

STATE OF MICHIGAN  
COURT OF APPEALS

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HOWARD A. MONIZ, JR.,

Plaintiff-Appellant,

v

BRIAN L. LAMBRIX,

Defendant-Appellee.

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UNPUBLISHED

June 22, 2004

No. 243264

Wayne Circuit Court

LC No. 01-012379-NM

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

In this legal malpractice case, plaintiff appeals as of right from a ruling granting summary disposition in favor of defendant. We affirm.

Plaintiff alleged a single claim of legal malpractice against his court-appointed attorney who withdrew from his representation of plaintiff in a criminal<sup>1</sup> case on the basis of a conflict of interest. Defendant, or members of his firm, represented the municipality whose police department effectuated plaintiff's arrest, as well as a towing company that plaintiff wanted to sue to regain his automobile and possessions. It is undisputed that several different attorneys represented plaintiff before his case eventually proceeded to trial, and that defendant did not represent him at trial. In the instant case, plaintiff requested that the trial court appoint an expert witness to testify on his behalf as to the standard of care applied to defendant in his representation of plaintiff in the criminal case. The trial court declined to do so. Defendant, in

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<sup>1</sup> We affirmed plaintiff's criminal convictions for unlawfully driving away an automobile, ("UDAA"), MCL 750.413, second-degree home invasion, MCL 750.110a(3), unarmed robbery, MCL 750.530, third degree fleeing or eluding a police officer, MCL 257.602a(3), and resisting or obstructing a police officer, MCL 750.479, in *People v Moniz*, unpublished opinion per curiam of the Court of Appeals, issued July 1, 2003 (Docket Number 234431). For these convictions, and because he was sentenced as a habitual offender, fourth offense, MCL 769.12, plaintiff was sentenced to concurrent prison terms of nineteen to thirty-five years for the unarmed robbery and home invasions convictions, six to thirty-five years for the fleeing or eluding and UDAA convictions, and 3-1/2 to 10 years for the resisting or obstructing a police officer conviction.

turn, moved for summary disposition pursuant to MCR 2.116(C)(10), because plaintiff did not have an expert witness that could establish the requisite standard of care applicable to defendant's representation of plaintiff. The trial court granted the motion, and this appeal ensued.

On appeal, plaintiff first argues that there was, at a minimum, a genuine issue of material fact as to each element for his legal malpractice claim. However, we need not address this claim because plaintiff's case is barred by collateral estoppel. In *Barrow v Pritchard*, 235 Mich App 478, 483-485; 597 NW2d 853 (1999), a panel of this Court determined that an appellate court's rejection of a criminal defendant's allegations of ineffective assistance of counsel precluded relitigation of those claims under the rubric of legal malpractice. The *Barrow* Court, *id.* at 484-485, stated:

There is ample authority in other jurisdictions to support the conclusion that, for purposes of collateral estoppel, the standards for establishing ineffective assistance of counsel in a criminal forum and legal malpractice in a civil suit are equivalent.

Although case-law discussion of the requirements to establish ineffective assistance of counsel and legal malpractice may contain language disparity, we believe the standards are sufficiently similar in substance to support the application of the defense of collateral estoppel. The first step of the *Strickland* [*Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).] standard and the breach element of a claim of legal malpractice are the same, i.e., trial counsel must act reasonably. Further, the second step of the *Strickland* standard (prejudice) and the causation element of a claim of legal malpractice are also the same, i.e., a defendant must show that trial counsel's alleged deficiency affected the outcome of the criminal trial. Finally, although defendants were not parties to plaintiff's motion for a new trial based on ineffective assistance of counsel in the federal court, we agree with this Court's extensive analysis in *Knoblauch*, [*People v Knoblauch*, 163 Mich App 712, 719-725; 415 NW2d 286 (1987).], that mutuality of estoppel is not necessary before a defendant in a legal malpractice action can use the defense of collateral estoppel. [Citations omitted.]

Because this Court rejected plaintiff's allegations of ineffective assistance of counsel in his earlier criminal appeal, *People v Moniz*, unpublished opinion per curiam of the Court of Appeals, issued July 1, 2003 (Docket Number 234431), slip op at 6-7, he is foreclosed from relitigating this issue as a malpractice claim.

In light of our disposition, we need not address plaintiff's remaining issues on appeal. Affirmed.

/s/ Kurtis T. Wilder  
/s/ Richard Allen Griffin  
/s/ Jessica R. Cooper