

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD KEVIN WARD,

Plaintiff-Appellant,

v

KNUDSEN, WASIURA & ASSOCIATES, PC,
EDWARD E. WASIURA, attorney-at-law, and
ROBERT TIMOTHY WARD and CAROL
JANETTE SMITH, Co-personal representatives for
the Estate of Robert John Ward, Deceased,

Defendants-Appellees.

UNPUBLISHED

April 22, 1997

No. 187604

Muskegon Circuit Court

LC No. 95-032885-NM

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer*, JJ.

PER CURIAM.

Plaintiff claims an appeal as of right from an order granting summary disposition in defendants' favor. We affirm.

In October 1992, Robert John Ward, plaintiff's father, died intestate. In November 1992, defendant Edward E. Wasiura, through his law firm, defendant Knudsen, Wasiura & Associates, PC, opened decedent's probate estate in the Muskegon County Probate Court. In December 1992, the probate court appointed defendant Robert T. Ward, plaintiff's brother, as the personal representative for the decedent's estate. Subsequently, the probate court appointed defendant Carol J. Smith, plaintiff's sister, as a co-personal representative of the estate.

In January 1995, plaintiff filed suit against defendants in the Ionia Circuit Court alleging that defendants Ward and Smith negligently and fraudulently handled the settlement of his father's estate and that the law firm committed malpractice while representing the estate. In May 1995, the Ionia Circuit Court granted defendants' motion to change venue to the Muskegon Circuit Court.

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

In June 1995, the Muskegon Circuit Court issued a written opinion pertaining to defendants' motion for summary disposition. First, the circuit court determined that the probate court had jurisdiction over plaintiff's complaint of negligence and fraud. Additionally, the circuit court decided that plaintiff did not have a claim of malpractice against the law firm. As a result, plaintiff's complaint was dismissed, and the instant appeal ensued.

Plaintiff contends first that the circuit court improperly granted summary disposition in the law firm's favor under MCR 2.116(C)(8). Specifically, plaintiff argues that his claim of malpractice was proper because the law firm clearly represented him as one of the beneficiaries of his father's estate. We disagree. This Court reviews de novo as a question of law a trial court's determination concerning a motion for summary disposition. *Lindsey v Harper Hosp*, 213 Mich App 422, 425; 540 NW2d 477 (1995).

A motion under MCR 2.116(C)(8) should only be granted when the plaintiff's claim is so unenforceable as a matter of law that the plaintiff cannot develop facts that could possibly justify a right to recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992). In a legal malpractice action, the plaintiff has the burden of adequately alleging the existence of an attorney-client relationship. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). Under current law, the law firm represents the personal representatives of decedent's estate, defendants Ward and Smith, not the estate itself. MCR 5.117(A). Because an attorney-client relationship does not exist between the estate and the law firm, we can find no attorney-client relationship between the law firm and plaintiff on the ground presented. Consequently, no error can be found on this ground.

Plaintiff next claims that the circuit court erred when it dismissed his complaint on jurisdictional grounds. We disagree. Subject-matter jurisdiction is a question of law that this Court reviews de novo. *Bruwer v Oaks (On Rem)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). Probate courts have exclusive legal and equitable jurisdiction over matters pertaining to the settlement of an estate. MCL 700.21(a); MSA 27.5021(a). Because plaintiff's allegations of negligence and fraud are based upon defendants' actions in settling the decedent's estate, only the probate court had the jurisdiction to hear plaintiff's claims against defendants. *York v Isabella Bank & Trust*, 146 Mich App 1, 4-5; 379 NW2d 448 (1985). Because the circuit court lacked subject-matter jurisdiction over plaintiff's complaint, it did not err when it dismissed plaintiff's remaining causes of action. MCR 2.116(C)(4).

We affirm. Defendants, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ James M. Batzer