

STATE OF MICHIGAN  
COURT OF APPEALS

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LISA C. HARRIS-WATKINS, a/k/a  
LISA C. HARRIS,

UNPUBLISHED  
June 6, 2000

Plaintiff-Appellant,

v

No. 213933  
Oakland Circuit Court  
LC No. 98-005779-NM

ELAINE GOREN-DARMON,

Defendant-Appellee.

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

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm.

Plaintiff's sole issue on appeal is that the trial court erred by granting defendant's motion for summary disposition on the basis of the statute of limitations. We disagree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(7), we accept all well-pleaded factual allegations as true and construe them most favorably to the plaintiff. *Fante v Stepek*, 219 Mich App 319, 321-322; 556 NW2d 168 (1996). We consider affidavits, admissions, depositions, and other documentary evidence along with the pleadings. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996).

Malpractice actions are governed by a two-year statute of limitations. MCL 600.5805; MSA 27A.5805; *Stroud v Ward*, 169 Mich App 1, 4-5; 425 NW2d 490 (1988). MCL 600.5838; MSA 27A.5838 applies specifically to claims for professional malpractice:

- (1) . . . [A] claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudo-professional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.

- (2) . . . [A]n action involving a claim based on malpractice may be commenced . . . within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim shall be on the plaintiff. A malpractice action which is not commenced within the time prescribed by this subsection is barred.

An attorney discontinues serving a client when he is relieved of the obligation either by the client or by the court, or when the attorney completes the specific legal service which he was hired to perform. *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994). Therefore, a client must commence a legal action within two years from the date that the attorney discontinues legal service as to matters out of which the claim for malpractice arose. *Stroud, supra* at 6.

Plaintiff filed her complaint in this case on April 30, 1998. Therefore, defendant must have provided legal services on or after April 30, 1996, in order for plaintiff's complaint to have been filed within the statute of limitations. Plaintiff claims that defendant's last date of service was on May 9, 1996, when the order substituting attorneys was entered, however, the date that such an order is entered is not a controlling factor in determining when an attorney discontinues serving a client. *Hooper v Hill Lewis*, 191 Mich App 312, 315-316; 477 NW2d 114 (1991).

Defendant's affidavit established that she never represented plaintiff subsequent to taking her maternity leave in December 1995, and, at the time that she signed her affidavit, had not had any direct contact whatsoever with plaintiff or Alexsy since December 1995. The evidence showed that plaintiff relied solely on Alexsy<sup>1</sup> to represent her after December 1995, thereby implicitly relieving defendant of this responsibility. Plaintiff acknowledged that Alexsy was her sole attorney by terminating all contact with defendant and proceeding with the case without defendant's assistance. Therefore, the date that the order substituting attorneys was entered in this case is not indicative of when defendant discontinued representing plaintiff.

Plaintiff also argues that the April 30, 1996, invoice that she received for services performed on April 8, 1996, and April 26, 1996, was an acknowledgment by defendant that defendant was still performing legal services for plaintiff on April 30, 1996. While this Court held in *Maddox, supra*, that the defendant acknowledged that he still represented the plaintiff by sending the plaintiff a bill for legal services, such is not the case here. *Id.*, 451-452. The evidence showed that the bill was generated by defendant's former employer for the efforts that the firm had taken to collect the unpaid legal fees owed by plaintiff. Defendant performed none of the services itemized on the bill, and one of the telephone calls listed on the invoice was to defendant herself. Furthermore, the "services" listed on the bill occurred on April 8, 1996, and April 26, 1996. Therefore, even if they were legal services rendered by defendant, they did not occur within two years prior to April 30, 1998.

The evidence, construed most favorably to plaintiff, indicates that defendant last performed legal services for plaintiff no later than December 1995. Because plaintiff failed to

show that defendant provided any legal services to her on or after April 30, 1996, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Gary R. McDonald

/s/ Hilda R. Gage

/s/ Michael J. Talbot

<sup>1</sup> Steven F. Alexsy is an attorney who entered an appearance on behalf of plaintiff as co-counsel with defendant, in the underlying divorce case, on September 29, 1995.