

STATE OF MICHIGAN
COURT OF APPEALS

MARY JO MURRAY,

Plaintiff-Appellant,

v

DAVID D. BLACK, BRYAN D. BLACK, and
BLACK, BLACK & BLACK LAW OFFICES,

Defendants-Appellees.

UNPUBLISHED

January 5, 2006

No. 264861

Lapeer Circuit Court

LC No. 02-031994-CZ

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition in this legal malpractice case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when the motorcycle on which she was a passenger collided with a farm tractor. Ryan Smith, the driver of the motorcycle, was killed in the accident. Plaintiff retained defendants to represent her in litigation related to the accident. She agreed to settle with Smith's estate for \$20,000, the limits of his insurance policy. Plaintiff signed a release discharging Smith's estate "and any other person . . . charged or chargeable with responsibility or liability, . . . from any and all claims" in connection with the accident.

Plaintiff filed suit against J. Guadalupe Uribe Arce and Kenneth Lee Penzien, the driver and owner of the tractor, respectively, seeking damages for injuries sustained in the accident.¹ When defendants learned of the existence of the release, they moved to amend their answer to plead release as a defense, and for summary disposition. The trial court granted the motions. In *Murray v Arce*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2003 (Docket No. 238757), we affirmed the trial court's decision.

Plaintiff filed the instant suit alleging that defendants committed legal malpractice by fraudulently and inappropriately inducing her to sign the release, and that as a consequence of

¹ *Murray v Arce*, Lapeer Circuit Court Docket No. 98-025311-NI.

signing the release, she had lost her ability to recover from Smith's estate, Arce, Penzien, or their insurers. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that prior to the decision in *Romska v Oppen*, 234 Mich App 512; 594 NW2d 853 (1999), the interpretation of a release was governed by the intentions of the parties to the release. *Romska, supra*, held that a release that discharges both the person being released and all other parties who are or might be liable to the person giving the release operates to discharge all such persons, including those persons who are not party to the release. *Id.* at 515-516. Defendants asserted that at the time they recommended that plaintiff execute the release, they believed, based on the law as it existed at the time, that the release could not be enforced by a third party such as Arce or Penzien. Moreover, defendants contended that plaintiff could not have prevailed on her underlying claim because the evidence showed that Smith's negligent act of driving the motorcycle into the rear of the tractor was the sole cause of the accident. The trial court granted the motion, observing that plaintiff presented no affidavits or other documentary evidence to create a question of fact regarding whether defendants violated the standard of care in effect at the time she signed the release.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

In order to establish a claim of legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). As a general rule, expert testimony is required in a legal malpractice case to establish the applicable standard of care, the breach of that standard, and causation. However, if the absence of professional care is so manifest that ordinary laymen of common knowledge and experience can perceive that the defendant was careless, a plaintiff can maintain a malpractice action without offering expert testimony. *Law Offices of Lawrence J. Stockler, PC v Rose*, 174 Mich App 14, 48; 436 NW2d 70 (1989).

We affirm. Plaintiff alleged that defendants committed legal malpractice by failing to adhere to the standard of care applicable to the execution of a release. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), and submitted an affidavit from an attorney who stated that they adhered to the standard of care applicable at the time plaintiff signed the release. Plaintiff was not entitled to rely on her pleadings, but was required to submit affidavits or other documentary evidence establishing the existence of a genuine issue of material fact. MCR 2.116(G)(4). Plaintiff failed to submit such evidence. Her assertion that expert testimony was not required to establish the standard of care is belied by the fact that counsel for the parties disputed what the law required at the time plaintiff signed the release. Under these circumstances, an absence of adherence to the applicable standard of care would not be so manifest that laypersons could perceive it without guidance from expert testimony. *Stockler, supra*. Without expert testimony, plaintiff could not make out a prima facie case of legal malpractice. *Winiemko, supra*. Summary disposition was correct.

Plaintiff's complaint alleged that defendants filed a claim for first-party benefits, but did not allege that defendants allowed a statute of limitations to expire. This issue was not raised before or decided by the trial court, and is given only cursory treatment on appeal. We conclude

that this issue has been abandoned. *Bageris v Brandon Twp*, 264 Mich App 156, 162 n 2; 691 NW2d 459 (2004).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot