STATE OF MICHIGAN

COURT OF APPEALS

ROBERT L. GREEN,

Plaintiff-Appellant,

v

CLAYTON & MULDER and KENNETH D. CLAYTON,

Defendants-Appellees.

UNPUBLISHED
November 15, 2005

No. 254729
Oakland Circuit Court
LC No. 2003-051531-NM

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this legal malpractice case, plaintiff appeals as of right the trial court's order granting summary disposition for defendants under MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After being injured on the job, plaintiff filed for total and permanent disability benefits under the Workers' Disability Compensation Act, MCL 418.101 *et seq*. A union representative referred plaintiff to defendant attorneys to assist him with his filing. After submitting an application for hearing to the Bureau of Workers' Disability Compensation,[1] plaintiff's employer offered to settle his claim for $85,000. Plaintiff was also in the process of retiring, and had the option of choosing between a regular pension and a disability pension. Plaintiff chose the regular pension plan after allegedly seeking the advice of defendants.

Plaintiff later discovered that the regular pension would be set off against his workers' compensation settlement, reducing the outstanding offer from $85,000 to $20,000. Plaintiff was advised to accept the $20,000 offer so that he could keep his regular pension. He agreed to accept the offer and defendants withdrew plaintiff's application for hearing on June 21, 2001. The Bureau of Workers' Disability Compensation sent plaintiff a notice on July 2, 2001, confirming that his application had been withdrawn, but stating that the termination of his case would not become final for thirty days. Plaintiff and defendants had no further dealings after June 21, 2001.

---

[1] Now the Workers' Compensation Agency.

On July 31, 2003, plaintiff brought this legal malpractice action, contending that but for defendants' negligent advice, he would have selected the disability pension plan, remaining eligible for the entire $85,000 initial settlement amount. Defendants moved for summary disposition under MCR 2.116(C)(7), asserting that plaintiff's claim was barred by the two-year statute of limitations. Plaintiff responded that the action had not accrued until the workers' compensation order of termination became final, thirty days after it was sent. The trial court found that plaintiff's claim was not timely filed and granted defendants' motion.

We review a trial court's decision granting summary disposition under MCR 2.117(C)(7) de novo. *DiPonio Construction Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 46; 631 NW2d 59 (2001). In reviewing the decision, this Court accepts as true a plaintiff's well-pleaded factual allegations and other documentary evidence. *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001). When there are no factual disputes, this Court reviews de novo whether a plaintiff's action is barred by the statute of limitations. *Id*.

To be timely, a professional malpractice action must be filed within two years of accrual, or within six months of discovery of the claim, whichever is later. MCL 600.5805(6), MCL 600.5838. It is agreed in this case that the six-month discovery provision does not apply. An action alleging professional malpractice accrues on the last day professional service is rendered. *Gebhardt v O'Rourke*, 444 Mich 535, 541; 510 NW2d 900 (1994). This is true even if the underlying action in which the alleged malpractice occurred continues in time beyond that day. *Id*.

Plaintiff admits that defendants last rendered professional service on June 21, 2001. During his deposition, plaintiff indicated that he had "no more dealings" with defendants after that time, and that their relationship had ended on that day. However, plaintiff asserts that defendants owed him a duty of representation until the underlying case became final, thirty days after notice was sent. This assertion ignores *Gebhardt*, which specifically rejects the argument that malpractice claims do not accrue until a final order is issued in the underlying action. *Id*. at 542. Instead, "the Legislature intended that the last day of service be the *sole basis* for determination of accrual." *Id*. at 543 (emphasis added).

Based on the documentary evidence, there is no genuine issue of fact to support plaintiff's contention that his claim accrued after June 21, 2001, the last day of defendants' professional services. Plaintiff's complaint was filed on July 31, 2003, more than two years after that date. The trial court found no factual dispute regarding whether plaintiff's complaint was barred by the statute of limitations. Summary judgment for the defendants was proper.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray