

STATE OF MICHIGAN  
COURT OF APPEALS

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YONG IL OH,

Plaintiff-Appellant,

v

JOSEPH GILLIARD, III,

Defendant-Appellee.

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UNPUBLISHED

September 11, 1998

No. 201763

Kent Circuit Court

LC No. 96-011977 NM

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

MEMORANDUM.

Plaintiff appeals by right the order granting defendant's motion for summary disposition in this legal malpractice action. We reverse and remand.

Plaintiff retained defendant in 1994 to represent him in three separate matters. Plaintiff asserts that after he received his files from defendant in June 1996, he discovered certain acts and omissions which formed the basis for this legal malpractice action. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that his representation met the appropriate standard of care and that plaintiff failed to file his action within the statute of limitations. The trial court granted defendant's motion solely on statute of limitations grounds. The court did not address defendant's argument that the evidence established as a matter of law that he had rendered effective assistance of counsel. The court also entered a bond order pursuant to MCR 2.109, requiring plaintiff to post a \$10,000 bond before proceeding further.

Defendant does not contest that plaintiff has raised a question of fact as to the application of the six-month discovery provision in the statute of limitations, MCL 600.5838(2); MSA 27A.5838(2). Indeed, defendant concedes that plaintiff's lawsuit was filed less than six months after defendant received the files in June 1996. Thus, summary disposition was improperly awarded pursuant to MCR 2.116(C)(7).<sup>1</sup> We decline to address defendant's alternative argument, given that the trial court did not address the merits of that argument. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Where the court did not have plaintiff's answer when it granted defendant's motion for bond, that order is also vacated, and remanded for reconsideration and application of MCR 2.109.

Reversed and remanded. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh

<sup>1</sup> Although the trial court did not indicate under which subrule defendant's motion for summary disposition was being granted, and even though defendant's motion was based on MCR 2.116(C)(10), MCR 2.116(C)(7) is the appropriate rule for summary disposition based on the applicable statute of limitations.