STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF PARVIZ MEGHNOT, by Personal Representative LILLIAN MEGHNOT, and LILLIAN MEGHNOT, Individually, Plaintiffs-Appellants,	UNPUBLISHED October 18, 2012
v	No. 306403 Washtenaw Circuit Court
GREGORY J. ROHL and ROHL DILLON, P.C., Defendants-Appellees.	LC No. 10-001302-NM

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

This legal malpractice action arose from Gregory Rohl's pro bono representation of Parviz Meghnot. Unfortunately, during the proceedings in the lower court, Parviz passed away, and his wife Lillian Meghnot became the personal representative of his estate. Both the Estate, through Lillian, and Lillian individually appeal as of right from an order granting summary disposition to defendants and dismissing the case with prejudice. We affirm.

Appellate review of a motion for summary disposition is de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Rohl moved for summary disposition under MCR 2.116(C)(7). In evaluating a summary-disposition motion brought under MCR 2.116(C)(7), a reviewing court considers "all documentary evidence and accept[s] the complaint as factually accurate unless affidavits or other documents presented specifically contradict it." *Shay v Aldrich*, 487 Mich 648, 656; 790 NW2d 629 (2010). Whether a claim is time-barred by an applicable statute of limitations is a question of law that we review de novo. *Seyburn, Kahn, Ginn, Bess, Deitch & Serlin, PC v Bakshi*, 483 Mich 345, 354; 771 NW2d 411 (2009).

As an initial matter, we conclude that plaintiffs' claims, pleaded as allegations of malpractice and fraud, were, in substance, only allegations of malpractice. "If a client attempts to characterize a malpractice claim as a fraud or other type of claim, a court will look through the labels placed on the claim and will make its determination on the basis of the substance and not the form." *Brownell v Garber*, 199 Mich App 519, 532-533; 503 NW2d 81 (1993). Plaintiffs attempted to plead a claim of "silent fraud" premised on Rohl's failure to inform Parviz that a motion for summary disposition had been filed and eventually granted in his underlying case. However, plaintiffs, in the context of their fraud claim, did not allege with sufficient particularity

that Rohl intended to induce Parviz to rely on the nondisclosure and did not allege any specific action taken in reliance on Rohl's silent misrepresentation. See *Hamade v Sunoco Inc (R & M)*, 271 Mich App 145, 171; 721 NW2d 233 (2006) (recognizing that silent fraud requires "reliance on a misrepresentation"), *Clement-Rowe v Mich Health Care Corp*, 212 Mich App 503, 508; 538 NW2d 20 (1995) ("[a] claim of silent fraud requires a plaintiff [to] allege that the defendant intended to induce him to rely on its nondisclosure . . ."), and MCR 2.112(B)(1) (requiring fraud to be pleaded with particularity). Instead, plaintiffs generally alleged that they "relied upon the Defendants as their attorney and expected to be fully informed of all timely action that needed to be taken." The complaint did not indicate, with particularity, in what way Rohl's silence was intended to mislead plaintiffs; instead, plaintiffs alleged that Rohl merely failed to keep Parviz informed. Plaintiffs' allegations sound of malpractice, not fraud, and, as such, the malpractice limitations period applies. *Brownell*, 199 Mich App at 532-533.

The statutes of limitations governing legal malpractice lawsuits provide that "a plaintiff must file a legal-malpractice action within two years of the attorney's last day of service to the plaintiff or within six months of when the plaintiff discovered or should have discovered the claim, whichever is later." *Wright v Rinaldo*, 279 Mich App 526, 534; 761 NW2d 114 (2008), citing MCL 600.5805(6) and MCL 600.5838(2). Accordingly, a crucial question to be resolved is when Rohl ceased acting as Parviz's attorney. "Generally, when an attorney is retained to represent a client, that representation continues until the attorney is relieved of the obligation by the client or the court." *Id*. (internal citation and quotation marks omitted). Alternatively, a lawyer discontinues service "upon completion of a specific legal service that the lawyer was retained to perform." *Balcom v Zambon*, 254 Mich App 470, 484; 658 NW2d 156 (2002) (internal citations and quotation marks omitted). To end an attorney-client relationship, "no formal discharge by the client is required, and the termination of an attorney-client relationship can be implied by the actions or inactions of the client." *Estate of Mitchell v Dougherty*, 249 Mich App 668, 684; 644 NW2d 391 (2002).

Neither party identifies a specific date on which Rohl's services were expressly terminated by Parviz or a court. The matter Rohl litigated for Parviz concluded in November 2004. Accepting as true that Parviz neither sanctioned nor knew of the litigation's conclusion, a review of the record nevertheless makes clear that, at the very latest, Rohl's services were effectively terminated when Parviz filed a complaint with the Attorney Grievance Commission in August 2007.[1] A client's acts to humiliate and degrade an attorney, such as suing him for malpractice, render it impossible for client and attorney to cooperate any further in an attorney-client relationship. *Berry v Zisman*, 70 Mich App 376, 379-380; 245 NW2d 758 (1976), citing *Genrow v Flynn*, 166 Mich 564; 131 NW 1115 (1911). Here, in exposing Rohl to the censure of the Attorney Grievance Commission, Parviz constructively ended the attorney-client relationship. In support of this conclusion, we note that when Parviz filed his grievance, the matter Rohl was retained to litigate had long ended, and Lillian had already demanded the return

[1] Although Parviz's complaint with the Attorney Grievance Commission bears dates in June 2007, for purposes of this appeal, we adopt the later August 2007 date used by both plaintiffs and Rohl in making their arguments in the court below.

of Parviz's case file from Rohl's office and obtained that file. Rohl did not even have a copy. In light of these facts, it is apparent that Rohl's professional relationship with Parviz ended, at the latest, in August 2007. Plaintiffs' lawsuit, filed in December 2010, was time-barred by the two-year limitations period governing legal malpractice actions.

We also conclude that the discovery rule does not operate to make the malpractice suit timely. On appeal, plaintiffs incorrectly suggest that Parviz could not have known there was a malpractice cause of action until Rohl's wrongdoing was confirmed by the issuance of the formal complaint by the Attorney Grievance Commission in October 2009. Contrary to plaintiffs' argument, "the standard under the discovery rule is not that the plaintiff knows of a 'likely' cause of action." *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994). "Instead, a plaintiff need only discover that he has a 'possible' cause of action." *Id*. The complaint Parviz filed with the Attorney Grievance Commission consisted of the same facts and allegations that formed the basis of the current malpractice suit. As such, it is clear that plaintiffs knew of Rohl's failures and the resulting injury in August 2007, more than six months before filing suit in December 2010. Additionally, assuming for purposes of this appeal that Rohl fraudulently concealed his malpractice from Parviz, the lawsuit still was not timely, even in light of MCL 600.5855, which provides for a two-year limitations period where wrongdoing has been fraudulently concealed. As discussed, Parviz learned of the malpractice, at the latest, in August 2007, more than two years before he filed suit in December 2010.

On appeal, plaintiffs also challenge the trial court's decision to deny their request for relief from judgment. A trial court's decision regarding a motion for relief from final judgment is reviewed for an abuse of discretion. *Fisher v Belcher*, 269 Mich App 247, 262; 713 NW2d 6 (2005). Relying on MCR 2.612(C)(1)(a), plaintiffs argue that their failure to appear and file a timely response to Rohl's motion for summary disposition constituted "excusable neglect" warranting relief from the trial court's final judgment. In making the argument, plaintiffs mistakenly suggest that the trial court did not decide Rohl's motion on its merits but dismissed the case merely because they filed an untimely response and Lillian failed to appear at the hearing. In actuality, the trial court dismissed the case because, as discussed, it was time-barred under the applicable statutes of limitations. Plaintiffs' cited failures, even if constituting "excusable neglect," were immaterial to the trial court's decision. As such, the trial court did not abuse its discretion in finding that plaintiffs did not present grounds warranting relief from judgment.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra