# STATE OF MICHIGAN

# COURT OF APPEALS

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JAMES A HELLER,

Plaintiff-Appellant,

v

JOHN M. DONALDSON and MAGER, MONAHAN, DONALDSON & ALBER,

Defendant-Appellees.

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UNPUBLISHED
March 13, 1998

No. 194219
Wayne Circuit Court
LC No. 94-419778-NM

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants. We affirm.

Plaintiff claimed that defendants committed numerous acts of legal malpractice in their representation of him with respect to a financial dispute that later ripened into litigation and with respect to a possible legal malpractice claim against plaintiff's former attorney. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) arguing that plaintiff had failed to state a claim for legal malpractice or to demonstrate that a genuine issue of material fact existed for trial. After a hearing on the matter, the trial court granted defendants' motion, but failed to specify the subrule upon which the determination was based. The trial court referred to facts beyond the pleadings, however, so it is presumed that defendants' motion was granted pursuant to MCR 2.116(C)(10). See *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 705; 532 NW2d 186 (1995).

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence available to it in a light most favorable to the nonmoving party. *Tranker v Figgie Int'l, Inc*, 221 Mich App 7, 11; 561 NW2d 397 (1997). We must then determine whether

there exists a genuine issue of material fact on which reasonable minds could differ or whether the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff first argues that defendants had a duty to advise him of the statute of limitations on his potential malpractice claim against his former attorney. We disagree. In an action for legal malpractice, a plaintiff must establish (1) the existence of an attorney-client relationship, (2) negligence in the legal representation of the plaintiff, (3) that the negligence was a proximate cause of the injury, and (4) the fact and extent of the injury alleged. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). An attorney-client relationship is contractual in nature. See *Fletcher v Board of Education*, 323 Mich 343, 348-349; 35 NW2d 177 (1948). An attorney may limit the scope of his relationship with a client. See *Jackson v Pollick*, 751 F Supp 132, 134 (ED Mich, 1990), aff'd 941 F2d 1209 (1991) ("It is accepted practice, particularly in an age of legal specialization, for an attorney to represent a client only as to a specific claim.").[1] For purposes of a claim of legal malpractice, an attorney's duty to his client does not extend beyond the scope of the attorney-client relationship. *Jackson*, *supra* at 133-135.

Here, in an engagement letter presented to plaintiff, defendants expressly limited the scope of their representation of plaintiff to a particular business dispute, and specifically excluded any potential malpractice claim from the contractual terms of that relationship. The engagement letter specifically advised plaintiff that defendants would not render any opinion with regard to a possible malpractice claim against plaintiff's former attorney. The letter also noted that plaintiff should continue to consult with the separate counsel he had retained to pursue that claim. Because plaintiff did not provide any documentary evidence to contradict the engagement letter's memorialization of the terms of his relationship with defendants, the trial court properly granted summary disposition with respect to this issue. See *Munson Medical Center v Auto Club Ins Ass'n*, 218 Mich App 375, 386; 554 NW2d 49 (1996); *Jackson*, *supra* at 133.

Plaintiff also argues that the trial court erred when it concluded that, absent a showing of fraud or bad faith, a claim of legal malpractice may not be brought where the underlying litigation resulted in a settlement. Although we agree that the trial court reached an erroneous conclusion regarding the standard to be applied in legal malpractice claims arising from settlement agreements,[2] plaintiff is not entitled to any relief on appeal as a result of the trial court's erroneous conclusion of law. This is so because the trial court also granted summary disposition on the alternate basis that there was no genuine issue of material fact as to defendants' ordinary negligence. As discussed below, we agree with the trial court's alternate conclusion.

Plaintiff argues that the trial court erred in finding defendants' alleged acts of negligence to be protected from scrutiny as litigation tactics involving professional judgment. We disagree. An attorney is "obligated to use reasonable skill, care, discretion and judgment in representing a client." However, an attorney "does not have a duty to insure or guarantee the most favorable outcome possible" and is not required "to exercise extraordinary diligence, or act beyond the knowledge, skill, and ability ordinarily possessed by members of the legal profession." *Simko*, *supra* at 656. Further, "mere errors in judgment by a lawyer are generally not grounds for a malpractice action where the attorney acts in good faith and exercises reasonable care, skill, and diligence." *Id.* at 658. The evaluation of a settlement offer is clearly a matter of strategy, as are choices regarding discovery and the types of claims

to bring. Here, there was nothing to suggest that defendants failed to use reasonable skill, care, and discretion in the exercise of their professional judgment, or that defendants acted in anything but good faith. Therefore, defendants should not be held liable for those strategic choices even if hindsight could establish that their decisions were poor ones. *Simko, supra* at 658.

Finally, plaintiff argues that the trial court erred in granting defendants' motion for summary disposition with respect to plaintiff's allegation that defendant Donaldson's prior association with the attorney representing the adverse parties in the underlying litigation created a conflict of interest. We disagree. Although there was a disputed issue of fact with respect to the issue of when Donaldson's professional association with one of the opposing attorneys terminated, that question was not legally dispositive of plaintiff's legal malpractice claim against defendants. In order to preclude a motion for summary disposition brought pursuant to MCR 2.116(C)(10), the disputed factual matter must be material to the issue in dispute. See *State Farm & Casualty Co v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1991). This Court, in *Radtke v Miller, Canfield, Paddock & Stone*, 209 Mich App 606, 620-621; 532 NW2d 547 (1995), rev'd on other grounds 453 Mich 413; 551 NW2d 698 (1996), held that dismissal of the plaintiff's legal malpractice claim based on an alleged conflict of interest was proper where there was no evidence that defendants breached any duty to plaintiff or that plaintiff was adversely affected by the alleged conflict of interest. Likewise, nothing in this case suggests that defendants violated any ethical rule, breached any duty to plaintiff, or otherwise committed any malpractice as a result of Donaldson's prior relationships to the adverse parties. Accordingly, the trial court properly granted defendants' motion for summary disposition with respect to the issue of defendants' alleged conflict of interest. *Radtke, supra* at 620-621.

Affirmed. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Maureen Pulte Reilly

[1] Although not binding on this Court, federal precedent may provide persuasive authority. See *Ward v Parole Board*, 35 Mich App 456, 461; 192 NW2d 537 (1971).

[2] In cases alleging legal malpractice, the ordinary negligence standard is applied. See *Simko, supra* at 655-659; *Lowman v Karp*, 190 Mich App 448, 451; 476 NW2d 428 (1991) (also holding that settlement of the underlying litigation did not preclude, as a matter of law, a subsequent legal malpractice cause of action against the attorney who represented the plaintiff in the underlying litigation).