STATE OF MICHIGAN

COURT OF APPEALS

HABIB MAMOU and V & M CORPORATION, d/b/a ROYAL OAK WASTE PAPER AND METAL COMPANY NO. 2,

Plaintiffs/Counter-Defendants-Appellants,

v

EDWARD C. CUTLIP, JR.,

Defendant-Appellee,

and

KERR, RUSSELL & WEBER, P.L.C.,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
June 10, 2008

No. 275862
Wayne Circuit Court
LC No. 04-432424-NM

Before: Servitto, P.J., and Cavanagh and Kelly, JJ.

PER CURIAM.

Plaintiffs/counter-defendants, Habib Mamou ("Mamou") and V & M Corporation, d/b/a Royal Oak Waste Paper and Metal Company No. 2 ("V & M") (collectively, "plaintiffs"), appeal as of right the trial court's order dismissing the counter-complaint of defendant/counter-plaintiff, Kerr, Russell, and Weber, P.L.C. ("KRW"), without prejudice. On appeal, plaintiffs challenge the trial court's earlier order granting defendants summary disposition. We affirm.

I. Basic Facts and Proceedings

In 1995, Mamou had a dispute with his cousin, Joseph Mammo ("Joseph"), regarding whether Joseph had an ownership interest in V & M, and they reached an oral agreement. Mamou contacted defendant Edward C. Cutlip, Jr., an attorney with KRW, who had represented Mamou in various matters since 1991 or 1992. Cutlip prepared a release of any and all claims of ownership of V & M by Joseph in exchange for the payment of $75,000, and Mamou and Joseph signed this document. Joseph, however, claimed that Mamou represented that the release he signed was actually a document to effect the sale of V & M to an outside party. In late 1999 or early 2000, Joseph learned that Mamou still owned V & M. In June 2000, Joseph filed suit

against plaintiffs in the Oakland Circuit Court, claiming, among other things, that Mamou had fraudulently induced him to convey his shareholder's interest in V & M. Plaintiffs, represented by defendants, sought summary disposition, arguing in part that Joseph's claims were barred by the 1995 release. In response, Joseph claimed, in pertinent part, that the release was false and fraudulent, he had not signed it, and that, if he had signed it, he had been fraudulently induced into doing so. On October 25, 2000, the Oakland Circuit Court denied plaintiffs' motion for summary disposition, finding that there was a genuine issue of material fact with respect to the validity of the release. Joseph and Mamou eventually settled their dispute, and the Oakland Circuit Court entered an order dismissing the action on December 3, 2002.

On October 18, 2004, plaintiffs filed their complaint in the instant action in the Wayne Circuit Court, alleging in part that defendants committed malpractice in connection with the preparation and execution of the release. The trial court granted defendants' motion for summary disposition because plaintiffs had failed to establish proximate cause and the action was barred by the statute of limitations.

II. Analysis

Plaintiffs argue that the trial court erred in granting defendants summary disposition because their claims were not barred by the statute of limitations. We disagree.

We review de novo a motion for summary disposition pursuant to MCR 2.116(C)(7). *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007). In the absence of disputed facts, this Court also reviews de novo issues regarding whether a cause of action is barred by the applicable statute of limitations. *Id.* When reviewing a ruling on a motion for summary disposition, this Court views the evidence in the light most favorable to the nonmoving party. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). This Court considers "all affidavits, pleadings, and other documentary evidence submitted by the parties and construe[s] the pleadings in plaintiff's favor." *Doe v Roman Catholic Archbishop of Archdiocese of Detroit*, 264 Mich App 632, 638; 692 NW2d 398 (2004).

"A legal malpractice claim must be brought within two years of the date the claim accrues, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006), see also MCL 600.5805(6); MCL 600.5838. MCL 600.5838(1), which is a codification of the common law "last treatment rule," provides that a claim for professional malpractice other than medical malpractice "accrues at the time that person discontinues serving the plaintiff . . . 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." *Levy v Martin*, 463 Mich 478, 482-484 and nn 13, 15, 487; 620 NW2d 292 (2001). An attorney discontinues serving a client when he "is relieved of that obligation by the client or the court[,]" or "upon completion of the specific legal service that the lawyer was retained to perform." *Kloian*, *supra* at 237-238; see also *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994). Thus, "a plaintiff's legal malpractice claim accrues on the day that the attorney last provides professional service in the specific matter out of which the malpractice claim arose." *Id.*, citing *Gebhardt v O'Rourke*, 444 Mich 535, 543; 510 NW2d 900 (1994).

Plaintiffs assert that defendants' representation was not limited to the drafting of the release, but it continued through December 3, 2002, when the Oakland Circuit Court action was dismissed. In *Levy*, *supra* at 480-481, 485-487, our Supreme Court applied § 5838(1) and held that, where the defendant accountants had prepared the plaintiffs' annual tax returns from 1974 until 1996, the plaintiff's malpractice claims regarding returns filed in 1992 and 1993 did not accrue until 1996, when the professional relationship ended. The Court found that the defendants had provided the plaintiffs with "generalized tax preparation services", rather than "professional advice for a specific problem," and the defendants had presented no evidence that "each annual income tax preparation was a discrete transaction that was in no way interrelated with other transactions." *Id.* at 489-490 and n 19. This Court has held that an attorney continued to represent clients with respect to the sale of their business nearly two years after the closing because he had contacted them and their Florida attorney, conducted research on applicable Florida law, prepared a memorandum for the file, and billed them for the work he performed. *Maddox v Burlingame*, 205 Mich App 446, 447-448, 451; 517 NW2d 816 (1994). It is also worth noting that the *Maddox* Court observed that the plaintiffs had alleged in their complaint that the defendant had been in continuous contact with them from the time of the closing until the date he spoke with the Florida attorney and performed research on Florida law. *Id*. at 448. In *Bauer v Ferriby & Houston, PC*, 235 Mich App 536; 599 NW2d 493 (1999), this Court reached a contrary result. The defendant attorney attempted to correct an alleged error in an order that had been entered with respect to a worker's compensation settlement he had effected because the plaintiff's subsequent attorney informed him that it might affect the plaintiff's social security benefits. *Id.* at 537. The Court noted that the defendant had not billed the plaintiff for the "follow-up efforts," and it found that the defendant's activities were "a response to a complaint about an earlier, terminated representation," rather than a "legal service in furtherance of a continuing or renewed attorney-client relationship." *Id.* at 540.

KRW represented plaintiffs in various matters, including V & M nuisance claims, estate planning, and corporate matters, beginning in 1991 or 1992. Mamou called Cutlip in May or June 1995, explained his dispute with Joseph and their oral agreement, and requested a release. When Mamou received the release in the mail, he was satisfied that it fulfilled the purpose for which he had requested it. Mamou admitted that, after signing the release on June 15, 1995, he thought the dispute concerning Joseph's claim to V & M was over, and he did not ask defendants to do anything further with respect to that dispute for the rest of 1995, 1996, 1997, or 1998. Defendants did not submit billing records from this period or any other evidence indicating that there was contact with plaintiffs during this period. Mamou did not contact Cutlip again until late 1999 or early 2000, when Joseph confronted Mamou and claimed to own half of V & M.

Given this significant period of inactivity, we cannot conclude that defendants were still serving plaintiffs in connection with the release when Mamou contacted Cutlip in 1999 or 2000, which makes the facts of this case significantly different from those in *Maddox*. Similarly, there is no evidence that defendants were providing plaintiffs with "continuing services" during this period, unlike *Levy*. Further, even if KRW were providing continuing services to plaintiffs, there is no evidence to suggest that these continuing services were "the matters out of which the claim for malpractice arose." *Levy*, *supra* at 489 (internal quotation marks and citation omitted). The evidence indicates that the preparation of the release was a discrete transaction. Cutlip denied that Mamou had asked him to conclude a settlement and resolution of Joseph's claims of ownership in V & M. Rather, he explained that Mamou "engaged [him] for the specific purpose

of preparing a release to document th[e] settlement" with Joseph, and his "limited engagement with respect to this matter concerned the preparation of the release."

Mamou reestablished contact with Cutlip in 1999 or 2000, not because he believed the release was defective or Cutlip's representation had been inadequate, but to consult with Cutlip about Joseph's claim of ownership in V & M. This conversation eventually led to defendants' representation of plaintiffs in the lawsuit Joseph brought against plaintiffs. Although the release eventually became an issue, i.e., as a defense to Joseph's claims against plaintiffs, this representation of plaintiffs was a separate matter from the preparation of the release in 1995. We therefore conclude that plaintiffs' claim of malpractice with respect to the release accrued in June 1995, after the release was signed, and the statute of limitations expired in 1997.[1]

The six-month discovery rule contained in § 5838(2) does not apply in this case to extend the statute of limitations beyond the general two-year period provided in § 5805(6). Plaintiffs bear the burden of proof with respect to the applicability of the discovery rule, MCL 600.5838(2), and they have not argued that it applies. In any event, Mamou testified that he concluded that defendants had made a mistake with respect to the release about a week or ten days after the Oakland Circuit Court denied plaintiffs' motion for summary disposition, which occurred on October 25, 2000. Therefore, Mamou was actually aware of a potential malpractice claim, at the latest, by November 2000. See *Solowy v Oakwood Hosp*, 454 Mich 214, 222-223; 561 NW2d 843 (1997). The complaint was not filed until October 18, 2004, obviously well over six months later. Therefore, the trial court properly concluded that the claim is barred.

Because we find the statute of limitations issue dispositive, we decline to address plaintiffs' remaining arguments on appeal.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly

[1] Although plaintiffs' complaint contained allegations regarding the Joseph litigation, which would not be barred by the statute of limitations, plaintiffs do not raise any issues regarding these claims in this appeal.