STATE OF MICHIGAN

COURT OF APPEALS

THOMAS J. EARLS,

Plaintiff-Appellant,

v

DAVID HERRINGTON,

Defendant-Appellee,

and

GENE BUCHOLTZ,

Defendant.

UNPUBLISHED
December 20, 2012

No. 308030
Sanilac Circuit Court
LC No. 11-033973-CZ

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the circuit court granting defendant's motion for summary disposition under MCR 2.116(C)(8) (failure to state a claim).[1] We affirm.

Defendant represented plaintiff in a criminal proceeding in Sanilac County. In his amended complaint, plaintiff asserted that defendant served as his court-appointed counsel from 2005 to 2007. Plaintiff filed his first complaint in the instant case on May 9, 2011, in which he accused defendant of various improprieties while serving as his counsel, but failed to state an actual cause of action against defendant. Plaintiff also demanded that defendant turn over to plaintiff his "work product" from the criminal action. Plaintiff filed his amended complaint in July 2011, in which he made more particularized requests for relief, but still failed to articulate a cause of action against defendant. In October 2011, defendant filed a motion for summary disposition, arguing that plaintiff had failed to state any cause of action. Defendant also argued that plaintiff's amended complaint was barred by the two-year statute of limitations to the extent that his action was for legal malpractice, because their attorney-client relationship had ended in August or September 2007. The court granted the motion, and this appeal followed.

[1] Defendant Gene Bucholtz is not a party to this appeal.

"This Court reviews de novo rulings on summary disposition motions, viewing the evidence in the light most favorable to the nonmoving party." *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006).

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision regarding a motion for summary disposition under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. All factual allegations supporting the claim, and any reasonable inference or conclusions that can be drawn from the facts, are accepted as true. [*Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998) (citations omitted).]

Plaintiff argued at the motion hearing that he "would just like to amend [his] Complaint and make causes of legal malpractice, and under the legal malpractice, [he] would do breach of contract and negligence." The trial court responded that plaintiff's existing cause of action was for legal malpractice, and then concluded that it was time-barred.

Plaintiff initially argues that a contractual relationship existed and that defendant had an independent duty to release his work product, which he implies is actionable in tort. However, he does not identify the tort action that applies, nor does he provide legal support for his rather broad pronouncement. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Plaintiff's assertion lacks apparent merit, and we will not search for any.

The gravamen of the amended complaint is that defendants had not turned over "work product" requested by plaintiff that he characterizes as "exculpatory." Michigan is a notice-pleading jurisdiction; "the primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993), citing 1 Martin, Dean & Webster, Michigan Court Rules Practice, p 186. Nevertheless, even under a notice-pleading standard, plaintiff's vague and conclusory statements do not approach the requisite "specific allegations necessary reasonably to inform the adverse party of the nature of the claims," MCL 2.111(B)(1) to be considered well-pleaded allegations. Plaintiff asked for $500,000 in compensatory damages "for loss of property,[2] breach of duty, and emotional damages," but he did not allege a legal theory (be it based in contract, tort, or malpractice) through which he would be entitled to relief, nor did he indicate how the compensatory damages were to be calculated.

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[2] Plaintiff also alleged that defendant was refusing to return "numerous instruments" he had entrusted to defendant for safe keeping.

The court spent much of the motion hearing engaged in a conversation with plaintiff on what the court identified as the "real issue," namely, whether "this is a viable claim for legal malpractice." The trial court properly sought to "look beyond the face of a plaintiff's pleadings to determine the gravamen or gist of the cause of action contained in the complaint." *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 159; 677 NW2d 874 (2003) (internal quotation marks and citation omitted). The court persistently questioned plaintiff on what "work product" he believed was in defendant's file that was not disclosed. Eventually, plaintiff stated that in the materials he had been provided, "there's nothing saying there about motions, notes or discovery—or in this file pertaining to" what he alleges "was surveillance that was suppressed which would vindicate me of the crime." "There is no notes [sic] when he interviewed all these individuals," he continued. Plaintiff's responses did not serve to clarify his pleadings.

Ultimately, plaintiff's amended complaint did not include well-pleaded allegations or identify any legal theory which would entitle him to the substantial relief he was seeking. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Plaintiff also argues that the court erred in denying his request to amend his complaint a second time. Decisions granting or denying motions to amend pleadings "are within the sound discretion of the trial court and reversal is only appropriate when the trial court abuses that discretion." *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001) (quotation omitted). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCR 2.118(A) provides in relevant part as follows:

> (1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.
>
> (2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

Plaintiff argued in his motion that he wished to "amend his complaint to incorporate claims of Legal Malpractice and Negligence." At the hearing on defendant's motion for summary disposition, plaintiff told the court that he "would just like to amend [his] Complaint and make causes of legal malpractice, and under the legal malpractice, [he] would do breach of contract and negligence."

In *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996), our Supreme Court held that a plaintiff alleging legal malpractice "must prove professional negligence, i.e., that counsel failed to exercise reasonable skill, care, discretion, and judgment in the conduct and management of the underlying case. The plaintiff also must establish that, but for the negligence, the outcome of the case would have been favorable to the plaintiff." Thus, a claim of negligence is included as an underlying element in a legal

malpractice claim. As noted, the circuit court determined that plaintiff's existing claim was for legal malpractice, so it was redundant for plaintiff to amend his complaint in order to specify negligence.

Pursuant to the governing statute, "a client's claim against his or her attorney for professional malpractice accrues on the date that his attorney discontinues serving the plaintiff in a professional . . . capacity as to the matters out of which the claim for malpractice arose." *Wright v Rinaldo*, 279 Mich App 526, 528-529; 761 NW2d 114 (2008), citing MCL 600.5838(1). Under MCL 600.5838(2), a legal client's action for malpractice is time-barred unless it is brought within two years from the date that services were discontinued, or within six months of the date that "the plaintiff discovers or should have discovered the existence of the claim," whichever date occurs later. *Id*. at 529, quoting MCL 600.5805(6). The *Wright* Court further stated that while:

> [s]ome of a lawyer's duties to a client survive the termination of the attorney-client relationship, most notably the general obligations to keep client confidences and to refrain from using information obtained in the course of representation against the former client's interests. Sound public policy would likewise encourage a conscientious lawyer to stand ever prepared to advise a former client of changes in the law bearing on the matter of representation, to make a former client's file available if the former client had need of it, and, indeed, to investigate and attempt to remedy any mistake in the earlier representation that came to the lawyer's attention. *To hold that such follow-up activities attendant to otherwise completed matters of representation necessarily extends the period of service to the client would give providers of legal services a powerful disincentive to cooperate with a former client who needs such attention.* [*Wright*, 279 Mich App at 538 (emphasis added by *Wright*; quotation omitted).]

Defendant's compliance with plaintiff's request to turn over his file falls into the category of "follow-up activities attendant to otherwise completed matters of representation," and does not represent a separate contractual duty which would give rise to a cause of action separate from legal malpractice.

Because the attorney-client relation at issue ended in September 2007, any attempt to amend the complaint would be futile because the applicable limitations period had run.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro