

STATE OF MICHIGAN  
COURT OF APPEALS

---

SHANNON FLANIGAN,

Plaintiff-Appellant,

v

BRIAN HERSCHFUS, WOOD, KULL,  
HERSCHFUS, LAY AND KULL, P.C., C.  
JOSEPH BOOKER, and SADO,

Defendants-Appellees.

---

UNPUBLISHED

February 1, 2002

No. 226997

Oakland Circuit Court

LC No. 99-016645-NM

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court's orders dismissing his legal malpractice complaint against defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court did not err by dismissing plaintiff's claims against his former appellate counsel C. Joseph Booker and Booker's employer SADO. An attorney has a duty to fashion a strategy consistent with prevailing law, but does not have a duty to guarantee the most favorable outcome possible. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). An attorney is not duty-bound to exercise extraordinary diligence or to act beyond the knowledge, skill, and ability ordinarily possessed by members of the legal profession. *Id.*, 656-657. Mere errors by counsel are not grounds for a malpractice action where counsel acted in good faith and exercised reasonable skill, care, and diligence. *Id.*, at 658. Which issues to raise on appeal are matters of professional judgment and strategy which will ordinarily not be second-guessed by the appellate courts. *People v Reed*, 449 Mich 375, 391; 535 NW2d 496 (1995). An appellate counsel's failure to assert all arguable claims of error does not indicate "that counsel failed to function as a reasonable appellate attorney in selecting the issues presented." *Id.* As noted by the circuit court, "plaintiff's real argument is that defendants were unsuccessful on appeal" because they failed to raise the numerous additional appellate arguments listed in his complaint. Defendants' failure to raise all possible appellate issues defendant can invent does not constitute legal malpractice.

The circuit court properly dismissed plaintiff's legal malpractice claims against Herschfus and his law firm Wood, Kull, Herschfus, Lay, and Kull P.C. A legal malpractice action must be filed within two years of the last day of service or within six months of when the

plaintiff discovered, or should have discovered, the claim. MCL 600.5805(5), MCL 600.5838. *Gebhardt v O'Rourke*, 444 Mich 535, 541; 510 NW2d 900 (1994). The two-year period set by MCL 600.5805 began to run when Booker was appointed to represent plaintiff in place of Herschfus. *Gebhardt*, at 544, 554. The six-month period set by MCL 600.5838(2) began to run by the date this Court affirmed his conviction in December of 1997 if not earlier. *Id.*, 544-545, 554.

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O'Connell  
/s/ Brian K. Zahra