

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

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BETTY L. OBRANOVIC,

Plaintiff-Appellant,

v

ANDERSON & WONCH, P.C., and NANCY A.  
WONCH,

Defendants-Appellees.

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UNPUBLISHED

March 18, 2004

No. 245425

Ingham Circuit Court

LC No. 00-092828-NM

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right 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. FACTS**

Plaintiff, a registered nurse, injured her back during the course of her employment. By letter dated January 26, 1995 UNUM Life Insurance Company denied plaintiff's claim for long-term disability (LTD) benefits. The letter stated that plaintiff could seek review of the decision within sixty days and should submit any documentation she wished to have considered. By letter dated March 22, 1995 plaintiff indicated that she wished to appeal the decision, but submitted no new documentation. By letter dated June 8, 1995 UNUM informed plaintiff that it had concluded its previous decision was correct.

Plaintiff retained defendants for the purpose of pursuing an action against UNUM for wrongfully denied LTD benefits. Subsequently, plaintiff filed suit alleging that defendants committed legal malpractice by failing to: review written materials in support of the claim for LTD benefits; become familiar with all the facts relevant to plaintiff's claim for LTD benefits, including the applicable statute of limitations; and file an action within the appropriate period. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not demonstrate that but for the alleged negligence, she would have prevailed in an action for LTD benefits. The trial court granted the motion, concluding that even if defendants had filed a federal action in a timely manner, UNUM's decision to deny plaintiff's application for LTD benefits would not and could not have been reversed. Because plaintiff

could not demonstrate that but for defendants' alleged negligence she would have prevailed in an underlying suit, her action failed as a matter of law.

## II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Trepanier v Nat'l Amusements, Inc.*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

## III. ANALYSIS

To establish a claim of legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence was the proximate cause of an injury; and (4) the fact and extent of the injury alleged. If the alleged malpractice results from the failure to diligently pursue a claim, a plaintiff seeking to establish proximate cause and damages must show that but for the attorney's alleged malpractice, he would have been successful in the underlying suit. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994).

Proof of causation requires both cause in fact and proximate cause. Cause in fact requires a showing that the harmful result would not have occurred but for the negligent conduct. A plaintiff must adequately establish cause in fact in order for proximate cause to become a relevant issue. *Helmus v Dep't of Transportation*, 238 Mich App 250, 255-256; 604 NW2d 793 (1999). To show proximate cause, a plaintiff must prove that the injury was a probable, reasonably anticipated, and natural consequence of the alleged negligence. *Allen v Owens-Corning Fiberglas Corp*, 225 Mich App 397, 401; 571 NW2d 530 (1997). Generally, proximate cause is an issue for the trier of fact. However, if reasonable minds could not differ, then the issue becomes one of law for the court. *Dep't of Transportation v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998).

The complaint alleged that plaintiff retained defendants for the purpose of pursuing an action against UNUM for LTD benefits and that defendants committed malpractice by failing to file the action within the statute of limitations. The trial court concluded, and plaintiff does not dispute, that even if such an action had been timely filed, UNUM's decision would not have been reversed because the record contained no evidence that plaintiff was unable to perform her job. The trial court correctly found that defendants were entitled to summary disposition for the reason that plaintiff was unable to establish proximate cause and damages because she could not show that but for defendants' alleged negligence, she would have prevailed in a federal action. *Charles Reinhart Co, supra*.

Furthermore, even if the complaint could be read to assert a claim of legal malpractice based on defendants' failure to make a further submission to UNUM, defendants would still be entitled to summary disposition. Plaintiff has not specified what, if any, further documentation could have been submitted to UNUM in support of her claim for LTD benefits, and has not shown that but for any alleged negligence by defendants in failing to make a further submission to UNUM, she would have been granted LTD benefits. *Id.*

Affirmed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Bill Schuette