STATE OF MICHIGAN

COURT OF APPEALS

SUSAN CEY, f/k/a SUSAN SETTERINGTON,

Plaintiff,

and

BARBARA PARRY SCHROER, f/k/a BARBARA PARRY, TRUSTEE of the Lewis Parry and Barbara O. Parry Trust,

Plaintiff-Appellant,

v

CAMPBELL, KEENAN, COONEY, KARLSTROM & STECKLING, LLP and STUART B. COONEY,

Defendants-Appellees.

UNPUBLISHED
January 17, 2006

No. 263647
Oakland Circuit Court
LC No. 2004-055452-NM

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

In this legal malpractice case, plaintiff Barbara Parry Schroer, trustee of the Lewis Parry and Barbara O. Parry (Schroer) Trust appeals as of right the trial court's order granting summary disposition in favor of defendants. We reverse and remand.

Defendants represented plaintiff Cey in the sale of three interrelated business entities. Cey's mother, plaintiff Schroer, held a minority interest in one of those entities as trustee of the Lewis Parry and Barbara O. Parry Trust. Defendants communicated solely with Cey until the day of closing. Defendants never spoke directly with Schroer regarding the transaction. Schroer first met defendants at the closing, which she attended in order to sign the relevant paperwork.

Prior to closing, defendants had drafted several documents, including an assignment of Schroer's minority interest to the purchaser, and a certificate of trust prepared on Schroer's behalf. Defendants had also drafted several documents for Cey, some of which incidentally benefited Schroer as a minority interest holder as well. Among these documents was a mortgage, granted as security by the purchaser of the businesses. Defendants concede that they negligently drafted the mortgage, leaving plaintiffs without adequate security when the purchaser

later filed for bankruptcy. Defendants admitted to legal malpractice with respect to Cey and eventually settled. However, defendants contended that they had never represented Schroer in the business transaction. The trial court agreed, finding no genuine issue of fact as to the existence of an attorney-client relationship with Schroer. Plaintiff Schroer challenges that ruling.

We review a motion for summary disposition under MCR 2.116(C)(10) de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A genuine issue of material fact exists when the record, viewed in the light most favorable to the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

"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 an injury, and (4) the fact and extent of the injury alleged." *Estate of Mitchell v Dougherty*, 249 Mich App 668, 676; 644 NW2d 391 (2002). In determining whether an attorney-client relationship exists, the focus is on the putative client's belief. *Grace v Center for Auto Safety*, 72 F3d 1236, 1242 (CA 6, 1996); *Dalrymple v Nat'l Bank and Trust Co of Traverse City*, 615 F Supp 979, 982 (WD Mich, 1985). However, such a belief must also be reasonable, based on objective circumstances. *Fletcher v Bd of Education of School Dist Fractional No 5*, 323 Mich 343, 348; 35 NW2d 177 (1948).

Plaintiff Schroer testified that she subjectively believed defendants represented her interests in the underlying business transaction. Moreover, Schroer argues that her belief was reasonable in light of the attending circumstances and the actions of defendants. Specifically, Schroer points to a document drafted by defendants which assigned her minority interest to the purchaser, and a certificate of trust prepared by defendants on her behalf. Moreover, Schroer notes that she attended the closing in defendants' presence, and that defendants negotiated and revised the purchase agreement between the parties, which specifically identified Schroer as a minority owner. Finally, Schroer notes that although she was not individually billed by defendants, Cey specifically paid for all legal services with respect to both plaintiffs. Schroer correctly contends that "[t]he relation of attorney and client is not dependent on the payment of a fee." *Macomb Co Taxpayers Ass'n v L'Anse Creuse Public Schools*, 455 Mich 1, 11; 664 NW2d 457 (1997), quoting 7 Am Jur2d, Attorneys at Law, § 118, pp 187-188.

It is undisputed that defendants drafted documents concerning Schroer's legal interests and that defendants attended the closing with both Cey and Schroer. It is further uncontested that defendants negotiated and revised the purchase agreement, which specifically identified Schroer as a partial owner. In addition, Schroer presented three supporting affidavits to the trial court, two of which were signed by the purchaser's attorneys, averring that defendants outwardly appeared to be representing Schroer throughout the business transaction. This objective evidence was countered only by the deposition of defendant Stuart Cooney, who testified that he thought that he had only represented Cey in the underlying transaction, and that none of the legal services performed had been exclusively provided for Schroer.

The record evidence establishes an objective basis for Schroer's belief that defendants represented her in the business transaction. Viewing the evidence in a light most favorable to plaintiff, we find a genuine issue of material facts exists with regard to whether an attorney-client relationship existed between Schroer and defendants.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder