

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GARY E. STOCK and JULIE C. STOCK,

Plaintiffs-Appellants,

v

MARK C. CHARTER and BIRKHOLD &  
ASSOCIATES, P.C.,

Defendants-Appellees.

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UNPUBLISHED

May 29, 2001

No. 224130

Kalamazoo Circuit Court

LC No. 99-000012-NM

Before: McDonald, P.J., and Smolenski and K.F. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Defendants represented plaintiffs in a suit brought by Fred and Joyce Ruble, plaintiffs' neighbors, seeking to establish a prescriptive easement over a lane that ran to and from their property. When it was discovered that the disputed strip of land had been dedicated as a public road, the parties agreed to dismiss the case. Defendants approved as to form and content the stipulated order of dismissal. The order was entered on December 19, 1995.

On August 14, 1996, plaintiffs, represented by new counsel, filed a complaint for superintending control seeking to compel the Van Buren County Road Commission to declare the road abandoned. That suit was dismissed. On April 12, 1997 plaintiffs then brought an action for common law abandonment. The trial court dismissed the suit, concluding that the stipulated dismissal of the Rubles' lawsuit precluded plaintiffs from asserting a contrary position in the 1997 action.

Plaintiffs filed this suit alleging legal malpractice on January 8, 1999. They contended that they did not learn of a possible cause of action against defendants until July 15, 1998, the date they received the Van Buren County Road Commission's answer in the common law abandonment action. In that answer, the Van Buren County Road Commission asserted that the December 19, 1995 stipulated dismissal of the Rubles' suit precluded relitigation of the issue of

the abandonment of the road. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). The trial court granted the motion pursuant to MCR 2.116(C)(7), finding that the suit was time barred for the reason that it was not filed within two years after defendants' representation of plaintiffs ended, or within six months after plaintiffs discovered or should have discovered defendants' alleged malpractice.

## II. Statute of Limitations

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. 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).

A complaint for legal malpractice must be brought within two years after the attorney discontinues serving the client, or within six months after the client discovers or should have discovered the claim, whichever is later. MCL 600.5805(5); MSA 27A.5805(5); MCL 600.5838(2); MSA 27A.5838(2). Whether a plaintiff should have discovered a possible claim is measured objectively by the application of a reasonable person standard. *Levinson v Trotsky*, 199 Mich App 110, 112; 500 NW2d 762 (1993).

In this case, it is undisputed that this action was not filed within two years of December 19, 1995, the date that defendants stopped representing plaintiffs, and that plaintiffs were relying on the six-month discovery rule. MCL 600.5838(2); MSA 27A.5838(2). When plaintiffs filed their complaint for superintending control they, and presumably, new counsel, knew of the existence of the stipulated order dismissing the first action. At that time, plaintiffs should have discovered the existence of a possible cause of action because they should have discovered that the stipulated order of dismissal would preclude their asserting a contrary position in their action for superintending control. *Gebhardt, supra*; *Levinson, supra*. Thus, plaintiffs' complaint was untimely under both MCL 600.5805(5); MSA 27A.5805(5) and MCL 600.5838(2); MSA 27A.5838(2). The trial court properly granted summary disposition in favor of defendants.

Affirmed.

/s/ Gary R. McDonald  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly