

RENDERED: NOVEMBER 22, 2006; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2006-CA-000303-MR

DONALD RAY VIOLETT

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 05-CI-00348

CURRIE MILLIKEN

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \*\*

BEFORE: BARBER AND GUIDUGLI, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

BARBER, JUDGE: Appellant, Donald Ray Violet, appeals the Warren Circuit Court's dismissal of his civil complaint against his former defense counsel, W. Currie Milliken. We affirm the Warren Circuit Court's ruling.

Violet contends that, following withdrawal of Milliken as his attorney, Milliken later rejoined the case, despite the absence of any entry of appearance in the record,

---

<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and continued to represent him through 2001, when new criminal charges were filed against Violet. Violet argues that Milliken conspired with the county attorney to file the new charges and that this action constituted legal negligence. In 2005, Violet filed a civil action against Milliken for legal negligence. That action was dismissed by the circuit court on statute of limitations grounds.

We find that Milliken withdrew from the representation of Violet in 1993. The record shows that Violet had other counsel after that date, and also filed pro se claims on his own behalf. The 2001 charges were dismissed without prejudice. The record does not support a claim of any legal negligence on the part of Milliken with regard to those charges. The legal negligence limitations period is one year from the date of injury. We affirm the trial court's dismissal of the complaint.

In 1993 Violet was charged with numerous counts of sexual abuse of a minor. Milliken represented Violet at trial. Violet was convicted of the charged offenses and sentenced to serve in excess of 700 years. Violet's conviction was affirmed on direct appeal.

Following the conviction, Violet filed an RCr 11.42 motion claiming that counsel was ineffective. This motion was denied in 2001. The circuit court dismissed the motion as untimely. In 2002, Violet was indicted on new charges. The

Commonwealth Attorney dismissed those charges without prejudice in light of Violet's extended sentence on the earlier charges. Violet filed a second post-conviction motion in 2002, claiming misfeasance or negligence by Milliken. That motion was denied. Violet filed the underlying claim against Milliken in 2005, claiming that Milliken was legally negligent by "conspiring" to have him indicted for bribery. In his responsive pleading, Milliken notes that he withdrew as counsel for Violet in 1993, more than ten years before the filing of the suit. This withdrawal was authorized by the trial court. There is no entry of appearance for Milliken following that date. Milliken also provides documents following his withdrawal as counsel, showing that Violet refers to a third party as "my lawyer." Milliken also argued that the suit was untimely. Violet claims that the discovery rule should apply and contends that he was not aware of the claimed "legal negligence" by Milliken until 2004.

Violet relies on a signature on the Amended Final Judgment in 1994 as showing that Milliken re-entered the case. Violet contends that as Milliken never withdrew again after signing that document, he continued to represent Violet after that date. As the record and the brief filed by Milliken both show, Milliken did not represent Violet after he withdrew from the action. Violet was represented by other counsel on appeal, referred to other attorneys as his lawyer, paid Milliken no

fees, was not billed by Milliken, and did not interact with Milliken. There is no evidence of any attorney-client relationship after the date of withdrawal. Violettt also argues that as copies of the trial court's denial of his motion for RCr 11.42 relief were sent to Milliken, that shows that Milliken was his counsel. In fact, a review of the certificate of service shows that Donald Violettt appeared pro se. Violettt's claim that Milliken continues to represent him was properly denied by the trial court.

The circuit court dismissed Violettt's civil complaint against Milliken as being outside the applicable statute of limitations. "A professional negligence claim does not accrue until there has been a negligent act and until reasonably ascertainable damages are incurred." Pedigo v. Breen, 169 S.W.3d 831, 833 (Ky. 2004). In this case, the limitations period on any harm alleged by Violettt with regard to the criminal action expired one year after the appeal in that case was final. Stephens v. Denison, 64 S.W.3d 297, 299 (Ky.App. 2001). Filing post judgment motions does not toll a limitations period for legal negligence. Bryant v. Howell, 170 S.W.3d 421, 422 (Ky.App. 2005). With regard to any harm alleged in the 2001 filing of new charges, the limitations period on that claim has also long since expired. The applicable limitations period is one year from the date the plaintiff knows he is injured. Faris

v. Stone, 103 S.W.3d 1, 4 (Ky. 2003). Violettt claims that he knew Milliken was "involved" in the filing of criminal charges contemporaneously with that filing. Therefore, the applicable limitations period began to run on that date and expired long before the filing of the underlying complaint. For that reason, dismissal of the complaint must be affirmed.

In addition, as Milliken notes, the law requires that a criminal client suing counsel for legal negligence must first establish his innocence in a criminal proceeding. Ray v. Stone, 952 S.W.2d 220 (Ky. 1997). Violettt has not done so with regard to his criminal case or the later charges. The later charges were dismissed at the request of the Commonwealth Attorney, without prejudice. Further, contrary to Violettt's assertion on appeal, there is no evidence that Milliken was involved in bringing the charges against Violettt, or that Milliken acted with malice or with legal negligence towards Violettt with regard to the 2001 criminal charges. The trial court's ruling is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Donald Ray Violettt, Pro Se  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Matthew J. Baker  
Bowling Green, Kentucky