NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1786

LISA A. GRATTAN,
Appellant

v.

DAVID A. HANDLER P.C.; DAVID A. HANDLER

On Appeal from the United States District Court
for the District of New Jersey
(No. 2:19-cv-14373)
District Judge: Honorable Julien X. Neals

Submitted Under Third Circuit L.A.R. 34.1(a)
on December 2, 2025

Before: CHAGARES, *Chief Judge*, FREEMAN and MASCOTT, *Circuit Judges*

(Opinion filed: July 20, 2026)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

FREEMAN, *Circuit Judge*.

During four years of contentious divorce proceedings, Lisa Grattan discovered that marital assets had been hidden or transferred throughout her marriage. She sued the attorney who jointly represented her and her husband for estate planning, alleging that the attorney helped her husband accomplish these deeds. She appeals the District Court's order granting summary judgment in the attorney's favor. She also appeals one of the District Court's discovery orders.

We will affirm the discovery order. We also will affirm the summary judgment order insofar as it dismissed Grattan's breach-of-fiduciary-duty claim, but we will reverse that order insofar as it granted summary judgment for the attorney on Grattan's legal-malpractice claim. A jury could find sufficient facts to support Grattan's claim on one of her theories of damages.

I.[1]

A. Grattan and her then-husband retain Handler for estate planning.

Grattan and Robert Moriarty married in 1992 and had four children over the next decade. In late 2010, the couple asked attorney David A. Handler to perform estate planning work for them.[2] Moriarty already knew Handler, who did estate planning work for Moriarty's mother, Eileen Moriarty ("Eileen"). Handler also represented an entity

[1] We recount the facts in the light most favorable to Grattan, the party who opposed summary judgment.

[2] David A. Handler is a partner at the law firm Kirkland & Ellis ("Kirkland") through his professional corporation, David A. Handler P.C. We refer to Handler and his professional corporation collectively as "Handler."

that Moriarty and one of his siblings co-owned. That entity, Twin Oaks L.P., together with its affiliated entities (collectively, “Twin Oaks”), is an investment fund that manages and invests Moriarty family assets.

Handler drafted a retainer agreement (“RA”) for Grattan and Moriarty to sign. Handler did not explain any of the RA’s provisions to Grattan, but Grattan and Moriarty both signed the RA in January 2011.

The RA included a Joint Relationship provision (the “JRP”) that addressed issues that could arise when an attorney represents two spouses jointly. As relevant here, the JRP informed Grattan and Moriarty that Handler would [redacted]” but would “[redacted].” App. 314. It also informed the couple that, “[redacted]” and Handler would “[redacted].” *Id.*[3] For those reasons, the JRP stated: [redacted]” App. 315.

[3] Because Handler prepared and signed the RA on behalf of two affiliated Kirkland entities, he used first-person plural pronouns.

The JRP noted that Handler was [redacted]," and it asked the couple to inform Handler immediately of any such conflicts. App. 314. It also informed the couple: "[redacted]" App. 315.

The RA included a section about conflicts of interest (the "Conflicts Provision"), which stated that [redacted]. The Conflicts Provision noted that [redacted], and it stated that [redacted]. Additionally, Handler noted in the Conflicts Provision that [redacted].

Handler did not inform Grattan of the nature of any conflicts she might be waiving.

B. Grattan files for divorce and later gets information about the marital estate.

In April 2016, Moriarty told Handler that he and Grattan intended to divorce, and he asked Handler to continue handling his individual estate planning work. Handler informed Grattan that he could no longer jointly represent the couple, and he sought her position on Moriarty's request for future legal work. Grattan objected to Handler performing any future estate planning work for Moriarty only. Several weeks later, Handler withdrew from his representation of both Grattan and Moriarty for estate planning matters.

Grattan filed for divorce in June 2016, and she and Moriarty each retained divorce attorneys. Handler communicated with Moriarty's divorce attorneys, and in 2019 he provided them with a sworn statement about Moriarty's finances. Moriarty also disclosed that Handler would serve as his expert witness in the divorce case. The contentious divorce proceedings lasted over four years, but the case settled before any expert testimony was needed.

Through discovery in the divorce case, Grattan learned much about Moriarty's finances. For instance, she learned about the [redacted]. Additionally, during the divorce case, Grattan learned that [redacted]. Consequently, those fees did not become part of the marital estate.

[redacted] Handler drafted the trust documents (including the divorce clauses) before Grattan and

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[4] Eileen established the 2007 trust with her husband before his death, and she established the 2009 trust on her own.

Moriarty jointly retained him for estate planning, but he never informed Grattan that the trusts existed. Handler did, however, remind Moriarty of the trusts' divorce clauses in May 2016, shortly after Moriarty informed him of the couple's anticipated divorce.

Additionally, Grattan discovered during the divorce case that her signature had been forged on two loan instruments that Handler prepared at Moriarty's request: a 2011 increase to a line of credit that Eileen's trust extended to Moriarty and Grattan, and a 2015 mortgage from Eileen's trust. These loan instruments financed two homes. Together, they caused Grattan to incur millions of dollars in debt (the "forged debt"). Grattan alleged in the divorce case that Moriarty committed fraud by forging her signature on these documents.

Grattan also discovered that her signature had been forged on a third document: the operating agreement of an investment vehicle ("[redacted]"). [redacted]

Moriarty, too, was a co-trustee of [redacted], and he was one of [redacted] investment advisors. [redacted] operating agreement contained a divorce clause that removed Grattan as co-trustee if she or Moriarty filed for divorce.

Lastly, Grattan discovered that [redacted].

Grattan did not obtain complete information about Moriarty’s assets until September 2020, more than four years after she filed for divorce. She received that information after the divorce court [redacted]. Less than a month after Grattan obtained those documents, the divorce case settled. Under the terms of the Marital Settlement Agreement (“MSA”), [redacted]

C. Grattan sues Handler.

In 2019, while the divorce case was still pending, Grattan filed this lawsuit against Handler. The complaint includes one count, captioned “Professional Negligence and Breach of Fiduciary Duties—Attorney Malpractice.” App. 1539. Grattan contended that Handler favored Moriarty’s interests over hers during his joint representation of the couple. She also contended that Handler withheld information from her, making the divorce case take longer and cost Grattan more than it would have otherwise.

During discovery, Handler asserted attorney-client privilege to withhold documents related to his representation of Eileen. Grattan challenged that withholding, and a magistrate judge twice ruled in Handler's favor. Grattan appealed those discovery rulings to the District Court, which affirmed them in an October 2022 order.

After the close of discovery, the District Court granted Handler's motion for summary judgment in a March 2024 order. It dismissed Grattan's breach-of-fiduciary-duty claim with prejudice, deeming it duplicative of her legal-malpractice claim, and it concluded that the record did not support the malpractice claim. Grattan timely appealed the October 2022 and March 2024 orders.

II.[5]

Grattan raises five issues for our review. We address each in turn.

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[5] The District Court had jurisdiction pursuant to 28 U.S.C. § 1332, and we have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review of orders granting summary judgment, applying the same standard used by district courts. *AstraZeneca Pharms. v. Sec'y U.S. Dep't of Health & Hum. Servs.*, 137 F.4th 116, 122 (3d Cir. 2025). A court may grant summary judgment where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine factual dispute exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). We review district courts' discovery orders for abuse of discretion. *Cornelius v. CVS Pharmacy Inc.*, 133 F.4th 240, 250 n.12 (3d Cir. 2025), *cert. denied*, 146 S. Ct. 193 (2025).

A. Grattan forfeited her challenge to the dismissal of the breach-of-fiduciary-duty claim.

Grattan argues that the District Court erred by summarily dismissing her breach-of-fiduciary-duty claim as duplicative of her legal-malpractice claim. She has forfeited this argument, and no exceptional circumstances excuse that forfeiture.

Under New Jersey law, legal malpractice and breach of fiduciary duty can be brought as independent torts against attorneys. *Packard-Bamberger & Co. v. Collier*, 771 A.2d 1194, 1203 (N.J. 2001). But there is an alternative to bringing two independent torts: "A client's claim concerning the defendant-attorney's breach of a fiduciary duty may arise in the legal malpractice context." *Id.*

Here, Grattan pleaded a single count captioned "Professional Negligence and Breach of Fiduciary Duties—Attorney Malpractice." App. 1539. Her pleading was ambiguous as to whether she raised two claims or one, but she later forfeited her argument that she brought two independent claims.

Handler sought summary judgment on "Plaintiff's lone claim." ECF 190 at 11.[6] He stated the elements of a legal malpractice action—(1) an attorney-client relationship creating a duty of care, (2) the defendant's breach of that duty, and (3) proximate causation of plaintiff's damages—and he argued (among other things) that Grattan could not establish the third element.

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[6] Citations to "ECF" refer to documents in the District Court record and use the pdf pagination.

In response, Grattan recounted that "[t]his is a legal malpractice action," ECF 194 at 9, and she argued that the record contains "sufficient evidence of each element necessary to prove her legal malpractice claim," *id.* at 11. She never argued that she had a separate breach-of-fiduciary-duty claim that Handler did not address. By failing to raise that argument in the District Court, she forfeited it. *See Simko v. United States Steel Corp*, 992 F.3d 198, 205 (3d Cir. 2021) ("[A]rguments raised for the first time on appeal are not properly preserved for appellate review."). There are no "truly exceptional circumstances" here that would excuse this forfeiture. *Barna v. Bd. of Sch. Directors of Panther Valley Sch. Dist.*, 877 F.3d 136, 148 (3d Cir. 2017).

B. The JRP permitted Handler to communicate primarily with Moriarty.

Grattan next argues the District Court misconstrued the RA's terms governing Handler's communications with Grattan and Moriarty. Relatedly, she argues that Handler failed to explain those terms to her.

The RA's JRP states: "[redacted]" App. 315. The District Court construed this language as expressly authorizing Handler to communicate with either Grattan or Moriarty. Thus, it concluded, "to the extent [Handler] communicated relevant information only to Moriarty, the [RA] authorized it." App. 44.

Grattan argues that the JRP permitted Handler to communicate primarily with Moriarty only if Grattan gave explicit consent. But nothing in the language of the JRP supports an explicit-consent requirement. The JRP contemplates that Grattan and Moriarty would decide whether to communicate with Handler primarily through one person (“[redacted]”) and their choice, however expressed to Handler, would cause Handler to respond to that person only (“[redacted]”).[7]

C. Disputes of fact prevent us from determining whether the Conflicts Provision is enforceable.

Grattan next challenges the District Court’s ruling that she validly waived any right to information about Eileen’s estate and any related conflicts. Specifically, the District Court ruled that Handler was not obligated to give Grattan information about Eileen’s estate because Grattan “(i) acknowledged [Handler]’s separate, concurrent representation of Eileen; (ii) waived all related conflicts; and (iii) agreed that information concerning the Eileen representation would not be shared with her.” App. 47.

The Magistrate Judge was the first jurist to address whether the RA’s Conflicts Provision was valid. When ruling on discovery disputes, the Magistrate Judge

[7] We are unmoved by Grattan’s argument that Handler failed to explain the JRP’s terms to her. The relevant language of the JRP is plain. Moreover, when Grattan signed the RA, she was a licensed attorney with over a decade of experience as a civil litigator. Her level of sophistication in legal matters supports our determination that no explanation of this clear provision was necessary. *Cf. Balducci v. Cige*, 223 A.3d 1229, 1240 (N.J. 2020) (“In determining the validity of a retainer agreement, a court may consider the circumstances related to the making of the agreement, including . . . the client’s level of sophistication or experience in retaining and compensating lawyers, and other relevant factors.”) (citation modified).

determined that Handler resolved any "potential embedded conflict" between Eileen's interests and Grattan's by placing the Conflicts Provision in the RA. App. 108. Based on the terms of those provisions, the Magistrate Judge ruled that Handler was prohibited from sharing information with Grattan about Eileen's estate, and he denied Grattan's discovery requests.

After the Magistrate Judge declined to reconsider his decision, Grattan appealed to the District Court. The District Court agreed with the Magistrate Judge's view of the Conflicts Provision and affirmed the discovery order.

Several months later, Grattan opposed Handler's summary judgment and submitted evidence from witnesses she tendered as experts. Attorney Tricia Rich, who specializes in legal ethics and professional responsibility, opined that the RA's Conflicts Provision is unenforceable because Grattan did not give informed consent. According to Rich, Handler was obligated to explain to Grattan the risks of the proposed course of conduct and to reveal potential and actual conflicts, including [redacted]. Additionally, seasoned trusts and estates attorney Joseph L. Goldman opined that Grattan lacked informed consent about Handler's representation of Eileen. In Goldman's view, material limitations related to Eileen's estate planning may even have rendered the conflicts unwaivable.

The District Court stood by its prior ruling about the Conflicts Provision, invoking the law of the case. *See Pub. Int. Rsch. Grp. of New Jersey, Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 116 (3d Cir. 1997) ("The law of the case doctrine directs courts to refrain from re-deciding issues that were resolved earlier in the litigation."). It recognized that it could revisit its decision if new evidence was available, *see id.* at 117, but it said there was no new evidence in the record.

The opinions of Rich and Goldman were unavailable to the District Court when it reviewed the Magistrate Judge's discovery ruling. Those opinions bear directly on whether the Conflicts Provision is valid, and they cast doubt on the District Court's reliance on law-of-the-case. In any event, we review the enforceability of the Conflicts Provision de novo. *See Lahoud v. Anthony & Sylvan Corp.*, 330 A.3d 803, 810 (N.J. App. Div. 2025); *see also Saint-Jean v. Palisades Interstate Park Comm'n*, 49 F.4th 830, 836 (3d Cir. 2022) ("[A]n appellate court is not bound by district court rulings under the law-of-the-case doctrine because an appellate court's function is to revisit matters decided in the trial court." (citation modified)). When we do so, disputed facts prevent us from determining whether the Conflicts Provision is enforceable.

Under New Jersey law, "a retainer agreement is not an ordinary contract—it must conform not only to the legal principles governing contracts, but also to the ethical obligations imposed on attorneys by the [Rules of Professional Conduct]." *Delaney v. Dickey*, 242 A.3d 257, 274 (N.J. 2020). Because those obligations "require scrupulous fairness and transparency in dealing with clients," the attorney "bears the burden of establishing the fairness and reasonableness of the [retainer agreement]." *Id.* at 260, 268 (citation modified).

The attorney must "make necessary disclosures to the client so that the client can make informed decisions." *Id.* at 269. And when courts assess the validity of retainer agreements, they "may consider the circumstances related to the making of the agreement, including whether the parties actually negotiated the agreement, the client's level of sophistication or experience in retaining and compensating lawyers, and other relevant factors." *Balducci v. Cige*, 223 A.3d 1229, 1240 (N.J. 2020) (citation modified). We review retainer agreements "from the standpoint of a reasonable person in the client's circumstances," and "an agreement susceptible to two reasonable interpretations should be construed in favor of the client," *id.* at 1241 (first citation modified).

On this record, a reasonable jury could find that Grattan did not give informed consent when she executed the RA's Conflicts Provision. Informed consent turns on what disclosures Handler made to Grattan.[8] And a reasonable jury could find that Handler failed to disclose material information relevant to Grattan's ability to waive any conflicts, such as [redacted]. Absent appropriate disclosures, the Conflicts Provision would be unenforceable. Therefore, Grattan's execution of that provision does not preclude her malpractice claim.[9]

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[8] *See* N.J. R.P.C. 1.0(e) ("'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."); *id.* at 1.4(c) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."); *see also Baxt v. Liloia*, 714 A.2d 271, 275 (N.J. 1998) (recognizing that although "no New Jersey case has allowed a cause of action based solely on a violation of the RPCs. . . . Courts in New Jersey and elsewhere have nonetheless recognized the relevance of the Rules in civil cases against attorneys.").

[9] Grattan's experience as a civil litigator when she signed the RA does not preclude a jury from finding that Grattan did not give informed consent. Grattan alleges that Handler failed to disclose conflicts (i.e., facts) of which she had no knowledge, regardless of her experience as a litigator.

D. Grattan's legal-malpractice claim can proceed on one of her two theories of damages.

To prevail on a legal-malpractice claim, a plaintiff must establish: "(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney, (2) the breach of that duty by the defendant, and (3) proximate causation of the damages claimed by the plaintiff." *McGrogan v. Till*, 771 A.2d 1187, 1193 (N.J. 2001). Here, the first element (duty of care) is undisputed. The District Court determined that Grattan adduced sufficient evidence to proceed to trial on the second element (breach) but not on the third (causation of damages). Thus, this appeal pertains only to the third element.

1.

Grattan must show that Handler's breach of duty was the proximate cause of her injuries. "Proximate cause consists of any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." *Gilbert v. Stewart*, 255 A.3d 1101, 1114 (2021) (citation modified). "Foreseeability is a constituent part of proximate cause," and an injury is foreseeable if, objectively, it "was within the realm of reasonable contemplation." *Id.* (citation modified).

It is likely that Handler's ethical duties precluded him from disclosing information about Eileen's estate planning to Grattan. But whether Grattan gave informed consent turns on whether Handler made all necessary disclosures to Grattan before agreeing to represent her and undertaking his ethical duties to her as a client. The reason underlying Handler's decision not to make those disclosures is beyond the purview of Grattan's malpractice claim.

When there is more than one potential cause of an injury, New Jersey courts apply the substantial-factor test. *See id*. (observing that the substantial-factor test is "well-suited for legal malpractice cases in which inadequate or inaccurate legal advice is alleged to be a concurrent cause of harm" (citation modified)). When applying that test, courts ask whether the defendant's conduct "was a substantial factor in bringing about the injuries." *Id.* (citation modified). The substantial-factor test "accounts for the fact that there can be any number of intervening causes between the initial wrongful act and the final injurious consequence and does not require an unsevered connecting link between the negligent conduct and the ultimate harm." *Id.* (citation modified).

"In legal-malpractice cases, proximate causation ordinarily must be established by expert testimony." *Morris Props., Inc.*, *v. Wheeler*, 300 A.3d 980, 987 (N.J. App. Div. 2023). "Only in extraordinary cases will the issue of proximate cause be removed from the factfinder." *Gilbert*, 255 A.3d at 1114 (citation modified).

2.

In the District Court, Grattan argued two theories of damages: (1) the marital estate (and, thus, her equitable share of it) was reduced by the amount of debt the couple incurred through loan instruments that Moriarty forged and that Handler failed to disclose to Grattan, and (2) Handler's failure to provide Grattan information material to the marital estate prolonged the divorce proceedings and increased Grattan's legal fees for the divorce. A jury should decide whether there was proximate causation on the first theory of damages, but the record forecloses relief on the second theory.

The District Court held that the first damages theory is foreclosed by the MSA. It reasoned that [redacted], so Grattan suffered no loss. But Grattan argues that the mere existence of the forged debt reduced the value of the marital estate. Moreover, her damages expert opined that [redacted] even though Grattan did not have to pay the debt directly. So Grattan has submitted evidence that the forged debt caused her a financial injury, notwithstanding that she received a fair allocation of the reduced estate.

The link between Handler's conduct and Grattan's reduced equitable distribution is far from direct. But the substantial-factor test "does not require an unsevered connecting link between the negligent conduct and the ultimate harm." *Gilbert*, 255 A.3d at 1114 (citation modified). And a reasonable jury could find that Handler's conduct was a substantial factor causing Grattan's injury.[10]

As to Grattan's second theory of damages (increased legal fees in the divorce case), the District Court invoked its ruling about the RA's Conflicts Provision and held that damages were foreclosed by the law of the case. Even if the RA's Conflicts Provision were not a barrier to relief, the District Court ruled that Handler's conduct was

[10] Handler argues that Grattan would not have fared better if she had hired a different attorney for estate planning, as that attorney would not have had access to information about Eileen's estate planning. Maybe so. But Grattan hired Handler, so he owed her a duty of care. A reasonable jury could find that his breach of that duty caused her financial injury.

not a substantial factor in causing Grattan's injury because (1) Moriarty caused the injury by failing to timely provide discovery during the divorce case, and (2) Grattan could have mitigated the damage by seeking legal fees in the divorce and reaching a settlement in the MSA.[11] It concluded that it would not permit Grattan to proceed against Handler for legal fees she could have sought in the divorce case.

We agree that Grattan cannot recover from Handler for legal fees in the divorce action, but we reach that conclusion because of a dearth of record evidence supporting her injury.[12]

According to Grattan's experts, [redacted]. Acknowledging that she would have incurred some legal fees in the normal course of the divorce, Grattan seeks 50% of the legal fees she incurred between June 2016 (when she filed for divorce) and August 2020 as damages for Handler's breach of duty. Her damages expert opines that, [redacted]. But her expert does not account for the fact that [redacted]. Nor does the expert say [redacted] or explain how [redacted]

[11] The District Court also noted that the MSA does not include a carve-out for fees attributable to Handler's malpractice. But the MSA resolved claims between Grattan and Moriarty, not claims against Handler, who was not a party to the divorce.

[12] We may affirm on any basis supported by the record. *See Murray v. Bledsoe*, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam).

[redacted]. Moreover, Grattan points to no evidence showing [redacted]. Absent evidence that Grattan still suffered an injury [redacted], she cannot pursue legal fees from Handler. *Grunwald v. Bronkesh*, 621 A.2d 459, 464–65 (N.J. 1993) ("Legally-cognizable damages occur when a plaintiff detrimentally relies on the negligent advice of an attorney. Actual damages are those that are real and substantial as opposed to speculative." (citation omitted)).

In sum, Grattan's pursuit of damages from the reduced marital estate due to the forged debt withstands summary judgment, but her pursuit of legal fees from the divorce cannot.

E. The District Court did not abuse its discretion in affirming the Magistrate Judge's discovery orders.

Lastly, Grattan appeals the District Court's order affirming the Magistrate Judge's rulings on her motion to compel production of documents from Handler. The District Court affirmed the Magistrate Judge's orders on multiple grounds, one of which was Grattan's failure to comply with the Magistrate Judge's directive to file a motion to enforce the underlying subpoena. In so ruling, the District Court did not abuse its discretion.

* * *

For the foregoing reasons, we will affirm the District Court's October 2022 order, affirm in part and reverse in part the March 2024 order, and remand for further proceedings.