

STATE OF MICHIGAN
COURT OF APPEALS

JUDY A. LINN,

Plaintiff-Appellant,

v

WILLIAM G. YOUATT and YOUATT, MEANS &
ASSOCIATES,

Defendants-Appellees.

UNPUBLISHED

April 16, 1999

No. 204168

Ingham Circuit Court

LC No. 96-083752 NM

Before: Smolenski, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff Judy A. Linn appeals as of right from the trial court's order granting summary disposition to William G. Youatt and his law firm (hereinafter defendant). We affirm.

Plaintiff initiated a malpractice action against defendant, alleging that defendant had negligently advised a client (plaintiff's father) with respect to the drafting of a deed to certain "farm property" owned by plaintiff's father and claiming damages because plaintiff did not receive the farm property as intended by her father upon his death. The trial court granted summary disposition in favor of defendant on the ground that defendant's legal advice to plaintiff's father, "when taken as a whole" did not "then amount to professional malpractice." On appeal, plaintiff claims that the trial court erred in granting summary disposition.

Defendant's motion for summary disposition was brought pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). Although the trial court did not specify the subrule under which it granted the motion, the court clearly considered matters outside the pleadings. Accordingly, we treat the motion as having been granted pursuant to MCR 2.116(C)(10). See MCR 2.116(G)(5). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis of a claim. *Omnicom of Mich v Giannetti Investment Co*, 221 Mich App 341, 344; 561 NW2d 138 (1997). The trial court must consider all the documentary evidence submitted by the parties in a light most favorable to the nonmoving party to determine whether there exists a genuine issue of fact upon which reasonable minds could differ or whether the moving party is entitled to judgment as a matter of law. *Id.* The trial court's

decision on the motion is reviewed de novo by this Court, which applies the same standard as that applied by the trial court. See *id.*

In order to state a claim for legal malpractice, the plaintiff must show “(1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged.” *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995); see also *Peterson v Simasko, Simasko, & Simasko, PC*, 228 Mich App 707, 708; 579 NW2d 469 (1998). The first element a plaintiff in a negligence action must prove is duty. *Simko, supra*. The existence of a duty is a question of law for the court. *Id.* The general rule is that an attorney is only liable in negligence to a client. *Mieras v DeBona*, 452 Mich 278, 297; 550 NW2d 202 (1996); see also *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). However, a narrow exception to this general rule exists whereby a nonclient plaintiff may withstand summary disposition on the issue of duty by establishing that the initial attorney-client contract was “primarily” or “so unquestionably” for the benefit of the nonclient plaintiff that the attorney owed the nonclient plaintiff a duty of due care. *Beaty, supra* at 259; *Mieras, supra* at 300, 302.

In this case, plaintiff relies on *Mieras* for the proposition that even though she and defendant did not have an attorney-client relationship defendant nevertheless owed her a duty of due care through his representation of her father because she was a named grantee, and therefore an intended beneficiary, on the quit-claim deed that defendant drafted for her father. However, even though plaintiff was one of the named grantees on the quit-claim deed, the initial contract between defendant and plaintiff’s father for the drafting of the deed was not primarily or unquestionably for the benefit of plaintiff, but rather was primarily to benefit plaintiff’s father, who did not want to relinquish control of the property. Indeed, this intent is clear from the face of the deed where plaintiff’s father quit-claimed the property to *himself* and his children. Accordingly, we conclude that defendant owed no duty to plaintiff. Therefore, we affirm the trial court’s grant of summary disposition in favor of defendant in this case, albeit on a different ground.¹

Affirmed.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Hilda R. Gage

¹ We express no opinion on whether the trial court properly found that defendant was not negligent. Rather, in light of our determination that defendant owed no duty to plaintiff, we simply do not need to reach the issue of negligence, i.e., breach of duty.