

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS H. HUFFMAN,

Plaintiff-Appellant,

v

STUART R. SHAFER and REID & REID,

Defendants-Appellees.

UNPUBLISHED

August 21, 2001

No. 223612

Ingham Circuit Court

LC No. 97-087474-NM

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and denying his motion to amend the caption of his complaint. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants represented plaintiff in a custody action in which plaintiff did not prevail.¹ On March 6, 1997, after the conclusion of the custody action, plaintiff filed for bankruptcy. He listed a potential cause of action for legal malpractice against defendants as an asset in the bankruptcy action. On December 3, 1997 plaintiff filed suit alleging that defendants committed legal malpractice when representing him in the custody dispute. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that plaintiff was not entitled to bring the action because he was not the real party in interest, that plaintiff was estopped from asserting a claim for legal malpractice, and that no reasonable jury could find in plaintiff's favor. Plaintiff moved to amend the caption of the complaint to substitute or add the bankruptcy trustee as plaintiff. Plaintiff's motion was filed after expiration of the two-year statute of limitations for a legal malpractice action. MCL 600.5805(4).

The trial court granted defendants' motion for summary disposition, and denied as futile plaintiff's motion to amend the caption. The court treated plaintiff's motion as one to amend the

¹ Plaintiff appealed as of right. In *Huffman v Huffman*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 1998 (Docket No. 191474), this Court affirmed the trial court's decision.

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

complaint to add a party, and denied same on the ground that the relation-back doctrine does not generally apply to the addition of new parties. *Hurt v Michael's Food Center, Inc*, 220 Mich App 169, 179; 559 NW2d 660 (1996).

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).

We review a trial court's decision on a motion to amend a complaint for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition and abused its discretion by denying his motion to amend. We disagree and affirm. An action must be prosecuted in the name of the real party in interest. MCR 2.201(B). A real party in interest is one who is vested with the right of action on a given claim, even though the beneficial interest may rest with another. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). Plaintiff's bankruptcy filing listed a possible cause of action for legal malpractice among his assets. This claim became part of plaintiff's bankruptcy estate. 11 USC 541(a)(1). Upon appointment, a bankruptcy trustee is vested with title to the debtor's entire estate, including rights of action. 11 USC 110(a). A bankruptcy trustee has the exclusive right to assert claims belonging to the debtor at the time of the bankruptcy filing. *In re Newpower*, 229 BR 691 (WD Mich, 1999); *Bauer v Commerce Union Bank*, 859 F2d 438, 441 (CA 6, 1988). Plaintiff's claim for legal malpractice became the property of the bankruptcy trustee, and could be pursued only by the trustee. *McClarty v Gudenau*, 176 BR 788 (ED Mich, 1995); *Hofmann, supra*. Summary disposition was properly granted.

The trial court's denial of plaintiff's motion to amend the caption of the complaint did not constitute an abuse of discretion. The bankruptcy trustee was the real party in interest prior to the filing of the complaint. The trial court correctly treated the motion as one seeking to add a party, and properly denied the motion. *Hurt, supra*; MCL 600.5805(4). Plaintiff's reliance on *Hayes-Albion Corp v Whiting Corp*, 184 Mich App 410; 459 NW2d 47 (1990), as support for the assertion that the trial court should have allowed the amendment, is misplaced. Plaintiff has not established either that he had an interest in the subject matter at the time the malpractice complaint was filed, or that defendants had notice of the new plaintiff, i.e., the bankruptcy trustee, prior to the expiration of the malpractice limitations period. *Id.*, 417. The trial court properly denied the motion to amend as futile. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage
/s/ Charles H. Miel