STATE OF MICHIGAN

COURT OF APPEALS

KAZZI L. TUPPER,

Plaintiff-Appellant,

V

RONALD A. LEBEUF,

Defendant/Cross-Defendant-Appellee,

and

SULLIVAN, HAMILTON, SCHULZ, SIMONS, KREETER, TOTH & LEBEUF PC,

Defendant/Cross-Plaintiff-Appellee,

and

WILLIAM M. MURPHY and ALBERTA MURPHY,

Defendants-Appellees.

UNPUBLISHED
August 6, 2002

No. 229869
Calhoun Circuit Court
LC No. 99-003745-NM

Before: Neff, P.J., and White and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting defendants' motions for summary disposition. We affirm in part, reverse in part, and remand.

Plaintiff retained defendant Ronald A. Lebeuf to provide legal services in her divorce action against her then-husband, non-party Johnny Allen Kipp. Among the issues resolved during the divorce action was ownership of the marital home. On February 24, 1997, an order was entered appointing defendants William M. Murphy and Alberta Murphy (the "Murphy defendants") receivers of the marital home. The purpose of the receivership was to enable the Murphy defendants to obtain financing to pay plaintiff and Kipp's mortgage indebtedness, so

that they could then sell the marital home for plaintiff and Kipp's benefit. Plaintiff and Kipp executed quit claim deeds conveying the marital home to the Murphy defendants.[1]

However, the Murphy defendants were unsuccessful in their attempt to obtain financing. The marital home was sold at a sheriff's foreclosure sale on May 23, 1997. Because the Murphy defendants were the record owners on the date of the foreclosure, plaintiff and Kipp lost their respective rights of redemption. Nevertheless, the divorce judgment provided that, after the divorce judgment was entered, either plaintiff or Kipp could redeem the property free of any claim by the other.[2]

In August 1997, plaintiff's cousin made arrangements to obtain the financing to allow plaintiff to redeem the marital home. However, the lending institution informed plaintiff's cousin that only the Murphy defendants retained a right of redemption. Plaintiff's cousin contacted defendant Lebeuf to attempt to have the situation resolved. On September 24, 1997, defendant Lebeuf, after receiving plaintiff's permission, moved on plaintiff's behalf to have the Murphy defendants reconvey the marital home to plaintiff and Kipp. However, on October 7, 1997, defendant Lebeuf informed plaintiff that no further action would be taken. In the interim, the Murphy defendants had redeemed the property and sold it to third parties. Plaintiff did not receive any share of the proceeds.

On October 1, 1999, plaintiff filed her complaint. In Count I, she alleged that defendant Lebeuf committed legal malpractice by allowing the Murphy defendants to have the sole rights of redemption. In Count II, she alleged that defendant Sullivan, Hamilton, Schulz, Simons, Kreeter, Toth & Lebeuf, P.C., defendant Lebeuf's employer ("defendant law firm") was liable for defendant Lebeuf's malpractice under a respondeat superior theory. In Count III, plaintiff alleged that the Murphy defendants' conduct constituted a breach of their respective fiduciary duties. In Count IV, plaintiff alleged that the Murphy defendants' sale of the property to the third parties constituted a tortuous interference with plaintiff's business expectancy. Ultimately, the trial court granted defendants' respective motions for summary disposition, resulting in the dismissal of all of plaintiff's claims. On appeal, plaintiff challenges these orders.

Plaintiff contends that the trial court erred by granting the Murphy defendants' motion for summary disposition. Generally, we review de novo a trial court's ruling on a motion for summary disposition.[3] *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

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[1] The property was conveyed to the Murphy defendants as individuals, rather than as receivers.

[2] The judgment of divorce was entered on July 8, 1997. Arguably, the receivership terminated with the filing of the divorce judgment.

[3] Although the trial court did not specify a subsection of MCR 2.116(C) when granting the Murphy defendants' motion for summary disposition, the trial court went beyond the pleadings in considering the merits of the motion. Accordingly, it is appropriate to review the trial court's order as if it were pursuant to MCR 2.116(C)(10). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), we consider "the affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Haliw v Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001). "Summary disposition may be granted if the evidence demonstrates that there is no genuine issue with respect to any material fact, and the moving

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In *In re Motion for Leave to Sue Receiver of Venus Plaza Shopping Center*, 228 Mich App 357, 359; 579 NW2d 99 (1998), we recognized that "leave of court must be obtained before bringing a lawsuit against a court-appointed receiver." See also *Cohen v Bologna*, 53 Mich App 149, 152; 216 NW2d 596 (1974). Here, plaintiff did not move for leave to sue the Murphy defendants. In fact, the proper course of action would have been for plaintiff to move for leave within the divorce action, rather than filing a separate lawsuit against the Murphy defendants. See *In re Peoples State Bank of Auburn*, 51 Mich App 421, 431-432; 215 Mich App 722 (1974), quoting *Citizens' State Bank v Ingham Circuit Judge*, 98 Mich 173, 177; 57 NW 121 (1893) ("The proper and orderly manner for the allowance of such claims is by petition to the court appointing the receiver, and in the same action."). Accordingly, we believe that plaintiff's failure to obtain leave of the court to sue the Murphy defendants is fatal to her lawsuit. Consequently, the trial court properly granted the Murphy defendants' motion for summary disposition.[4]

Plaintiff also contends that the trial court erred by granting defendant Lebeuf's motion for summary disposition pursuant to MCR 2.116(C)(7). When reviewing a motion for summary disposition under MCR 2.116(C)(7), the court must accept the nonmoving party's well-pleaded allegations as true and "construe the allegations in the nonmovant's favor to determine whether any factual development could provide a basis for recovery." *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000). "The court must consider any pleadings, affidavits, depositions, admissions, or other documentary evidence that has been submitted by the parties . . [although] the moving party is not required to file supportive material." *Id.* Here, the primary issue to be determined is when, for purposes of the two-year malpractice statute of limitation, MCL 600.5805(5), defendant Lebeuf's representation of plaintiff terminated as to the matters out of which the claim arose. MCL 600.5838(1).

In *Maddox v Burlingame*, 205 Mich App 446, 447; 517 NW2d 816 (1994), the defendant attorney represented the plaintiffs in September 1986 regarding the plaintiffs' sale of a business, which included the plaintiffs' retention of a security interest in certain business assets. The closing of the sale took place on October 13, 1986. *Id.* In April 1987, the defendant "revised the sale agreement to accommodate the purchasers' financial problems." *Id.* In March 1988, the defendant prepared a letter on the plaintiffs' behalf that demanded immediate payment from the purchasers. *Id.* at 448. In April 1988, the purchasers filed for bankruptcy, and the plaintiffs' Florida attorney[5] advised them in June 1988 that there was "a problem with their security interest." *Id.* On August 15, 1988, the plaintiffs accused the defendant of committing legal malpractice, which prompted defendant to conduct research and contact the plaintiffs' Florida attorney that day. *Id.* The defendant billed the plaintiffs for his efforts on August 15, 1988. *Id.* at 448, 450. The plaintiffs did not file their legal malpractice action until August 14, 1990;

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party is entitled to judgment as a matter of law." *Id.*

[4] We may affirm where the trial court reaches the right result, but for the wrong reason. *People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993). Moreover, in light of our ruling, we need not address plaintiff's remaining issues regarding the Murphy defendants.

[5] The defendant had instructed the plaintiffs to have the demand letter reviewed by a Florida attorney "to take advantage of potential Florida remedies." *Maddox, supra* at 448.

therefore, the issue was whether the defendant's efforts on August 15, 1988, were sufficient to constitute a continuation of legal representation. *Id.* at 448-449.

The trial court granted the defendant's motion to dismiss based on the statute of limitation, opining that the last date of service was the date of the closing. *Maddox*, *supra* at 449. We reversed, opining in pertinent part:

> [W]e must accept as true plaintiffs' well-pleaded allegation that defendant sent them a bill for services rendered on August 15, 1988 . . . . Defendant acknowledges that he did speak with plaintiffs and their Florida attorney, and also conducted legal research on August 15, 1988 . . . .
>
> We agree with counsel for defendant that a call by a disgruntled former client to his former lawyer, accusing him of professional malpractice, does not in itself constitute a continuation of prior representation in connection with the client's business for purposes of the statute of limitations. However, in such a situation one would not expect the lawyer to bill the former client for the telephone call in question. In the present case, it appears that defendant reviewed applicable provisions of the UCC, contacted plaintiffs and their Florida attorney by phone, and made a memo to the file—all on August 15, 1988. It appears that defendant then billed plaintiffs for one hour of work for performing these services. In this factual setting, we are of the opinion that the work performed by defendant for plaintiffs, and duly billed to them, does constitute continuing representation following the 1986 sale of the business. We believe that an attorney's act of sending a bill constitutes an acknowledgement by the attorney that the attorney was performing legal services for the client. [*Id*. at 450-451.]

Thus, we concluded that the trial court erred by ruling that the defendant was not representing the plaintiffs on August 15, 1988. *Id.* at 451-452.

The facts of the instant matter are similar to the facts in *Maddox*. For example, both attorneys performed work for their clients that did not necessarily have to be performed in light of an earlier event signifying the termination of the attorney-client relationship. Both billed their clients for the subsequent work. While it appears that the *Maddox* defendant's only actions on August 15, 1988, were to determine *whether* he had erred in drafting the security interest created during the earlier representation, defendant Lebeuf's efforts in filing a motion on plaintiff's behalf were an attempt to correct or resolve the redemption issue that evolved from the earlier representation. In other words, defendant Lebeuf's efforts benefited plaintiff more than the *Maddox* defendant's actions benefited the *Maddox* plaintiff. Further, defendant Lebeuf's subsequent representation included filing a motion on her behalf in the divorce action docket.[6] Accordingly, we believe that defendant Lebeuf's representation of plaintiff continued through October 7, 1997; therefore, the trial court erred by granting defendant Lebeuf's motion for summary disposition.

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[6] This fact further prevents a finding that defendant Lebeuf was representing plaintiff's cousin, rather than plaintiff.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this decision. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald S. Owens