

STATE OF MICHIGAN
COURT OF APPEALS

DAVID J. SCOTT,

Plaintiff-Appellant,

v

JAMES L. FEINBERG,

Defendant-Appellee.

UNPUBLISHED
December 8, 2000

No. 214737
Wayne Circuit Court
LC No. 97-733107-NM

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

On October 15, 1997, plaintiff filed a complaint for legal malpractice in which he alleged that in March 1984 he retained defendant, an attorney, to represent him in criminal and tax matters, and that defendant committed malpractice by failing to take measures to have invalid search warrants quashed and evidence seized pursuant to those warrants suppressed. The complaint asserted that plaintiff had discovered that the search warrants were invalid on or about January 6, 1997. Defendant answered, denied that he represented plaintiff in the tax matter, and asserted various affirmative defenses, including that the action was barred by the statute of limitations, and failed to state a claim on which relief could be granted.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiff's action was barred by the statute of limitations, and that it failed to state a claim on which relief could be granted. The trial court granted the motion without explanation.

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The elements of legal malpractice are: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged. *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). The general period of limitation for a legal malpractice

* Circuit judge, sitting on the Court of Appeals by assignment.

action is two years from the date the claim accrues. MCL 600.5805(5); MSA 27A.5805(5) (previously MCL 600.5805(4); MSA 27A.5805(4)). A claim accrues on the last day of the attorney's service to the client. *Fante v Stepek*, 219 Mich App 319, 322; 556 NW2d 168 (1996). However, MCL 600.5838(2); MSA 27A.5838(2) provides that an action may be commenced within six months after the plaintiff discovers or should have discovered the existence of the claim, even if the discovery occurs beyond the two-year period.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Even assuming arguendo that defendant represented plaintiff in the tax matter, a claim that defendant denies, plaintiff's assertion that that matter is still pending is unsubstantiated. Plaintiff points to no action taken by defendant after 1984. Furthermore, contrary to plaintiff's assertion, the complaint was not filed within six months after he discovered the alleged malpractice. Plaintiff indicates that he discovered the alleged malpractice on or about January 6, 1997. The trial court's docket entries indicate that the complaint was filed on October 15, 1997. Plaintiff's action was barred by the two-year statute of limitations, MCL 600.5805(5); MSA 27A.5805(5), and was not filed within the six-month discovery period. MCL 600.5838(2); MSA 27A.5838(2). Summary disposition was proper.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber