STATE OF MICHIGAN

COURT OF APPEALS

PAUL C. FRENCH, JR.,

Plaintiff-Appellant,

v

NORMAN C. WITTE,

Defendant-Appellee.

UNPUBLISHED
April 27, 2004

No. 244606
Ingham Circuit Court
LC No. 02-001155-NM

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition and dismissing plaintiff's complaint on the ground that it was barred by the statute of limitations. We affirm.

Plaintiff retained defendant to represent him in an action brought by a bank to foreclose on outstanding debts owed by plaintiff and his company. The trial court rejected plaintiff's claim that the bank's action was precluded by the doctrine of promissory estoppel, finding that the statute of frauds, MCL 566.132(2), barred enforcement of any oral agreements. Defendant twice filed a claim of appeal on plaintiff's behalf, but both claims were dismissed for lack of jurisdiction because a final order had not been entered.[1] Plaintiff's company's assets were sold to satisfy the bank's debt in September 1999. Plaintiff discharged defendant in April 2000. He filed this malpractice action in August 2002. The trial court granted defendant's motion for summary disposition, holding that the statute of limitations barred plaintiff's action and was not tolled by the discovery rule.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on the statute of limitations is properly considered under MCR 2.116(C)(7). Whether a cause of action is barred by the statute of limitations is a question of law that is reviewed de novo on appeal.

[1] *Paragon Bank & Trust v French*, unpublished order of the Court of Appeals, entered October 20, 1999 (Docket No. 222451); *Paragon Bank & Trust v French*, unpublished order of the Court of Appeals, entered August 10, 1999 (Docket No. 219940).

Insurance Comm'r v Aageson Thibo Agency, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

A legal malpractice action must be brought within two years after the claim first accrues. MCL 600.5805(1), (6). The claim accrues at the time provided in § 5838. MCL 600.5827. A malpractice claim against a state-licensed professional other than a health care professional "accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838(1). A malpractice claim may be commenced at any time within the applicable period prescribed in § 5805 "or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." MCL 600.5838(2). The plaintiff bears the burden of proving that he neither discovered nor should have discovered the existence of his claim at least six months before the applicable limitations period expired. *Id.*

An attorney discontinues serving a client "when the attorney is relieved of that obligation either by the client or the court." *Stroud v Ward*, 169 Mich App 1, 6; 425 NW2d 490 (1988). Plaintiff discharged defendant from further representation in April 2000. Plaintiff filed this action in August 2002. Therefore, his claim is barred unless he neither discovered nor should have discovered the existence of his claim before February 2002. MCL 600.5838(2).

The fact that defendant was unsuccessful in pursuing a promissory estoppel claim, that he failed to obtain a final order before filing the claims of appeal, and that he failed to take any action to stop the sheriff's sale were known to plaintiff at the time he discharged defendant. Plaintiff contends that he nevertheless failed to discover his claim until he found case law that he believes would have supported his promissory estoppel claim and thus established that defendant breached his duty by failing to cite that case to the court in the underlying action. In other words, the discovery rule applies to the discovery not just of a cause of action but to case law supporting the cause of action. Plaintiff has not cited any case law or other supporting authority for this contention and thus is deemed to have abandoned the issue. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Plaintiff also claims that in ruling that the discovery rule applies to the discovery of a cause of action as opposed to the case law supporting it, the trial court deprived him of his due process rights. "This argument was not raised by plaintiff below and, consequently, was not addressed by the trial court. Therefore, it is not preserved for appellate review." *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski