

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA ANDREWS,

Plaintiff-Appellant,

v

ROBERT S. ROLLINGER,

Defendant-Appellee.

UNPUBLISHED
September 1, 2009

No. 285913
Oakland Circuit Court
LC No. 2008-088906-NM

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

MEMORANDUM.

In this legal malpractice action, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7). The sole issue on appeal is whether the trial court correctly determined that plaintiff's malpractice claim was time-barred. Because we conclude that the trial court properly determined that plaintiff's claim was time-barred, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

This Court reviews de novo a trial court's decision granting summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court properly grants summary disposition when the claim is untimely and, therefore, barred under the applicable period of limitations. MCR 2.116(C)(7).

On appeal, the parties dispute the date when plaintiff's malpractice claim accrued—that is, when defendant stopped serving plaintiff. MCL 600.5838(1). Plaintiff acknowledges that she repeatedly told defendant that he no longer represented her, but nevertheless contends that, because defendant refused to move to withdraw from the case after she requested that he withdraw, defendant's representation continued under MCR 2.117(C), which provides:

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment by the trial court.

(2) An attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

However, for purposes of determining when a legal malpractice claim accrues, MCR 2.117(C) only applies to cases where an attorney's services have not been terminated by the attorney, the client, or the court: "[I]n cases in which counsel is not dismissed by the court or the client, in which no substitute counsel is retained, and in which the attorney fails to send affirmative notification of withdrawal from service, MCR 2.117(C)(1) likely extends the attorney's service in the matter until 'the time for appeal of right has passed.'" *Kloian v Schwartz*, 272 Mich App 232, 238-239 n 2; 725 NW2d 671 (2006). Thus, in cases where the client terminates his or her attorney's representation, MCR 2.117(C) will not operate to extend the time of service beyond that termination. Rather, the "attorney discontinues serving a client, for purposes of the statute of limitations, when the attorney is relieved of the obligation to serve by either the client or a court." *Hooper v Hill Lewis*, 191 Mich App 312, 315; 477 NW2d 114 (1991). In the present case, plaintiff clearly terminated her relationship with defendant. And, under these circumstances, "MCR 2.117(C) did not operate to delay or postpone the accrual of plaintiff's claim." *Kloian*, 272 Mich App at 239 n 2.

Although plaintiff contends that defendant cannot rely on her notices of termination because he "refused to acquiesce to the discharge," she does not cite any authority for the proposition that an attorney can unilaterally cause his or her representation to continue by refusing to "acquiesce" in his or her termination. As the Court in *Hooper* plainly stated, an attorney's representation ends when the client terminates the representation and "[n]o additional court action [is] necessary to effectuate that discharge." *Hooper*, 191 Mich App at 316. Therefore, the trial court correctly determined that plaintiff's claim accrued when she terminated defendant's representation, which was more than two years before she sued defendant for malpractice.

The trial court did not err when it determined that plaintiff's claim was time-barred and dismissed it accordingly.

Affirmed. As the prevailing party, defendant may tax costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro