

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CALVIN OAKES,	§	
	§	No. 708, 2010
Plaintiff Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
JOHN A. CLARK,	§	
	§	
Defendant Below,	§	C.A. No. 10C-04-146
Appellee.	§	

Submitted: August 12, 2011  
Decided: November 10, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**O R D E R**

This 10<sup>th</sup> day of November 2011, it appears to the Court that:

(1) On April 19, 2010, Calvin Oakes filed a legal malpractice complaint against his former attorney, John A. Clark, III, Esquire. Clark had represented Oakes in the Family Court on a property division ancillary to Oakes' divorce.

(2) On June 4, 2010, Clark filed a motion to dismiss based on the affirmative defenses of "collateral estoppel and/or res judicata." According to Clark, "[t]he Family Court's finding that Oakes was 'evasive and untruthful' bar[red] Oakes from asserting any claim against Clark based upon any aspect of the property division."

(3) It appears from the record that the Superior Court held a hearing on the motion to dismiss on October 13, 2010. At the conclusion of the hearing, the Superior Court dismissed Oakes' complaint. On appeal, we review the Superior Court's dismissal *de novo*.<sup>1</sup>

(4) Fairly read, Clark's motion sought to dismiss Oakes' complaint under Superior Court Civil Rule 12(b)(6) ("Rule 12(b)(6)") for "failure to state a claim upon which relief can be granted."<sup>2</sup> Under Rule 12(b)(6), if the motion to dismiss presents "matters outside the pleading . . . the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."<sup>3</sup>

(5) The Court has carefully considered the parties' positions on appeal and the Superior Court record, including the transcript of the October 13, 2010 hearing. On the record before us, it appears to the Court that "matters outside the pleading" were "presented" or otherwise taken into consideration by the Superior Court at the October 13, 2010 hearing. It further appears that the Superior Court did not convert Clark's motion to dismiss to a motion for summary judgment as required under Rule 12(b)(6).

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<sup>1</sup> *Ramirez v. Murdick*, 948 A.2d 395, 399 (Del. 2008); *See Haskins v. Kay*, 2008 WL 5227187 (Del. Supr.) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>2</sup> Del. Super. Ct. Civil R. 12(b)(6).

<sup>3</sup> *Id.*

Under the circumstances of this case, the Court concludes that the October 13, 2010 ruling of the Superior Court should be reversed as having been rendered erroneously on a motion to dismiss.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED that the Superior Court's dismissal of Oakes' complaint is REVERSED, and this matter is REMANDED for further proceedings consistent with this Order.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>4</sup> See *Furman v. Del. Dep't of Transp.*, \_\_ A.3d \_\_, 2011 WL 4963847 (Del. Supr.) (reversing and remanding for further proceedings relevant to a summary judgment motion).