

STATE OF MICHIGAN
COURT OF APPEALS

SHAREN RAE,

Plaintiff-Appellant,

v

WILLIAM A. REDMOND, and DEMING,
HUGHEY, LEWIS, ALLEN & CHAPMAN, P.C.,

Defendants-Appellees.

UNPUBLISHED

February 25, 2000

No. 212368

Kalamazoo Circuit Court

LC No. B96-2683NM

Before: Sawyer, P.J., and Gribbs and McDonald, JJ.

PER CURIAM.

In this legal malpractice action, plaintiff Sharen Rae appeals as of right in propria persona from an order granting defendants' motion for summary disposition. Specifically, plaintiff argues the trial court improperly granted defendants' motion for summary disposition because a jury should have determined that but for defendant William A. Redmond's negligence, plaintiff would have been successful in demonstrating that her son had sexually molested his minor daughter. Although the trial court does not specify the court rule it used in making this decision, it is clear from the content of its well written opinion that it was decided on the grounds of MCR 2.116(C)(7), collateral estoppel. We affirm.

In a legal malpractice action, a plaintiff has the burden of establishing four elements: (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 an injury; and (4) the fact and extent of the injury alleged. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994), quoting *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). Because plaintiff cannot establish the third element, her claim fails.

A plaintiff must prove negligence by showing that his attorney failed to exercise reasonable skill, care, discretion, and judgment in the conduct and management of the underlying case. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996). The Michigan Supreme Court has noted that an attorney does not have a duty to insure or guarantee the most favorable outcome possible, and that an attorney is never bound to exercise extraordinary diligence, or act

beyond the knowledge, skill, and ability ordinarily possessed by members of the legal profession. *Simko v Blake*, 448 Mich 648, 656; 532 NW2d 842 (1995). An attorney's mere errors in judgment do not constitute malpractice where the attorney acts in good faith and in honest belief that his acts and omissions are well founded in law and are in the best interest of his client. *Id.*, 658.

Plaintiff's evidence does not support her contention that Redmond breached his duty to zealously represent her in the postjudgment custody action. We do not find that Redmond was negligent, but even if he had been, plaintiff's legal malpractice action would still fail because she cannot establish the third element. Under the third element in a legal malpractice action, a plaintiff must demonstrate that, but for the alleged malpractice, the plaintiff would have been successful in the underlying suit. *Reinhart, supra* at 586.

Plaintiff argues that the trial court erred in holding that plaintiff was estopped from demonstrating that her son sexually abused his minor daughter. According to plaintiff's understanding of the collateral estoppel doctrine, she should not be estopped because the underlying actions did not involve the issue of legal malpractice. Plaintiff is correct only to the degree that she is not estopped because of her legal malpractice claim. However, because three courts determined that plaintiff's son did not sexually abuse his minor daughter, plaintiff is estopped from arguing that Redmond could have demonstrated that the sexual abuse occurred, which is a necessary component of plaintiff's proximate cause argument. Plaintiff already had a full and fair opportunity to litigate her allegation that her son sexually abused his minor daughter and is collaterally estopped from relitigating the issue in this matter. *Alterman v Provizer, Eisenberg, Lichtenstein & Pearlman, PC*, 195 Mich App 422, 424-427; 491 NW2d 868 (1992) Therefore, defendants were entitled to judgment as a matter of law and the trial court properly granted summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ Roman S. Gribbs
/s/ Gary R. McDonald