

Uldaho Law

## Digital Commons @ Uldaho Law

---

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

---

3-7-2019

### Parkinson v. Bevis Respondent's Brief Dckt. 46269

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

#### Recommended Citation

"Parkinson v. Bevis Respondent's Brief Dckt. 46269" (2019). *Idaho Supreme Court Records & Briefs, All*. 7558.

[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/7558](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7558)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

REBECCA PARKINSON,

Appellant,

vs.

JAMES E. BEVIS,

Respondent.

Docket No. 46269-2018

Ada County Case No. CV01-17-08744

**RESPONDENT'S BRIEF**

Appeal from the District Court of the Fourth Judicial District for Ada County.

(Honorable Jonathan Medema, District Judge)

Kim J. Trout  
TROUT LAW, PLLC  
3778 N. Plantation River Dr., Ste. 101  
Boise, ID 83707  
Boise, ID 83702  
*Attorney for Appellant*

Keely E. Duke  
Aubrey D. Lyon  
Duke Scanlan & Hall, PLLC  
1087 West River Street, Suite 300  
*Attorneys for Respondent James A. Bevis*

**TABLE OF CONTENTS**

I.	STATEMENT OF THE CASE.....	4
A.	Nature of the Case.....	4
B.	Course of the Proceedings .....	4
C.	Concise Statement of the Facts .....	6
II.	ISSUES PRESENTED ON APPEAL.....	7
III.	ATTORNEY FEES ON APPEAL.....	7
IV.	SUMMARY OF ARGUMENT .....	9
V.	STANDARD OF REVIEW .....	11
VI.	ARGUMENT .....	13
VI.	CONCLUSION.....	30

**TABLE OF AUTHORITIES**

**Cases**

*Bishop v. Owens*, 152 Idaho 616, 272 P.3d 1247 (2012).....passim

*Blough v. Wellman*, 132 Idaho 424, 974 P.2d 70 (1999)..... 26

*Brown v. City of Pocatello*, 148 Idaho 802, 229 P.3d 1164 (2010)..... 14

*Burrows v. Arce*, 997 S.W.2d 229 (Tex. 1999)..... 24

*Clark v. Olsen*, 110 Idaho 323, 715 P.2d 993 (1986) ..... 13

*Doe v. Boy Scouts of Am.*, 159 Idaho 103, 356 P.3d 1049 (2015)..... 8, 19, 23

*Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 117 P.3d 130 (2005)..... 29

*Fragnella v. Petrovich*, 153 Idaho 266, 281 P.3d 103 (2012) ..... 27, 28

*Greenfield v. Smith*, 162 Idaho 246, 395 P.3d 1279 (2017)..... 9, 19, 20, 26

*Griggs v. Nash*, 116 Idaho 228, 775 P.2d 120 (1989) ..... 19

*Hodge for & on behalf of Welch v. Waggoner*, 164 Idaho 89, 425 P.3d 1232 (2018)..... 13

*Lapham v. Stewart*, 137 Idaho 582, 51 P.3d 396 (2002) ..... 9, 19, 20, 26

*Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187 (2018) ..... 11, 12, 17, 28

*Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 235 P.3d 387 (2010)..... 14

*Quick v. Crane*, 111 Idaho 759, 727 P.2d 1187 (1986) ..... 17

*Rockefeller v. Grabow*, 136 Idaho 637, 39 P.3d 577 (2001) ..... 9, 24

*See Jones v. Runft, Leroy, Coffin & Matthews, Chartered*, 125 Idaho 607, 873 P.2d 861 (1994)..... 23

*Smith v. Mitton*, 140 Idaho 893, 104 P.3d 367 (2004)..... 12, 28

*State v. Bradshaw*, 155 Idaho 437, 313 P.3d 765 (Ct. App. 2013)..... 9

*State, Dep't of Transp. v. Grathol*, 158 Idaho 38, 343 P.3d 480 (2015)..... 7

*Taylor v. McNichols*, 149 Idaho 826, 243 P.3d 642 (2010).....passim

*W. Cmty. Ins. Co. v. Burks Tractor Co., Inc.*, 164 Idaho 215, 428 P.3d 793 (2018) ..... 15

*Young v. City of Ketchum*, 137 Idaho 102, 44 P.3d 1157 (2002) ..... 14

**Statutes**

Idaho Code section 12-121 ..... 6

**Rules**

I.R.C.P. 11..... 13

I.R.C.P. 12..... 10, 13

I.R.C.P. 54..... 28, 29

I.R.C.P. 8..... 13

Idaho Appellate Rule 40 ..... 6

Idaho Appellate Rule 41 ..... 6

## I. STATEMENT OF THE CASE

### A. Nature of the Case

This case arises from a matter where Defendant-Respondent James A. Bevis (incorrectly identified in the caption as “James E. Bevis”), an Idaho attorney, represented Plaintiff-Appellant Rebecca Parkinson in a divorce from her husband Joe Parkinson. Mrs. Parkinson and Mr. Parkinson stipulated to a resolution of the divorce on May 11, 2015. Nearly two years later, Mrs. Parkinson sued Mr. Bevis alleging he disclosed a confidential email after the settlement agreement was reached in the divorce. While it is undisputed that the alleged disclosure of the email caused no damage, Mrs. Parkinson sued Mr. Bevis for breach of fiduciary duty – her sole cause of action – and requested as damages disgorgement of the fees Mr. Bevis earned while he represented her.

Mrs. Parkinson’s “breach of fiduciary duty” cause of action was really a legal professional negligence claim in disguise; however, she unequivocally conceded that she did not suffer any damages from the alleged breach and, therefore, could not prove all of the required elements of a legal malpractice claim. As such, the District Court dismissed Mrs. Parkinson’s Complaint because she had failed to state a claim upon which relief could be granted and could allege no set of facts that would state a claim.

In this appeal, Mrs. Parkinson seeks to circumvent this Court’s consistent holdings that “[l]egal malpractice has traditionally been treated as the proper claim where an attorney breaches his or her duty, which arises from the attorney-client relationship.” *Bishop v. Owens*, 152 Idaho 616, 621, 272 P.3d 1247, 1252 (2012). The misconception driving Mrs. Parkinson’s pursuit of this action is her belief that she must have a right to sue Mr. Bevis because he allegedly made a mistake which embarrassed her. Mrs. Parkinson argues that because she is seeking only the disgorgement of fees, she is entitled to pursue a cause of action for breach of fiduciary duty and need not prove causation and damages, two elements of a legal malpractice cause of action. Idaho has never

allowed such an end-run around proof of a legal malpractice claim where the allegations are that an attorney breached a duty which arose from the attorney-client relationship. Mrs. Parkinson cannot make a claim for her alleged embarrassment that she admitted resulted in no damages.

**B. Course of the Proceedings**

Mrs. Parkinson filed her Complaint against Mr. Bevis on May 10, 2017. (R. Vol. I, p. 6.) Mrs. Parkinson did not serve process until six months later, and Mr. Bevis responded on December 1, 2017 by filing a Motion to Dismiss pursuant to I.R.C.P. 12(b)(6) because Mrs. Parkinson's Complaint failed to state a claim for relief. (R. Vol. I, p. 13.) On January 30, 2018, Mrs. Parkinson filed her response brief to the Motion to Dismiss and filed a declaration of counsel that attached emails, one of which was the allegedly confidential communication that was disclosed to Mr. Parkinson's counsel. (R. Vol. I, p. 33-61.) The District Court held a hearing on the Motion to Dismiss on February 6, 2018. (Tr. Vol. I, p. 5, L. 2.) The District Court issued its memorandum decision granting Mr. Bevis's Motion to Dismiss on March 16, 2018. (R. Vol. I, p. 85.) Judgment was entered on March 23, 2018. (R. Vol. I, p. 116.)

On April 6, 2018, Mrs. Parkinson moved to amend the Complaint and to reconsider the decision to grant Mr. Bevis's Motion to Dismiss. (R. Vol. 1, p. 118-144.) The same day, Mr. Bevis filed materials seeking his costs and fees. (R. Vol. I, p. 147.) The court held oral argument on the parties' motions on June 4, 2018. (Tr. Vol. II, p. 6, L. 2.) On July 5, 2018, the District Court issued written decisions which granted Mr. Bevis's motion for costs as a matter of right, denied Mrs. Parkinson's Motion to Reconsider, and denied Mrs. Parkinson's Motion to Amend the Complaint. (R. Vol. I, p. 244-255.) It also entered an Amended Judgment reflecting Mr. Bevis's cost award. (R. Vol. I, p. 256.) Mrs. Parkinson filed her notice of appeal on August 15, 2018. (R. Vol. I, p. 258.)

**C. Concise Statement of the Facts**

This matter arises from a divorce action in which Mr. Bevis represented Mrs. Parkinson. Mrs. Parkinson's Complaint against Mr. Bevis included few facts. (R. Vol. I, p. 6-8.) She alleged the following:

- She retained Mr. Bevis in July of 2014 to represent her in divorce proceedings with her husband. (R. Vol. I, p. 6.)
- Stan Welsh represented Mr. Parkinson, and Mr. Bevis shared confidential attorney-client information with Mr. Welsh without Mrs. Parkinson's consent. (R. Vol. I, p. 6.) She provided no other details of the allegedly confidential, privileged communication that was disclosed until she responded to Mr. Bevis's Motion to Dismiss.
- Mr. Bevis was complicit with Mr. Welsh in securing a divorce that was more favorable to Mr. Parkinson than Mrs. Parkinson (R. Vol. I, p. 7), an allegation she later abandoned. (*See* R. Vol. I, p. 35 (Mrs. Parkinson stated that she "is not asking Bevis for the value of any lost divorce claims").)
- Mr. Bevis failed to obtain a full and complete evaluation of the marital property (R. Vol. I, p. 7), which she also abandoned. (*See* R. Vol. I, p. 35 (Mrs. Parkinson stated that she "is not asking Bevis for the value of any lost divorce claims").)

Mrs. Parkinson alleged only one cause of action against Mr. Bevis, which was styled as "breach of fiduciary duty." (R. Vol. I, p. 7.) The sole basis for Mrs. Parkinson's "breach of fiduciary" claim was her allegation that Mr. Bevis disclosed privileged communications to Mr. Welsh. (R. Vol. I, p. 7.) She alleged Mr. Bevis's breach was "all to Parkinson's damage," without providing any allegations regarding how she was allegedly damaged. (*Id.*) She later conceded she suffered no damage from Mr. Bevis's alleged breach of his duties to her. (*See, e.g.*, R. Vol. I, p.



38, 39 (stating that “[t]he Court should consider the grievous nature of Bevis’s betrayal, even though it did not cause any lasting financial damage . . . Parkinson’s harm is in the impaired value of Bevis’s legal services. Parkinson does not need to show any legal malpractice damages.”)

The District Court found Mrs. Parkinson had not alleged she suffered economic damages as a result of the alleged breach of fiduciary duty, and Mrs. Parkinson does not appeal that characterization of Mrs. Parkinson’s allegations. (*See* Appellant Brief at 16 (arguing that the District Court erred in its analysis of *Bishop v. Owens*, not that it misunderstood Mrs. Parkinson’s allegations regarding damages).) The District Court thoroughly analyzed Mrs. Parkinson’s Complaint, the arguments raised in her Response memorandum, and even the materials Mrs. Parkinson submitted that were outside the pleadings. The District Court concluded that Mrs. Parkinson had not alleged, and could not allege, a claim upon which relief could be granted. (R. Vol. I, p. 109-114.) The District Court reasoned that Mrs. Parkinson alleged that the rules of conduct that govern attorneys in Idaho precluded Mr. Bevis from sharing her email without her permission, and she alleged Mr. Bevis did so anyway. (R. Vol. I, p. 113.) While Mrs. Parkinson had chosen to articulate her claim in the language of an action for breach of fiduciary duty, it was at its essence a claim for professional negligence, and she could not prove all the elements of such a cause of action. (R. Vol. I, p. 113-114.)

## **II. ADDITIONAL ISSUES PRESENTED ON APPEAL**

Mr. Bevis is not raising additional issues for appeal.

## **III. ATTORNEY FEES AND COSTS ON APPEAL**

Mr. Bevis seeks his costs and fees on appeal. If Mr. Bevis prevails, he will be entitled to costs pursuant to Idaho Appellate Rule 40 as the prevailing party. Also, he will be entitled to his attorney fees on appeal pursuant to Idaho Appellate Rule 41 and Idaho Code Section 12-121

because this appeal is being pursued “frivolously, unreasonably or without foundation.” Section 12-121 “permits a court to apportion and award reasonable attorney fees for claims that are brought or defended unreasonably, frivolously, or without adequate foundation in fact or law. Such circumstances exist when an appellant has only asked the appellate court to second-guess the trial court by reweighing the evidence or has failed to show that the district court incorrectly applied well-established law.” *State, Dep’t of Transp. v. Grathol*, 158 Idaho 38, 53–54, 343 P.3d 480, 495–96 (2015) (internal citations and quotations omitted). In *Grathol*, as a basis for awarding fees on appeal and analyzing Idaho Code section 12-121, this Court found the appellant “failed to show the district court incorrectly applied well-established law, which makes its appeal unreasonable.” *Id.* at 54, 343 P.3d at 496.

Here, as in the underlying action, Mrs. Parkinson’s arguments are without foundation and unreasonable. The District Court, following this Court’s well-established precedent, determined that “Plaintiff may not bring a claim for breach of a fiduciary duty against her attorney if the crux of her complaint is that her attorney did not provide adequate legal representation. In that event, the Plaintiff must pursue an action for professional negligence.” (R. Vol. I, p. 108-109.)

Here, Mrs. Parkinson’s claim was never fairly debatable because the crux of her claim was always an alleged failure to provide adequate legal representation and she conceded she suffered no damages caused by any alleged breach of fiduciary duty. (*See, e.g.*, Mrs. Parkinson’s Response to Mr. Bevis’s Mot. To Dismiss at R. Vol. I, p. 38 (“Admittedly, Bevis’s breach did not affect the substance of Parkinson’s divorce, as the parties had already settled at the time of his emails. Instead, the breach impaired the value of Bevis’s services.”).) Mrs. Parkinson never distinguished her case from a legal professional negligence claim except in arguing that she should be exempt from proving the elements of professional negligence because of the form of recovery she sought.

She offered no authority for the proposition that simply seeking a different form of damages could change the nature of the cause of action itself, and Idaho case law unequivocally discourages that concept. *See Doe v. Boy Scouts of Am.*, 159 Idaho 103, 105, 356 P.3d 1049, 1051 (2015) (the focus is not on the remedy sought or the type of damages, but on the source of the damages).

Mrs. Parkinson had no basis to allege, and did not allege, that Mr. Bevis did anything to give rise to a claim for breach of fiduciary duty against an attorney to the extent that cause of action is recognized in Idaho law. Mrs. Parkinson did not allege that Mr. Bevis had a conflict of interest, that he stood to benefit himself by sharing her email with the other attorney, or that he lied to her in any way. From the start, it was clear that Mrs. Parkinson could not distinguish her claim from a cause of action for professional negligence. For that reason, Mrs. Parkinson pursued her action, and this appeal, unreasonably and in violation of Idaho Code section 12-121, and an award of attorney fees is appropriate.

#### **IV. SUMMARY OF ARGUMENT**

The District Court correctly ruled that Mrs. Parkinson failed to state a claim in her Complaint. The District Court also correctly exercised its discretion when it denied Mrs. Parkinson's requests to amend her Complaint because Mrs. Parkinson's amended allegations, even if allowed, failed to state a claim upon which relief could be granted. Mrs. Parkinson conceded she suffered no monetary damage from the alleged breach that formed the foundation of her claim against Mr. Bevis, and therefore, she could not prove a legal professional negligence cause of action. Also undisputed was that the alleged act which was the gravamen for her Complaint arose from her attorney-client relationship with Mr. Bevis.

In dismissing Mrs. Parkinson's Complaint and in denying her request to amend her Complaint, the District Court correctly applied Idaho law, primarily this Court's analysis in *Bishop*

*v. Owens*, 152 Idaho 616, 272 P.3d 1247 (2012), and found that Mrs. Parkinson had not made an allegation upon which a breach of fiduciary duty cause of action against her former attorney could survive. The District Court applied the law and reached the correct conclusion – that Mrs. Parkinson did not, and could not, state a claim upon which relief could be granted.

In support of her theory that she should be able to pursue an action against Mr. Bevis even though she suffered no damage, Mrs. Parkinson urges this Court to apply its holding in *Rockefeller v. Grabow*, 136 Idaho 637, 39 P.3d 577 (2001) (“*Rockefeller I*”). Notably, *Rockefeller I* has no application to Mrs. Parkinson’s claim because *Rockefeller I* was not a legal malpractice case, but was instead a case involving a real estate agent and involved allegations of the real estate agent’s breach of fiduciary duty by misleading his principals for personal gain. *Rockefeller I* is inapposite, and the District Court appropriately distinguished it from Mrs. Parkinson’s claims.

Mrs. Parkinson also urges this Court to adopt and apply the Restatement (Third) of the Law Governing Lawyers § 37 (2000), a section that has never been adopted by this Court, and to ignore this Court’s holdings in prior cases such as *Lapham v. Stewart*, 137 Idaho 582, 588, 51 P.3d 396, 402 (2002); *Bishop*, 152 Idaho at 621, 272 P.3d at 1252; *Greenfield v. Smith*, 162 Idaho 246, 395 P.3d 1279, 1284 (2017). (See Appellant Brief at 4.) Based on the principle of *stare decisis* and because the current state of the law strikes the right balance between discouraging attorney misconduct without adopting draconian penalties for alleged mistakes, this Court should decline Mrs. Parkinson’s invitation to upend established Idaho law. “*Stare decisis* dictates that we follow controlling precedent, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overturning it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.” *State v. Bradshaw*, 155 Idaho 437, 439, 313 P.3d 765, 767 (Ct. App. 2013) (reaffirming prior holding because appellant failed to show that the prior holding was

manifestly wrong, had proven to be unjust or unwise, or was inconsistent with longstanding legal principles). Here, Mrs. Parkinson has not demonstrated that this Court’s prior holdings in *Bishop*, *Lapham*, or *Greenfield* were manifestly wrong, unjust or unwise, or inconsistent with longstanding legal principles. Mrs. Parkinson largely avoids those relevant cases and instead focuses on other, inapposite, and often inapplicable authorities.

Additionally, this Court’s holding that “[l]egal malpractice has traditionally been treated as the proper claim where an attorney breaches his or her duty, which arises from the attorney-client relationship,” *Bishop*, 152 Idaho 621, 272 P.3d at 1252, combined with other consequences of misconduct, appropriately discourages attorneys from the type of conduct Mrs. Parkinson complains of without going so far as to make the profession more perilous than it needs to be. The rule that Mrs. Parkinson encourages this Court to adopt would allow a client to threaten an attorney to disgorge all fees earned for months or years of work due to an alleged error, no matter how minor, that caused no actual damage. This Court’s prior rulings establish that where an attorney breaches a professional duty to a client and causes damage, the client can recover. *See, e.g., Greenfield*, 162 Idaho at 252, 395 P.3d at 1285. Idaho law should not be expanded to encompass the type of claim Mrs. Parkinson attempted to bring against Mr. Bevis.

## V. STANDARD OF REVIEW

### A. Motion to Dismiss for Failure to State a Claim

A district court’s dismissal of a complaint under Rule 12(b)(6) of the Idaho Rules of Civil procedure “shall be reviewed *de novo*.” *Taylor v. McNichols*, 149 Idaho 826, 832, 243 P.3d 642, 648 (2010).

When this Court reviews an order dismissing an action pursuant to I.R.C.P. 12(b)(6), we apply the same standard of review we apply to a motion for summary judgment. After viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated. The

issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.

*Id.*

**B. Motion to Amend**

“The Court reviews a district court's decision to grant or deny a motion to amend for abuse of discretion.” *DAFCO LLC v. Stewart Title Guar. Co.*, 156 Idaho 749, 753, 331 P.3d 491, 495 (2014).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018) (emphasis in original).

**C. Motion for Reconsideration**

When reviewing a district court’s decision to grant or deny a motion for reconsideration, “this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration.” *Fagnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). The Motion for Reconsideration here was related to a decision to grant a Motion to Dismiss for Failure to State a Claim which is subject to *de novo* review, so the Motion for Reconsideration will also be subject to *de novo* review. *See Taylor*, 149 Idaho at 832, 243 P.3d at 648. Mrs. Parkinson’s Motion for Reconsideration also asked the District Court to reconsider its decision to disallow an amendment of the Complaint, which is subject to an abuse of discretion level of review. *See DAFCO LLC*, 156 Idaho at 753, 331 P.3d at 495.

**D. Costs and Fees Award**

“An award of attorney fees and costs is within the discretion of the trial court and subject to an abuse of discretion standard of review. The party disputing the award of attorney fees has the burden of showing an abuse of discretion.” *Smith v. Mitton*, 140 Idaho 893, 901, 104 P.3d 367, 375 (2004) (internal citations omitted). Determining whether the trial court abused its discretion is a four-step analysis as outlined above. *Lunneborg*, 163 Idaho at 863, 421 P.3d at 194.

## VI. ARGUMENT

### A. The District Court did not err in granting Mr. Bevis’ Motion to Dismiss.

In this case, the trial court dismissed the Complaint due to Mrs. Parkinson’s failure to plead (1) facts establishing her allegation that a confidential, privileged communication was disclosed, (2) all elements of a claim that her attorney failed to fully and completely evaluate the value of the community property during the divorce proceedings, and (3) all elements of a claim that her attorney “was complicit” with her husband’s attorney in securing a divorce more favorable to her husband than to her. (R. Vol. I, p. 109-111.) As the District Court noted, denial based on the second and third theories was appropriate because Mrs. Parkinson conceded that she cannot show damages, which is a required element to a legal professional negligence cause of action. (*Id.* at 110-111.) Indeed, Mrs. Parkinson does not challenge the dismissal of her action on these two grounds. (*See* Appellant’s Brief.)

Rather, Mrs. Parkinson takes issue with the dismissal based on the first ground, that she failed to allege facts establishing a cause of action based on her allegation that Mr. Bevis disclosed a confidential, privileged communication. The District Court’s decision on this issue was correct, and should be affirmed, for two primary reasons. First, Mrs. Parkinson’s pleadings failed to satisfy the “notice pleading” standard applied in Idaho. Second, the District Court’s decision ultimately

overlooked Mrs. Parkinson's deficient pleading, assumed Mrs. Parkinson had made a more robust set of allegations, and was based on what Mrs. Parkinson could have alleged.

**1. The District Court correctly concluded that Mrs. Parkinson's Complaint failed to include a concise statement of the facts constituting a cause of action.**

“A pleading that states a claim for relief must contain: . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” I.R.C.P. 8(a). Idaho applies a notice-pleading standard for interpreting the sufficiency of a pleading, “which inquires whether a pleading suffices to put the adverse party on notice of the claims brought against it.” *Hodge for & on behalf of Welch v. Waggoner*, 164 Idaho 89, 425 P.3d 1232, 1239 (2018), *reh'g denied* (Oct. 1, 2018) (internal citation omitted). “The purpose of a complaint is to inform the defendant of the material facts upon which the plaintiff bases his action. A complaint need only contain a concise statement of the facts constituting the cause of action and a demand for relief.” *Clark v. Olsen*, 110 Idaho 323, 325, 715 P.2d 993, 995 (1986) (internal citations omitted). Factual contentions in a pleading must have “evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” I.R.C.P. 11(b).

Pleadings which fail to state a claim for relief are subject to dismissal pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure. “A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated.” *Taylor v. McNichols*, 149 Idaho 826, 833, 243 P.3d 642, 649 (2010). “While we ‘will make every intendment to sustain a complaint that is defective, *e.g.*, wrongly captioned or inartful, a complaint cannot be sustained if it fails to make a short and plain statement of a claim upon which relief may be granted.’” *Id.* at 843–44 (internal citations omitted). When a motion to dismiss for failure to state a claim is considered, “the non-moving party is entitled to have all inferences from the record viewed in his favor. After drawing all inferences in the non-moving party's favor, we then ask whether a claim for relief has been



stated.” *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (internal citations and quotations omitted). “Even under the liberal notice pleading standard, a complaint must reasonably imply the theory upon which relief is being sought.” *Brown v. City of Pocatello*, 148 Idaho 802, 808, 229 P.3d 1164, 1170 (2010).

An example of a complaint that fails to provide sufficient allegations to state a claim is in *Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 443, 235 P.3d 387, 393 (2010). In *Mortensen*, the plaintiff argued that his complaint raised a quasi-estoppel claim. *Id.* In determining that the plaintiff waived his quasi-estoppel claim, this Court noted that the complaint lacked any mention of quasi-estoppel and the factual allegations did not set forth facts which would satisfy the elements of a quasi-estoppel claim. *Id.* This Court observed that the defendant indeed was not on notice of a quasi-estoppel claim and concluded that the complaint did not properly raise a quasi-estoppel claim. *Id.* at 444, 235 P.3d at 394.

Here, Mrs. Parkinson’s Complaint failed to satisfy even the liberal notice pleading standard, and dismissal was appropriate. Mrs. Parkinson’s Complaint failed to inform Mr. Bevis (and the District Court) of the material facts upon which Mrs. Parkinson based her action. In “support” of her single claim, Mrs. Parkinson alleged only the following:

- “During the course of Bevis’ representation of Parkinson, Bevis, without Parkinson’s knowledge or consent, shared attorney-client confidential information with Joe Parkinson’s attorney, Stanley Welsh.” (R. Vol. I, p. 6).
- Mr. Bevis “was subject to ethical and fiduciary duties to Parkinson during his representation of her in the divorce proceedings” (R. Vol. I, p. 7).
- “Upon information and belief, Bevis breached his duties to Parkinson by, among other things, disclosing attorney client privileged communications to Welsh during the course of

the divorce proceedings, all to Parkinson's damage in an amount to be proven at time of trial." (*Id.*)

Mrs. Parkinson did not identify in her Complaint the privileged communication that was allegedly disclosed and did not allege she instructed Mr. Bevis to keep the communication private. Given Mrs. Parkinson's allegations were conclusory and did not sufficiently put Mr. Bevis on notice of the material facts upon which her action was based, the District Court – like the Court in *Mortensen* – correctly determined the Complaint did not plead a claim upon which relief could be granted.

**2. *Even if the District Court's analysis of the allegations in the Complaint was an error, it was harmless because the district court considered what Mrs. Parkinson could have alleged, not simply the allegations in her Complaint.***

Here, even if the District Court erred in dismissing Mrs. Parkinson's Complaint based on insufficient allegations of facts supporting her claim for relief – which it did not – the error was harmless because the District Court went on to consider whether it should allow Mrs. Parkinson to amend her Complaint to remedy its deficiencies. (R. Vol. I, p. 111.) “When an error does not affect the substantial right of a party, the error is harmless.” *W. Cmty. Ins. Co. v. Burks Tractor Co., Inc.*, 164 Idaho 215, 428 P.3d 793, 797 (2018), *reh'g denied* (Oct. 31, 2018). This Court has also noted that it ““must disregard all errors and defects that do not affect any party's substantial rights.” *Id.* (citing I.R.C.P. 61.)

In determining whether Mrs. Parkinson should be allowed to amend her Complaint, the District Court considered the additional factual allegations Mrs. Parkinson submitted in connection with her opposition to Mr. Bevis's Motion to Dismiss. (*Id.* at p. 112.) Only after considering Mrs. Parkinson's additional allegations, which remedied the deficient pleading but left open the legal question of whether Mrs. Parkinson could pursue the cause of action she sought to pursue, did the

District Court conclude that Mrs. Parkinson's Complaint must be dismissed. (*Id.* at p. 111-114.) Accordingly, Mrs. Parkinson's substantial rights were not affected by the dismissal based on the actual allegations in her Complaint because the District Court also considered what she could have alleged before the District Court reached its conclusion to dismiss the action.

**B. The District Court did not abuse its discretion in denying Mrs. Parkinson's requests to amend her Complaint.**

*1. The District Court appropriately exercised its discretion.*

Mrs. Parkinson first made requests to amend her Complaint in briefing in response to Mr. Bevis's Motion to Dismiss. (*See, e.g.*, R. Vol. I, pp. 34, 40, and 81.) Later, Mrs. Parkinson formally moved to amend her Complaint. (R. Vol. I, p. 118.) Mrs. Parkinson requested she be allowed to amend her Complaint to make more definite allegations of fact regarding her cause of action, but the essence of her cause of action was the same: she sought to allege breach of fiduciary duty and recover the fees she had paid Mr. Bevis for legal work, and she was seeking to avoid a cause of action for legal professional negligence because she conceded she had suffered no damage. (R. Vol. I, p. 34-40.) The District Court appropriately exercised its discretion and denied Mrs. Parkinson's requests to amend the Complaint because, even if she was allowed to amend, she would have still been unable to state a claim for relief.

"The Court reviews a district court's decision to grant or deny a motion to amend for abuse of discretion." *DAFCO LLC v. Stewart Title Guar. Co.*, 156 Idaho 749, 753, 331 P.3d 491, 495 (2014).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018) (emphasis in original). In discussing the abuse of discretion standard, this Court noted: “We have long held that the appellate court should not substitute its discretion for that of the trial court. Implicit in this principle is the truism that the appellate court should not simply focus upon the results of a discretionary decision below, but rather upon the process by which the trial court reached its discretionary decision.” *Quick v. Crane*, 111 Idaho 759, 772, 727 P.2d 1187, 1200 (1986).

“If the amended pleading does not set out a valid claim . . . it is not an abuse of discretion for the trial court to deny the motion to file the amended complaint.” *Taylor*, 149 Idaho at 847, 243 P.3d at 663. In *Taylor*, the plaintiff asserted claims against several defendants alleging business-related causes of action. *Id.* at 831, 243 P.3d at 647. The defendants filed motions to dismiss pursuant to I.R.C.P. 12(b)(6) for failure to state a claim, and before the motions were decided, the plaintiff filed a motion to amend his complaint to modify his original allegations and raise a new cause of action for a shareholder derivative claim. *Id.* The trial court granted the motions to dismiss, which this Court affirmed. *Id.* at 847, 243 P.3d at 663. This Court also affirmed the district court’s denial of the plaintiff’s motion to amend the complaint on the grounds that the proposed amendments would be futile because they would not have withstood a motion to dismiss. *Id.* The plaintiff’s proposed changes to his existing causes of action did not alter this Court’s analysis of the dismissal of those claims, and he did not have standing to allege a shareholder derivative claim. *Id.* Noting that the proposed factual changes did not change the I.R.C.P. 12(b)(6) analysis and the plaintiff lacked standing for the new cause of action, this Court held: “we find that the district court acted within its discretion in denying [the plaintiff’s] motions for leave to amend his complaints on the ground of futility.” *Id.*

The rationale for affirming the denial of the motion to amend in *Taylor* applies equally well to this case. Here, Mrs. Parkinson proposed amendments to the factual allegations of her Complaint, but even with those changes, her cause of action would still have been subject to a motion to dismiss because she conceded she could not prove all elements of a legal professional negligence cause of action. The District Court did not abuse its discretion denying Mrs. Parkinson's motion to amend as demonstrated by application of the four-step analysis this Court provided in *Lunneborg*:

1. The District Court correctly perceived the issue as one of discretion. (*See R. Vol. I, p. 111* (“Whether to permit such amendment is a discretionary decision or this Court.”).)
2. The District Court acted within the outer boundaries of its discretion. *See Taylor*, 149 Idaho at 847, 243 P.3d at 663 (holding that a court may deny a motion to amend if the proposed amendments do not set out a valid claim).
3. The District Court also acted consistently with the legal standards applicable to the specific choices available to it. *See id.*
4. Finally, the District Court's well-reasoned, 31-page memorandum decision and order demonstrates that it reached its decision by the exercise of reason. (*See R. Vol. I, p. 85-115.*) In that decision, the District Court considered Idaho law regarding claims against attorneys, how Mrs. Parkinson's allegations fit within that category of claims, the elements that Mrs. Parkinson must be able to prove in order to establish her cause of action, Mrs. Parkinson's arguments for why she should not be subject to Idaho's established standards for claims against one's attorney, and whether Mrs. Parkinson could allege a set of facts which would state a claim for relief. (*Id.*)

As demonstrated below, the District Court’s legal conclusion that Mrs. Parkinson’s cause of action was barred by this Court’s holding in *Bishop v. Owens*, 152 Idaho 616, 272 P.3d 1247 (2012), was correct. Accordingly, the District Court did not abuse its discretion in denying Mrs. Parkinson’s requests to amend the Complaint, and the District Court’s decision should be affirmed.

**2. *The District Court correctly concluded that Mrs. Parkinson’s claim sounded in professional negligence, which she conceded she could not prove.***

Mrs. Parkinson’s appeal is premised on the erroneous assumption that she must be able to sue Mr. Bevis for something. Mrs. Parkinson’s assumption is incorrect because, as the District Court concluded, her claim is for legal professional negligence which she cannot prove.

“Malpractice by any other name still constitutes malpractice.” *Griggs v. Nash*, 116 Idaho 228, 232, 775 P.2d 120, 124 (1989). “Legal malpractice has traditionally been treated as the proper claim where an attorney breaches his or her duty, which arises from the attorney-client relationship.” *Bishop v. Owens*, 152 Idaho 616, 621, 272 P.3d 1247, 1252 (2012). It is a long-established rule in Idaho that regardless of the label applied to claims by the plaintiff, a cause of action against a professional arising out of the provision of professional services to the plaintiff sounds in professional negligence. *Griggs*, 116 Idaho at 232, 775 P.2d at 124; *Lapham v. Stewart*, 137 Idaho 582, 588, 51 P.3d 396, 402 (2002); *Bishop*, 152 Idaho at 621, 272 P.3d at 1252; *Greenfield v. Smith*, 162 Idaho 246, 251, 395 P.3d 1279, 1284 (2017). An “action against one’s attorney for damages resulting from the manner in which the attorney represented the client constitutes an action for malpractice within the meaning of [the statute of limitations for malpractice], regardless of whether predicated upon contract or tort or whether for indemnification or for direct damages.” *Griggs*, 116 Idaho at 232. “[T]he focus in Idaho is not on the remedy sought or the type of damages, but on the source of the damages.” *Doe v. Boy Scouts of Am.*, 159 Idaho 103, 105 n.3, 356 P.3d 1049, 1051 (2015); *see also Bishop*, 152 Idaho at 621.

In considering whether a client may bring a claim against a former attorney for more than legal malpractice, this Court has noted that “legal malpractice” is defined as “wrongful acts or omissions in the performance of professional services by any person . . . licensed to perform such services under the law of the state of Idaho.” *Greenfield v. Smith*, 162 Idaho 246, 250, 395 P.3d 1279, 1283 (2017) (citing Idaho Code § 5-219(4)). “Legal malpractice” is an amalgamation and encompasses claims beyond those sounding in tort. *See id.*

A cause of action against an attorney arising out of the provision of professional services to the client-plaintiff sounds in professional negligence. In *Lapham*, the Idaho Supreme Court considered what claims could be asserted against an attorney in an action arising out of the provision of legal services to the plaintiff to determine the statute of limitations applicable to such claims. 137 Idaho at 585, 51 P.3d at 399. The case involved a mistake in disbursing funds to a debtor. The plaintiff argued that he was entitled to assert claims against the attorney for ordinary negligence, breach of contract, and breach of fiduciary duty, because they arose out of the provision of escrow services, which were separate and distinct from the legal services being provided by the attorney. *Id.* at 588-89, 51 P.3d at 402-03. This Court rejected the argument that the escrow services were distinct from legal services and held “the focus is whether the alleged wrongful act or omission occurred in the course of performing professional services.” *Id.* at 589, 51 P.3d at 403. This Court found that the disbursement of closing funds arose from the performance of professional services the attorney agreed to perform for the plaintiff. *Id.* As such, this Court concluded that the only applicable claim was professional negligence and the district court properly refused to allow amendment to assert claims for negligence, breach of contract, and breach of fiduciary duty for the same conduct which was the basis of the professional negligence cause of action. *See id.*

The concept that a cause of action against an attorney arising out of the provision of professional services to the client-plaintiff sounds in professional negligence, and not some other cause of action, was also discussed in *Bishop v. Owens*, 152 Idaho at 621, 272 P.3d at 1252. In that case, the personal representative of the deceased client sought to pursue an action against the former attorney of the deceased client. The complaint set forth causes of action for professional negligence and breach of contract. This Court considered whether a client could maintain both a breach of contract action and a professional negligence action against a former attorney. It noted that “[l]egal malpractice has traditionally been treated as the proper claim where an attorney breaches his or her duty, which arises from the attorney-client relationship.” *Id.* Absent a scenario where the attorney has guaranteed a specific outcome in the litigation or provided for a higher standard of care in the contract, the client’s cause of action against an attorney for allegedly breaching his duty arising from the attorney-client relationship is legal professional negligence, not breach of contract. *See id.*

This Court noted that a proponent’s label of her “action as sounding in contract as well as malpractice does not make the underlying action contract.” *Id.* It held that the former client’s breach of contract claim, which asserted the same claim as the legal malpractice theory, which has traditionally been treated as the proper claim, failed to state a claim upon which relief can be granted. *Id.*

In this case, Mrs. Parkinson attempted to characterize her cause of action as a claim for breach of fiduciary duty, even though the alleged conduct arose from the manner in which Mr. Bevis represented his client. As this Court held in *Bishop*, the law on this point is clear: legal malpractice is the proper claim where a client alleges the attorney breached his duty arising from the attorney-client relationship.



Here, all of Mrs. Parkinson's claims arose out of Mr. Bevis's alleged wrongful acts in performing services in connection with his representation of her. Mrs. Parkinson alleged that she hired Mr. Bevis in July of 2014 to represent her as an attorney in divorce proceedings. (R. Vol. I, p. 6.) She alleged that during the course of the representation, Mr. Bevis, without Parkinson's knowledge or consent, shared attorney-client confidential information with her husband's attorney. (*Id.*) Mrs. Parkinson alleged that Mr. Bevis was subject to ethical and fiduciary duties as her attorney, but she did not detail the specific duties she alleges were applicable. (*Id.* at p. 7.) She then alleged that Mr. Bevis "breached his duties to Parkinson by, among other things, disclosing attorney client privileged communications to [her husband's attorney] during the course of the divorce proceedings." (*Id.*) Mrs. Parkinson only alleged duties arising from Mr. Bevis's role as her attorney, and she did not identify some other source of a duty that would take her allegations outside the scope of a professional negligence claim.

While Mrs. Parkinson argues that this is really a breach of fiduciary duty action for the forfeiture of fees, she has not distinguished the factual basis of her claim from a claim for legal malpractice. Like the plaintiffs in *Lapham* and *Bishop* who tried to plead around a professional negligence cause of action, Mrs. Parkinson attempted to allege a breach of fiduciary duty cause of action even though the conduct at issue was Mr. Bevis's alleged performance of his duties as Mrs. Parkinson's attorney. This is a professional negligence claim, not breach of fiduciary duty.

Allowing a breach of fiduciary duty cause of action in Mrs. Parkinson's situation would also have unintended consequences on legal professional negligence claims in general. Similar to this Court's warning in *Bishop*, allowing a breach of fiduciary duty action here would create a *per se* breach of fiduciary duty action in every legal malpractice action. *See* 152 Idaho at 621, 272 P.3d at 1252. It would also render the two-year statute of limitations provided in Idaho Code section 5-

219 moot because clients could avail themselves of the longer breach of fiduciary duty limitations period. *See Jones v. Runft, Leroy, Coffin & Matthews, Chartered*, 125 Idaho 607, 614, 873 P.2d 861, 868 (1994) (applying the four-year statute of limitations contained in Idaho Code § 5–224 to a breach of fiduciary duty cause of action).

The fact that Mrs. Parkinson seeks to recover fees allegedly paid to Mr. Bevis does not, alone, separate it from a legal malpractice claim because the “focus in Idaho is not on the remedy sought or the type of damages, but on the source of the damages.” *Doe v. Boy Scouts of Am.*, 159 Idaho 103, 105, 356 P.3d 1049, 1051 (2015). For those reasons, the District Court correctly concluded that Mrs. Parkinson’s claim sounded in professional negligence and not breach of fiduciary duty.

**3. *The District Court appropriately dismissed Mrs. Parkinson’s claim because she cannot prove all elements of a professional negligence cause of action.***

“The elements of a legal malpractice actions are: (a) the existence of an attorney-client relationship; (b) the existence of a duty on the part of the lawyer; (c) failure to perform the duty; and (d) the negligence of the lawyer must have been a proximate cause of the damages to the client.” *Taylor v. McNichols*, 149 Idaho 826, 845, 243 P.3d 642, 661 (2010). Here, Mrs. Parkinson concedes that Mr. Bevis did not cause her damages. (R. Vol. I, p. 35 (“Parkinson is not asking Bevis for the value of any lost divorce claims”).) Rather, she argues, she seeks only disgorgement and forfeiture of attorney fees from Mr. Bevis. (*Id.*) Mrs. Parkinson argues that, “The fact that this did not ‘harm’ Parkinson’s divorce case is immaterial.” (R. Vol. I, p. 38.) She further argues, “The Court should consider the grievous nature of Bevis’s betrayal, even though it did not cause any lasting financial damages.” (*Id.*) The District Court appropriately applied the elements of a legal professional negligence cause of action and dismissed Mrs. Parkinson’s claim against Mr.

Bevis because she could not prove damages as a result of Mr. Bevis's alleged breach of his professional duties to her. (R. Vol. I, p. 110-114.)

**4. Mrs. Parkinson does not have a separate breach of fiduciary duty claim against Mr. Bevis.**

Mrs. Parkinson contends that her breach of fiduciary duty claim is distinct from a legal malpractice claim. (Appellant's Brief at 1.) She argues that her breach of fiduciary duty claim is not duplicative of a legal malpractice claim, but the only distinction she identifies is that she was not damaged by Mr. Bevis's alleged breach and therefore cannot prove a professional negligence claim. (See Appellant's Brief at 5.) The misconception that is driving Mrs. Parkinson's pursuit of this action is the belief that she must have a right to sue Mr. Bevis because he allegedly embarrassed her. However, absent suffering some damages, Mrs. Parkinson simply cannot recover for her alleged embarrassment.

In arguing that the District Court abused its discretion in denying her motion to amend the Complaint, Mrs. Parkinson relies primarily on two authorities: this Court's decision in *Rockefeller v. Grabow*, 136 Idaho 637, 39 P.3d 577 (2001) ("*Rockefeller I*") and the Restatement (Third) of Law Governing Lawyers § 37 (2000). (Appellant's Brief at 4.) *Rockefeller I* and the Idaho cases cited therein relate only to real estate agents and their commissions. *Rockefeller I* involved clients' claims against their former real estate development agent for breach of fiduciary duty and whether the former real estate development agent must forfeit his commission. In that case, this Court cited to the Texas case of *Burrows v. Arce*, 997 S.W.2d 229 (Tex. 1999), a case which did involve a claim against an attorney. However, this Court's analysis only relied on *Burrows* for a discussion of the theory of automatic full forfeiture, not to upset the settled law on legal professional negligence claims. *Rockefeller I*, 136 Idaho at 642. This Court has never relied on *Rockefeller I*

for the proposition Mrs. Parkinson offers it for: that a client can make an end-run around the pleading requirements for legal professional negligence by alleging breach of fiduciary duty.

The District Court correctly perceived the problem with Mrs. Parkinson's reliance on *Rockefeller I*: she attempted to use the rule stated there to allege a disguised legal professional negligence claim. (See R. Vol. I, p. 108.) This Court's holdings in *Bishop* and *Lapham* prohibit that type of form-over-substance argument. Mrs. Parkinson cited to no Idaho authority for the proposition that a client can sue her former attorney for an alleged breach of a professional duty and obtain a recovery without establishing the elements of legal professional negligence. Mrs. Parkinson argues that she "reminded the District Court that *Rockefeller I* imposed a high duty of loyalty on Bevis and that Bevis's breach of that duty was remediable, even in the absence of damages." (Appellant's Brief at 8-9.)

*Rockefeller I* is a real estate agent case, and the rule stated therein does not address the duties of attorneys or harmonize the rule with the longstanding rules regarding legal professional negligence being the only appropriate cause of action against an attorney for wrongful acts or omissions in the performance of an attorney's professional services. This Court observed in *Bishop*, 152 Idaho at 620, that legal malpractice actions encompass claims for a breach of the attorney-client relationship. "Legal malpractice has traditionally been treated as the proper claim where an attorney breaches his or her duty, which arises from the attorney-client relationship." *Id.* at 621. The District Court, after having thoroughly considered the holding in *Bishop* and other cases, correctly concluded that Mrs. Parkinson "may not bring a claim for breach of a fiduciary duty against her attorney if the crux of her complaint is that her attorney did not provide adequate legal representation." (R. Vol. I, p. 108-109.)

Mrs. Parkinson also encourages this Court to adopt Section 37 of the Restatement (Third) of the Law governing Lawyers as the law in Idaho, and she argues that the District Court abused its discretion for not applying the rule set out in the Restatement. (Appellant Brief at 14-15.) The District Court considered Section 37 of the Restatement, even though Idaho's appellate courts have not held that Section 37 accurately represents Idaho law regarding causes of action against attorneys. (See R. Vol. I, p. 108.) It considered that: "The test articulated by the Idaho Supreme Court in *Rockefeller I* and in the Restatement (Third) of the Law Governing Lawyers is applicable to those claims. However, Plaintiff may not bring a claim for breach of a fiduciary duty against her attorney if the crux of her complaint is that her attorney did not provide adequate legal representation." (R. Vol. 1, p. 108-109.) Again, the District Court's conclusion is consistent with this Court's holdings in *Lapham* and *Bishop* in that, where a plaintiff alleges a breach of a professional duty that would sound in legal professional negligence, a plaintiff cannot avoid a legal professional negligence cause of action by calling her claim something else. The District Court demonstrated an appreciation for the legal framework from this Court and made its decision consistent with that framework.

Mrs. Parkinson also relies on *Blough v. Wellman*, 132 Idaho 424, 426, 974 P.2d 70, 72 (1999), for the proposition that she can recover against Mr. Bevis for the alleged breach of professional duties. *Blough* is inapposite because it does not hold that a breach of fiduciary duty claim is separate and distinct from a legal malpractice claim. Even if it did so hold, the subsequent cases of *Lapham*, 137 Idaho at 588, *Bishop*, 152 Idaho at 621, and *Greenfield*, 395 P.3d at 1284 make clear that Idaho does not recognize a breach of fiduciary duty cause of action against one's own attorney for conduct which also would be the basis for a professional negligence claim.

In summary, Idaho does not allow a breach of fiduciary duty cause of action in lieu of a legal malpractice cause of action. To recover for an alleged breach of a duty arising from the attorney-client relationship, the “negligence of the lawyer must have been a proximate cause of the damages to the client.” *Taylor v. McNichols*, 149 Idaho 826, 845, 243 P.3d 642, 661 (2010). Here, the alleged misconduct Mrs. Parkinson bases her claim on is the disclosure of a confidential email, which is allegedly a breach of a duty arising from the attorney-client relationship. Mrs. Parkinson concedes that Mr. Bevis did not cause her damages, and as the District Court correctly perceived, the lack of damages is fatal to Mrs. Parkinson’s cause of action. For purposes of evaluating Mrs. Parkinson’s claim, the District Court assumed Mrs. Parkinson’s allegations to be true, analyzed the allegations Mrs. Parkinson made and those which she could have made, and allowed Mrs. Parkinson all reasonable inferences, and it nonetheless concluded that Mrs. Parkinson could not state a claim for relief. It concluded that allowing Mrs. Parkinson to amend her Complaint would be futile. Therefore, the District Court appropriately exercised its discretion in dismissing Mrs. Parkinson’s Complaint and denying her Motion to Amend.

**C. The District Court did not abuse its discretion in denying Mrs. Parkinson’s Motion for Reconsideration**

When reviewing a district court’s decision to grant or deny a motion for reconsideration, “this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration.” *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). The Motion for Reconsideration here was related to a decision to grant a Motion to Dismiss for Failure to State a Claim which is subject to *de novo* review, so the Motion for Reconsideration will also be subject to *de novo* review. *See Taylor*, 149 Idaho at 832, 243 P.3d at 648. Mrs. Parkinson’s Motion for Reconsideration also asked the District Court to reconsider its decision to disallow an amendment of the Complaint, which is subject to an abuse of discretion level of review. *See*

*DAFCO LLC*, 156 Idaho at 753, 331 P.3d at 495. “On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. However, a motion for reconsideration need not be supported by any new evidence or authority.” *Fragnella*, 153 Idaho at 276, 281 P.3d at 113.

As set forth above, the District Court applied the appropriate standard in deciding to dismiss Mrs. Parkinson’s Complaint and denying her request to amend the Complaint. It considered Mrs. Parkinson’s Motion for Reconsideration and found that Mrs. Parkinson did not introduce new facts or law which changed the outcome of its prior decision to dismiss the matter. (R. Vol. I, p. 244-248.) The District Court affirmed its prior decision to dismiss Mrs. Parkinson’s Complaint, and that decision demonstrated a correct application of the law and was not an abuse of discretion.

**D. The District Court did not abuse its discretion in awarding Mr. Bevis his costs**

“An award of attorney fees and costs is within the discretion of the trial court and subject to an abuse of discretion standard of review. The party disputing the award of attorney fees has the burden of showing an abuse of discretion.” *Smith v. Mitton*, 140 Idaho 893, 901, 104 P.3d 367, 375 (2004) (internal citations omitted). Determining whether the trial court abused its discretion is a four-step analysis as outlined above. *Lunneborg*, 163 Idaho at 863, 421 P.3d at 194.

A prevailing party is entitled to recover its mandatory costs. To determine a prevailing party, I.R.C.P. 54(d)(1)(B) provides:

In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

“A determination on prevailing parties is committed to the discretion of the trial court and we review the determination on an abuse of discretion standard.” *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 718–19, 117 P.3d 130, 132–33 (2005).

In this case, Mr. Bevis was unequivocally the prevailing party. Ms. Parkinson raised a single cause of action against Mr. Bevis, and that cause of action was dismissed upon Mr. Bevis’s motion to dismiss for failure to state a claim. For Mr. Bevis, it was “the most favorable outcome that could possibly be achieved,” and he was the prevailing party. *See Eighteen Mile Ranch*, 141 Idaho at 719, 117 P.3d at 133. The District Court was required to award Mr. Bevis his mandatory costs pursuant to I.R.C.P. 54(d)(1)(A), and therefore its decision to do so was not an abuse of discretion.

## **VI. CONCLUSION**

Based on the above, Mr. Bevis respectfully requests that this Court AFFIRM the March 16, 2018 Memorandum Decision and Order Granting Defendant’s Motion to Dismiss; the July 5, 2018 Order Denying Motion to Reconsider; the July 5, 2018 Order Denying Motion to Amend the Complaint; and the July 5, 2018 Order Awarding Costs.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of March, 2019

DUKE SCANLAN & HALL, PLLC

By /s/Keely E. Duke

Keely E. Duke - Of the Firm  
Attorneys for Appellant



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of March, 2019, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Kim J. Trout  
TROUT LAW, PLLC  
3778 N. Plantation River Dr., Ste. 101  
Boise, ID 83703  
*Attorney for Appellant*

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile (208) 297-2689
- iCourt/Email  
ktrout@trout-law.com

/s/Keely E. Duke

Keely E. Duke

Aubrey D. Lyon