STATE OF MICHIGAN

COURT OF APPEALS

HEDWIG MINA DEBOER,

Plaintiff-Appellant,

v

SHELDON G. LARKY,

Defendant-Appellee.

UNPUBLISHED
December 17, 2002

No. 234283
Oakland Circuit Court
LC No. 2000-020126-NM

Before: Kelly, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition regarding her claim of legal malpractice. We affirm.

Plaintiff brought her claim for legal malpractice against defendant on January 11, 2000 alleging that defendant failed to advise her of the divorce provisions of a prenuptial agreement that was executed between plaintiff and Harold DeBoer, her ex-husband, on June 20, 1991. Plaintiff admitted in her deposition testimony that the last time that defendant represented her was on that date. Subsequently, on December 6, 1995, plaintiff and her ex-husband entered into a postnuptial agreement, which contained a merger clause superseding the prenuptial agreement. The postnuptial agreement was prepared by Jerald Shatzman, Mr. DeBoer's lawyer, without any consultation with defendant, who shared office space with Mr. Shatzman's law firm. As plaintiff acknowledged in her deposition testimony, defendant was not consulted about the postnuptial agreement. Nevertheless, defendant testified in his deposition that he briefly reviewed the postnuptial agreement after plaintiff had already signed it. Almost three years later, on May 6, 1998, plaintiff and Mr. DeBoer amended the postnuptial agreement in a document that was again prepared by Mr. Shatzman. It is undisputed that defendant was not consulted about the 1998 amendment to the postnuptial agreement. On July 20, 1999, Mr. DeBoer commenced divorce proceedings against plaintiff, seeking to enforce the "divorce" provision of the prenuptial agreement as incorporated in the successive postnuptial agreements. Eventually, plaintiff and Mr. DeBoer settled the divorce case, and a divorce judgment was entered on April 24, 2000.

This Court reviews 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). In this case, the trial court properly granted summary disposition to defendant pursuant to MCR 2.116(7) on the ground that plaintiff's action was time-barred by the expiration of the two-year statute of limitations for legal malpractice under MCL 600.5805(4).

Plaintiff's malpractice claim arises from defendant's alleged failure to advise her of the divorce provisions of the June 20, 1991 prenuptial agreement. Under the prenuptial agreement, she was allowed to live in the marital home, expense free, for the rest of her life if Mr. DeBoer predeceased her. Plaintiff claims that she did not realize that the prenuptial agreement contained a boiler-plate divorce provision that provided that in the event of divorce, the provisions made for her if she survived her husband would be null and void and waived, and that she would take only that which was in her own name.

Here, it is undisputed that the last time that defendant acted on behalf of plaintiff was in connection with the postnuptial agreement in December 1995. Thus, plaintiff's complaint is time-barred because it was not filed within two years of defendant's last date of service to plaintiff. *Gebhardt v O'Rourke*, 444 Mich 535, 543; 510 NW2d 900 (1994).

Further, contrary to plaintiff's contention, she did not file her complaint within six months of having discovered the alleged malpractice. MCL 600.5838(2); *Gebhardt, supra*, 444 Mich 544. According to plaintiff, she did not read the prenuptial, postnuptial or amendment to the postnuptial agreements until after she consulted with her present counsel on July 20, 1999. Plaintiff thus contends that her legal malpractice action was timely because it was filed less than six months from the date of discovery of the provisions of the prenuptial agreement. In this case, the latest date that plaintiff should have discovered the alleged malpractice was on May 6, 1998 when the amendment to the postnuptial agreement was prepared and signed. As defendant rightly points out, the failure of plaintiff to read the prenuptial, postnuptial or amendment to the postnuptial agreements in a timely fashion does not avoid the limitations bar. *Watts v Polaczyk*, 242 Mich App 600; 619 NW2d 714 (2000) ("Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents."). Thus, plaintiff's malpractice complaint filed on January 11, 2000 was also barred under the six-month discovery rule.

Finally, we note that plaintiff cannot base her legal malpractice claim upon defendant's alleged violations of the Michigan Rules of Professional Conduct. *Watts, supra*, 242 Mich App 607 n 1 (noting that "though failure to comply with the requirements of MRPC 1.8(h) may provide a basis for invoking the disciplinary process, such failure does not give rise to a cause of action for enforcement of the rule or for damages caused by failure to comply with the rule").

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Pat M. Donofrio