

STATE OF MICHIGAN
COURT OF APPEALS

MARIANNE ZORZA,

Plaintiff-Appellant,

v

DAVID KOTZIAN and SOMMERS, SCHWARTZ,
SILVER & SCHWARTZ, P.C.,

Defendants-Appellees.

UNPUBLISHED
October 12, 1999

No. 208147
Washtenaw Circuit Court
LC No. 97-004008 NM

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and dismissing her claim with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants represented plaintiff in three suits arising out of her work as a research assistant at the University of Michigan. Each case was dismissed at the trial court level, and appeals were filed. In September, 1994, plaintiff informed defendants that she wished to represent herself for the remainder of the appeals process. We denied defendants' motion to withdraw as moot in two cases for the reason that the cases had been decided. On February 9, 1995 we granted the motion to withdraw in the third case, and directed that new counsel was to be retained within twenty-one days. We granted plaintiff's motion for rehearing, and on May 11, 1995 entered an order amending the February 9, 1995 order and providing that new counsel, if desired, was to be retained within twenty-one days.

Plaintiff's suit, filed on May 12, 1997, alleged that defendants violated their duty to exercise reasonable care, skill, and judgment in their representation, and that their acts and omissions constituted legal malpractice, fraud, and breach of contract. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the action was barred by the two-year statute of limitations for legal malpractice actions, MCL 600.5805(4); MSA 27A.5805(4), and that the six-month discovery rule, MCL 600.5838(2); MSA 27A.5838(2), was inapplicable. The trial court granted the motion, finding

* Circuit judge, sitting on the Court of Appeals by assignment.

that defendants' representation of plaintiff terminated on February 9, 1995. The trial court found that plaintiff's entire complaint sounded in legal malpractice, and that dismissal of the entire suit was warranted.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff's assertion that the trial court erred in finding that defendants' representation ended as of February 9, 1995, the date we relieved defendants of the obligation to represent plaintiff, is without merit. For purposes of application of the statute of limitations, an attorney discontinues serving a client when the attorney is relieved of the obligation to serve either by the client or by a court. *Hooper v Hill Lewis*, 191 Mich App 312, 315; 477 NW2d 114 (1991). Plaintiff's subjective belief that defendants continued to represent her after February 9, 1995 is not sufficient to create a question of fact.

The decision to dismiss a case with prejudice is within the discretion of the trial court. *Rinke v Automotive Moulding Co*, 226 Mich App 432, 439; 573 NW2d 344 (1997). The decision determines whether a party may refile a claim, or whether the claim is forever barred. *ABB Paint Finishing, Inc v National Union Fire Ins Co*, 223 Mich App 559, 562; 567 NW2d 456 (1995). The running of a statute of limitations forever bars a claim. *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 394; 406 NW2d 304 (1987). The trial court's dismissal of plaintiff's time-barred claim with prejudice did not constitute an abuse of discretion.

Finally, we hold that the trial court did not err in dismissing plaintiff's suit in its entirety. The gravamen of an action is determined by reading the complaint as a whole. *Aldred v O'Hara-Bruce*, 184 Mich App 488, 490; 458 NW2d 671 (1990). Defendants' acts and omissions said by plaintiff to constitute fraud and breach of contract were the same as those alleged to constitute legal malpractice. The entire action was governed by the malpractice statute of limitations. *Id.*

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich