improper.

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

DATED in Portland, Maine on the 1st day of May 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 May 1, 2026 I served true copies of the above Appellant's
Reply by providing electronic copies and paper copies to Appellees' Counsel:
James Bowie, Esq. and Matthew Wahrer, Esq.

/s/ Jeffrey Bennett

Jeffrey Bennett, Esq., #7223
Brooke J. Bailey, Esq. #6760