

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH C. HOOPER, JR.

Plaintiff-Appellant,

v

ROBERT L. REFIOR,

Defendant-Appellee.

UNPUBLISHED

December 17, 1996

No. 183359

Ingham Circuit Court

LC No. 92-072639-NM

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing his complaint for legal malpractice with prejudice pursuant to MCR 2.227(A)(3) based on his failure to pay a fee to transfer the case to probate court. The circuit court had previously determined that the probate court had exclusive jurisdiction over the action and had therefore dismissed the circuit court action and had ordered that the case be transferred. The order being appealed also awarded \$5,000 to defendant in attorney fees and costs. We affirm.

Plaintiff first argues that the trial court improperly dismissed his case for lack of jurisdiction. We lack subject-matter jurisdiction to hear plaintiff's argument because it is unrelated to the order being appealed. *In re Contempt of Johnson*, 165 Mich App 422, 427; 419 NW2d 419 (1988). In *Hooper v Refior*, plaintiff properly appealed the trial court's order dismissing his legal malpractice claim and transferring the case to the probate court; however, his appeal was dismissed for failure to file a brief (unpublished order of the Court of Appeals, docket no. 160789, issued July 7, 1994). Although plaintiff had fifty-six days to cure the defect, he failed to do so. MCR 7.217(D). The trial court then dismissed plaintiff's case with prejudice pursuant to MCR 2.227(A)(3) because he had failed to pay the fees to transfer the case to the probate court. It is from this order that plaintiff now appeals. Since plaintiff's argument is unrelated to the issues disposed of in this final order, we lack subject-matter jurisdiction to hear plaintiff's argument. *In re Contempt of Johnson, supra*.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff next argues that the trial court improperly awarded attorney fees to defendant because the trial court erred in that it did not make a specific finding that his claim of legal malpractice was frivolous. We disagree. The trial court granted defendant's motion for attorney fees and costs based on MCR 2.625(A)(2) for the filing of a frivolous action. Although the trial court did not articulate its reasoning on the record, it is implicit from its ruling that it found that plaintiff's claim was frivolous. At the time the contract was formed, plaintiff was legally incapacitated. Thus, plaintiff's guardian consented to the formation of the limited attorney-client relationship. Because there were no allegations in the complaint regarding the guardian's understanding of the attorney-client relationship, plaintiff failed to state a claim upon which relief could be granted because an on-going attorney-client relationship is an essential element of a legal malpractice claim. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994). Since there was no evidence presented or arguments made regarding plaintiff's guardian's understanding of the attorney-client relationship and all the documentary evidence presented supported defendant's argument of a limited attorney-client relationship, we find no clear error in the trial court's implicit determination that the complaint was frivolous. *Gramer v Gramer*, 207 Mich App 123, 126; 523 NW2d 861 (1994).

Affirmed.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz