

STATE OF MICHIGAN
COURT OF APPEALS

AMY GREEN,

Plaintiff-Appellant,

v

W. ALLAN CAWLEY, JR.,

Defendant-Appellee.

UNPUBLISHED

August 6, 1999

No. 206422

Oakland Circuit Court

LC No. 96-512908 NM

Before: White, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. Plaintiff actually challenges a prior ruling denying her motion to extend time to reply to defendant's request for admissions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, an attorney, represented plaintiff in her unsuccessful effort to secure a zoning variance. After plaintiff's second request for a variance was denied, defendant filed suit in circuit court alleging violation of plaintiff's right to equal protection. That suit was dismissed as untimely. On February 1, 1996 plaintiff filed suit alleging that defendant's failure to properly pursue an appeal from the denial of her request for a variance constituted legal malpractice. On June 13, 1996 defendant served a first request for admissions on plaintiff. The request asked plaintiff to admit: (1) that she never had standing to assert an equal protection claim against any party; (2) that she was not a member of a protected class at any relevant time; and (3) that the negligence alleged in the complaint did not result in any actual damage. Thereafter, defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's failure to respond meant that the requests were deemed admitted, and that she could not establish a prima facie case of legal malpractice. On April 29, 1997 plaintiff moved to extend time to answer the request for admissions. In support of the request, plaintiff noted that her counsel had left his position without notice in January, 1997. The trial court denied plaintiff's motion to extend time, and subsequently granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

MCR 2.312(B)(1) provides in pertinent part:

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

We review a trial court's decision to grant or deny a discovery motion for an abuse of discretion. *Eyde v Eyde*, 172 Mich App 49, 54; 431 NW2d 459 (1988).

Plaintiff argues that the trial court abused its discretion by denying her motion to extend time to answer defendant's request for admissions. We disagree. Plaintiff took no action to respond to the request, or to seek an extension of time in which to do so, for more than ten months. The fact that plaintiff's attorney left his position without notice in January, 1997 does not constitute a valid reason for plaintiff's failure to respond to seek an extension prior to that time. Under these facts, we find no abuse of discretion. *Eyde, supra*.

The elements of a claim for legal malpractice are: (1) the existence of an attorney-client relationship; (2) the acts constituting the negligence; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994). Plaintiff's deemed admissions established that the negligence alleged in her complaint did not result in any actual damage, and thus precluded her from establishing a prima facie case of legal malpractice. An admission resulting from a failure to answer a request for admissions may form the basis for summary disposition. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991).

Affirmed.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder