IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD MARIS, AN INDIVIDUAL,
Appellant,
vs.
THE LAW OFFICES OF BARRY LEVINSON, A PROFESSIONAL CORPORATION, A NEVADA CORPORATION; JAMES J. BUTMAN, ESQ.; BARRY LEVINSON, ESQ.; AND ROBERT E. HILL, ESQ.,
Respondents.

No. 62640

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a legal malpractice action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant Richard Maris sued respondents The Law Offices of Barry Levinson, James J. Butman, Barry Levinson, and Robert E. Hill (collectively the Levinson Firm) for legal malpractice arising from their representation of Maris in a previous action against his former employer, Western Pride Construction. In the Western Pride action, the district court entered a judgment against Maris for $1,034,738.30 on Western Pride's counterclaims. Maris alleges that the Levinson Firm committed malpractice by not raising arguments concerning a release and a good faith settlement under NRS 17.245, which allegedly would have prevented Western Pride from prevailing upon its counterclaims against Maris.[1]

[1]Maris also alleges that the Levinson Firm committed malpractice by withdrawing from representation of Maris after filing the opening brief on appeal, even though Maris had filed for bankruptcy. Maris filed no opposition to the Levinson Firm's February 2009 withdrawal motion and

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The district court granted summary judgment in this case based upon Maris's alleged abandonment of his appeal in the Western Pride action. If a client abandons what would have been a successful appeal, then the client is foreclosed from pursuing a malpractice action against his former attorney. *Hewitt v. Allen*, 118 Nev. 216, 221-22, 43 P.3d 345, 348 (2002). But if the appeal would have been futile, then the client is not required to pursue the appeal to finality. *Id.* In this regard, Maris argues that genuine issues of material fact remain as to whether he voluntarily abandoned his Western Pride appeal, or that his appeal would not have been successful on the release or NRS 17.245 issues and thus he abandoned a futile appeal.[2] In opposition, the Levinson Firm argues that they did raise these issues and the Western Pride appeal would have been successful.

As to the release and NRS 17.245 issues, we agree with Maris that the Levinson Firm would not have been successful. The release in the settlement with the victims of Maris's vehicle accident was the victim's release of Maris, Western Pride, and Western Pride's insurer. The settlement did not include any purported release between Western Pride and Maris. And because a good faith settlement under NRS 17.245

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has provided no evidence supporting any wrongdoing on the Levinson Firm's behalf in conjunction with the Levinson Firm's withdrawal. Accordingly, we conclude that this allegation lacks merit.

[2]Maris also argues that the other arguments in the opening brief would not have been successful. But because the Levinson Firm is not alleged to have committed malpractice as to any issues other than the release, NRS 17.245, and withdrawal issues, we decline to consider the merits of the remaining issues.

applies to a victim's release of "one of two or more persons liable in tort" for the injury or death at issue, it does not apply to release the indemnity claims of one tortfeasor against another when all alleged tortfeasors settle with the victim in one settlement. NRS 17.245(1); NRS 17.265 ("Except as otherwise provided in NRS 17.245, the provisions of NRS 17.225 to 17.305, inclusive, do not impair any right of indemnity under existing law."); *cf. Otak Nev., L.L.C. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 312 P.3d 491, 499-500 (2013) (applying NRS 17.245 to a plaintiff's settlement with one of several tortfeasors). Therefore, we conclude that the district court erred in finding that Maris would have been successful on these issues.[3]

But because of the nature of Maris's malpractice claims, reversal of the district court's summary judgment is not warranted. The malpractice alleged by Maris is that the Levinson Firm failed to raise the release and NRS 17.245 issues. While Maris's arguments that the Levinson Firm would not have succeeded on the merits of these issues may be beneficial to avoiding summary judgment for abandoning his appeal, they are ultimately fatal to his malpractice case: if the issues lack merit, then Maris was not required to pursue them on appeal, but neither did the Levinson Firm commit malpractice by failing to assert them. *See Hewitt*, 118 Nev. at 220-21, 43 P.3d at 347. Accordingly, we affirm the district court's summary judgment on this basis. *See Pack v. LaTourette*, 128 Nev. ___, ___, 277 P.3d 1246, 1248 (2012) (noting that this court may affirm a district court judgment if this court reached the same result as

[3]We decline to consider whether the district court correctly found that Maris abandoned his appeal because that argument is moot given our resolution of this appeal.

the district court, but for different reasons); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (holding that summary judgment is reviewed de novo).

It is so ORDERED.

Parraguirre, J.

Douglas, J.

Cherry, J.

cc: Hon. Ronald J. Israel, District Judge
Pengilly Law Firm
Bell and Young, Ltd.
Eighth District Court Clerk