STATE OF MICHIGAN

COURT OF APPEALS

DENNIS STEWART,

Plaintiff-Appellant,

v

JOHN HESS, DANIEL HESS, and HESS & HESS, P.C.,

Defendants-Appellees.

UNPUBLISHED
July 15, 1997

No. 194901
Kent Circuit Court
LC No. 95-3019-CZ

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Dennis Stewart appeals as of right Kent Circuit Judge H. David Soet's orders dated April 26, 1996, granting summary disposition to defendants John Hess, Daniel Hess, and Hess & Hess, P.C. We affirm.

I

Plaintiff claims that Judge Soet was disqualified by bias to preside over this case. We find that plaintiff waived this issue by not moving for disqualification below.

The court rule pertaining to judicial disqualification is clear that a party must file a motion for disqualification of the judge within fourteen days after the moving party discovers the grounds for disqualification. MCR 2.003(C). A party must pursue a claim for disqualification before the trial court to preserve the issue for appeal. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). When the aggrieved party fails to raise the issue at the trial court level, it is waived. *People v Bettistea*, 173 Mich App 106, 124; 434 NW2d 138 (1988). An exception to this preservation rule exists when the disqualifying circumstances were not apparent to the parties. *People v Gibson (On Remand)*, 90 Mich App 792, 796; 282 NW2d 483 (1979). However, that exception has no application here where the allegedly disqualifying circumstances were apparent to plaintiff.

II

Plaintiff next claims the trial court erred in granting summary disposition regarding count IV of his amended complaint, intentional infliction of emotional distress. We disagree.

We review a trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

We affirm the trial court's grant of summary disposition on the basis of MCR 2.116(C)(10). An essential element of an intentional infliction of emotional distress claim is that the defendant's conduct be extreme and outrageous. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). Giving the benefit of reasonable doubt to plaintiff, the nonmoving party, *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995), we find that reasonable minds could not differ that the aforesaid element is missing. The acts of alleged malpractice which plaintiff pleads simply do not rise to the level of extreme and outrageous conduct necessary to sustain this claim. *See Haverbush, supra; John v Wayne County*, 213 Mich App 143; 540 NW2d 66 (1995); and *Doe v Mills*, 212 Mich App 73; 536 NW2d 824 (1995).

III

Finally, plaintiff claims that the trial court erred in ruling that plaintiff needed expert testimony to prove the remaining legal malpractice counts. We disagree.

To prove legal malpractice, a plaintiff must show the existence of an attorney-client relationship, negligence, causation, and injury. *Bourke v Warren*, 118 Mich App 694; 325 NW2d 451 (1982). In order to prove negligence, a plaintiff ordinarily must do so by the use of an expert witness, except where the fact of negligence is "well within the ordinary knowledge and experience of a layman jury to recognize." *Joos v Auto-Owners Ins Co*, 94 Mich App 419, 424; 288 NW2d 443 (1979). In *Joos*, we held that an attorney's failure to disclose to, and to discuss with, his client settlement offers is a type of negligence that does not require expert testimony. *Id*. In *Stockler v Rose*, 174 Mich App 14, 48-49; 436 NW2d 70 (1989), we held that where an attorney admitted that he knew his failure to respond to a writ of garnishment could result in the default of his client no expert testimony was necessary.

As *Joos, supra*, and *Stockler, supra*, illustrate, the kinds of cases in which expert testimony is unnecessary are uncomplicated. Even seemingly simple cases, however, can require expert testimony. *See Beattie v Firnschild*, 152 Mich App 785; 394 NW2d 107 (1986).

Review of plaintiff's amended complaint makes readily clear that the malpractice which plaintiff alleged was not the type "well within the ordinary knowledge and experience of a layman jury to recognize." *Joos, supra*, 424. Some of plaintiff's allegations of malpractice, assuming they are true, are not even understandable as stated (e.g., "failed and refused to enter admissions against the adverse party"). Moreover, it is clear that defendants were not liable for malpractice for failing to move for judicial disqualification where that motion would have been both untimely and frivolous. Finally, plaintiff

alleged a conflict of interest. As we noted in *Beattie, supra,* 793, the conflict of interest rules are not so clear that an average juror can determine the existence of malpractice without expert testimony.

Affirmed.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald