

STATE OF MICHIGAN
COURT OF APPEALS

KATHERINE A. WICKLUND,

Plaintiff-Appellant,

UNPUBLISHED
July 17, 1998

v

CHARLES N. SIMKINS and SIMKINS &
SIMKINS,

No. 196351
Wayne Circuit Court
LC No. 94-429140 NM

Defendants-Appellees.

Before: Wahls, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order denying plaintiff's motion for reconsideration of an earlier order granting defendants' motion for summary disposition. We affirm.

I. BACKGROUND

Defendants represented plaintiff in a civil case in which the court entered a judgment of no cause of action and taxed costs and attorney's fees against plaintiff totaling \$55,873.76. Shortly thereafter, plaintiff executed a general assignment and bill of sale conveying her major assets to KAW, L.L.C., a limited liability corporation. Plaintiff signed the document both as the assignor and as manager of the assignee corporation. The assets covered by the transaction included plaintiff's interest in her then-envisioned legal malpractice suit against defendants.

More than a month after plaintiff executed the assignment of her assets to KAW, plaintiff initiated her legal malpractice lawsuit against defendants. Her complaint made no mention of the assignment. After the case proceeded through discovery, mediation, and the setting of a trial date, defendants discovered the existence of the assignment. Subsequently, defendants brought a motion for summary disposition on the ground that plaintiff was not the true party in interest. After a hearing, the circuit court granted the motion.¹

Immediately thereafter, plaintiff informed defendants that dispositive case law established that one could not validly assign an interest in a legal malpractice case. Less than two weeks after the circuit court granted defendants' motion for summary disposition, the parties were back in court to argue

plaintiff's motion for reconsideration on that ground. The circuit court accepted that it had committed "palpable error" in ruling earlier that plaintiff was not the true party in interest in the malpractice suit, but ultimately declined to reinstate the case, holding that plaintiff had waived recourse to asserting the invalidity of the assignment.

II. ANALYSIS

In *Joos v Drillock*, 127 Mich App 99, 105; 338 NW2d 736 (1983), this Court concluded that "[i]n view of the personal nature of the attorney-client relationship and the public policy considerations . . . [that flow from that relationship], . . . a legal malpractice cause of action is not subject to assignment." Accord *Moorhouse v Ambassador Ins Co, Inc*, 147 Mich App 412, 417-418; 383 NW2d 219 (1985). Thus, plaintiff's assignment of her interest in the legal malpractice case to KAW was null and void, and plaintiff was the true party in interest throughout these proceedings. Anticipating a situation such as the present one, in which the putative assignor has initiated a cause of action for legal malpractice, this Court stated in *Weston v Dowty*, 163 Mich App 238, 243; 414 NW2d 165 (1987), "that, even if there had been an invalid assignment, this would not warrant dismissal of the lawsuit. Instead, the assignment would be void, but the underlying action would survive."

The circuit court ruled that plaintiff "knew or should have known" that she would be taking the position that her assignment of her legal malpractice claim to KAW was invalid, expressly finding that plaintiff either willfully or negligently withheld the authority that governed that question. The court stopped short, however, of issuing a specific factual finding that plaintiff knew about the prohibition against assigning a legal malpractice cause of action, and had voluntarily and knowingly waived the right to raise it before the trial court.

We review a trial court's decision on a motion for reconsideration by an abuse of discretion standard. *Charbeneau v Wayne Co Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987). A motion for reconsideration must demonstrate a "palpable error by which the court and the parties have been misled." MCR 2.119(F)(3). As the trial court observed, palpable error infected the motion for summary disposition in the proceedings below, in that the impropriety of the validity of plaintiff's assignment of her interest in the legal malpractice litigation was never raised or addressed. However, because the case law on which plaintiff belatedly came to rely was readily available, and because plaintiff offers no reason beyond plain inadvertence for failing to present them in arguments on the motion for summary disposition, we conclude that the circuit court did not abuse its discretion when denying plaintiff's motion for reconsideration. See *Charbeneau, supra* at 733 (finding that the trial court did not abuse its discretion "in denying a motion [for reconsideration] resting on a legal theory and facts which could have been pled or argued prior to the trial court's original order").

Affirmed.

/s/ Myron H. Wahls

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

¹ By this time, the applicable statute of limitations barred KAW from being substituted as plaintiff.