

STATE OF MICHIGAN
COURT OF APPEALS

RONALD E. STARKS, JR.,

Plaintiff-Appellant,

v

DANIEL W. WHITE,

Defendant-Appellee.

UNPUBLISHED

June 2, 2000

No. 217042

Alpena Circuit Court

LC No. 95-001493-NM

Before: Hoekstra, P.J., and Holbrook, Jr. and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this legal malpractice action. We affirm.

Defendant served as appointed counsel for plaintiff on a number of drug-related criminal charges. Plaintiff pleaded guilty, and all but one of his convictions was affirmed on appeal.

Plaintiff brought this legal malpractice action, and the circuit court granted defendant's motion for summary disposition. On appeal, this Court originally affirmed the judgment, but on rehearing, vacated that opinion, finding that the circuit judge should have disqualified himself based on his prior involvement with plaintiff's criminal case. After remand, defendant's motion was again granted by a visiting judge.

In order to state an action for legal malpractice, the plaintiff has the burden of adequately alleging all of the following elements: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation; (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). An attorney does not have a duty to insure or guarantee the most favorable possible outcome, and only must act with the skill, learning, and ability of the average practitioner of the law. *Id.*, 656-657.

Where plaintiff entered a guilty plea in the criminal matter, the proximate cause of his injuries was his plea, and not defendant's negligence. *Schlumm v Terrence J O'Hagan, PC*, 173 Mich App 345, 361; 433 NW2d 839 (1988). Plaintiff has failed to provide any factual support for his assertion

that he would have received a lesser sentence but for defendant's negligence. The trial court properly granted summary disposition under MCR 2.116(C)(10).

The trial court did not abuse its discretion in limiting discovery. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 615-618; 576 NW2d 709 (1998). The appointment of an expert to establish the standard of care would be futile, and the court acted within its discretion in denying defendant's request to allow interrogatories to be served on non-parties. See *Id.*

The trial court acted within the scope of this Court's remand order when it decided the motion for summary disposition on pleadings that had been previously filed. *Allstate Ins Co v Miller (After Remand)*, 226 Mich App 574, 580; 575 NW2d 11 (1997). The matter was reversed solely on the basis of judicial disqualification. The court was not obliged to allow further briefing.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra