

STATE OF MICHIGAN
COURT OF APPEALS

DAVID DIEHL,

Plaintiff-Appellant,

v

DAVID MCEVERS,

Defendant-Appellee.

UNPUBLISHED
October 27, 2000

No. 220005
Ingham Circuit Court
LC No. 98-089395-NM

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting defendant's motion for summary disposition under MCR 2.116(C)(7), on statute of limitations grounds. We affirm.

On July 17, 1995, plaintiff retained defendant to represent him on a criminal charge. The parties executed a fee contract on that date. Plaintiff entered a no contest plea to a reduced charge on August 1, 1995. His motion to withdraw his plea was denied, and he was sentenced on September 18, 1995.

Plaintiff filed a legal malpractice and breach of contract action in Jackson Circuit Court on September 8, 1997. That case was dismissed without prejudice, and plaintiff filed the instant action in Ingham Circuit Court on December 22, 1998. The trial court granted defendant's motion for summary disposition, finding that the two-year statute of limitations for legal malpractice claims governed this action. The action was not brought within the two-year period, even tolling the statute while the Jackson circuit court case was pending.

MCL 600.5805; MSA 27A.5805 provides for a two-year statute of limitations for malpractice claims. That period begins to run from the time that a professional discontinues serving the plaintiff in a professional capacity. A malpractice claim that is not commenced within the time prescribed is barred. MCL 600.5838; MSA 27A.5838. The last date defendant provided service to plaintiff was September 18, 1995, the date of his sentencing. *Fante v Stepek*, 219 Mich App 319, 322; 556 NW2d 168 (1996).

While plaintiff argues that the court erred in failing to construe his claim as a breach of contract action, it is not the label that controls, but the nature of the interest harmed that governs the applicable law. *Seebacher v Fitzgerald, Hodgman, Cawthorne & King, PC*, 181 Mich App 642, 646; 449 NW2d 673 (1989). The two-year statute of limitations applies to a legal malpractice action even when phrased as a breach of contract action. *Id.* Here, plaintiff attempts to extend the statute of limitations by restating the label of his claim. His claim is clearly based on the alleged professional malpractice of defendant in failing to properly handle the defense against criminal charges. The two-year malpractice statute of limitations applies, and the court properly granted summary disposition to defendant.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage