

STATE OF MICHIGAN
COURT OF APPEALS

SHYAAM AL-AZIM LANDRUM and
MONIQUA LANDRUM,

UNPUBLISHED
December 21, 2010

Plaintiffs-Appellants,

v

FREDERICK FINN,

No. 294528
Wayne Circuit Court
LC No. 09-010283-CK

Defendant-Appellee.

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

In this legal malpractice case, plaintiffs appeal as of right an order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (C)(10).¹ We affirm.

Defendant is an attorney who was appointed to represent plaintiff Shyaam Al-Azim Landrum² after he was charged with the misdemeanor criminal offense of making a false police report in violation of Section 16-27 of the Grosse Pointe Park City Code. Following a bench trial, plaintiff was convicted and sentenced to 20 hours of community service and ordered to pay a \$200 fine. Plaintiff filed a motion for new trial based in part on ineffective assistance of counsel. The motion was based in pertinent part on defendant's failure to present an alibi defense. Following an evidentiary hearing on the motion, the trial court found that defendant's representation of defendant went to matters of reasonable trial strategy and did not support a claim of ineffective assistance of counsel.

Plaintiff then filed an appeal in Wayne Circuit Court, alleging in part that he was denied the effective assistance of counsel. The circuit court issued a written opinion and order denying

¹ Although the trial court did not identify the grounds on which it was granting summary disposition, it is apparent from the trial court's findings that it granted summary disposition pursuant to MCR 2.116(C)(7) with respect to plaintiff Shyaam Al-Azim Landrum and pursuant to MCR 2.116(C)(10) with respect to plaintiff Moniqua Landrum.

² Use of the term "plaintiff" hereinafter refers to Shyaam Al-Azim Landrum.

plaintiff's motion and affirming the trial court's decision that plaintiff had not met his burden of establishing ineffective assistance of counsel. The circuit court summarized the evidence presented at trial:

Officer Bostock of the Grosse Pointe Park Public Safety Department testified that he was dispatched to 1359 Wayburn for suspected narcotic activity. When he arrived, he did not see or smell any evidence of narcotic activity. Officer Bostock proceeded to the 1200 block of Maryland. When he got to 1240 Maryland, there were two people sitting on the porch. He asked them if either of them had made the 911 call. As he was speaking with them, he saw a man walking southbound on Maryland. He asked this man if he had made the 911 call. This man told the officer that he had made the call and he could not believe that the officers could not smell the marijuana coming from the house because he could smell it from the sidewalk. The officer stated that the man was reluctant to give his name, but he eventually told the officer his name was Shyaam Landrum. When the officers asked Mr. Landrum why he had given the 911 operator a false name, Mr. Landrum told the officer that he did it for "security reasons." [Internal citations omitted.]

The circuit court specifically noted that

Appellant makes the argument that he had ineffective assistance of trial counsel wherein his trial attorney failed to present an alibi defense, requested a bench trial against his wishes, did not call his guardian or three other family members who had appeared at all of the proceedings as witnesses and did not allow him to testify on his own behalf. Appellant further argues that because his guardian was sequestered, his guardian was not available to provide him with counsel regarding his right to testify.

The Court then found that

Even if Appellant's attorney had presented an alibi defense, and Appellant had called his guardian and relatives as witnesses, the fact remains that there still would have been evidence presented at trial that a 911 call was made and the officer who responded to it was met by Appellant, who admitted to the officer that he called 911 and gave a false name. As such, Appellant cannot meet his burden of establishing that, but for these errors, the result of the proceeding would have been different.

The circuit court thereafter issued a written opinion and order denying plaintiff's motion for reconsideration.

Plaintiff then filed an application for leave to appeal in this court, arguing in part the claim of ineffective assistance of counsel. This Court denied the application. *City of Grosse Pointe Park v Shyaam Al-Azim Landrum*, unpublished order of the Court of Appeals, entered June 20, 2008 (Docket No. 282403). The Supreme Court denied plaintiff's application for leave

to appeal. *People of the City of Grosse Pointe Park v Shyaam Al-Azim Landrum*, 483 Mich 912, 762 NW2d 517, reconsideration denied 483 Mich 1116; 766 NW2d 828 (2009).

On April 30, 2009, plaintiff filed the present complaint against defendant alleging legal malpractice, breach of implied attorney agreement, and fraud, deceit and misrepresentation. Each of the claims was premised on a claim of ineffective assistance of counsel for failing to pursue an alibi defense; one of the claims was premised on the claim that defendant unduly influenced defendant not to testify at trial or present witnesses, and another of the claims was premised on the claim that Moniqua Landrum was sequestered during trial.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(5), (7), (8), and (10). Citing *Barrow v Pritchard*, 235 Mich App 478; 597 NW2d 853 (1999), defendant asserted that a criminal defendant who unsuccessfully asserts an ineffective assistance of counsel claim in a criminal case is barred from relitigating the same claim in a legal malpractice claim and that therefore plaintiff's legal malpractice claim was barred by the doctrine of collateral estoppel. With regard to plaintiff Moniqua Landrum, defendant asserted that an attorney-client relationship had never existed between her and defendant.

The trial court ruled that the doctrine of collateral estoppel barred plaintiff's claims because

the claims that are presented in this complaint, ineffective assistance of trial counsel, not presenting an alibi defense, have been previously raised by the plaintiff Landrum in post conviction motions.

Also, the trial court, the municipal court, specifically told the defendant in that case, the plaintiff in this case, that he had the right to remain silent, or he could testify, it was all gone over by the trial court.

With regard to plaintiff Moniqua Landrum, the trial court determined that "she lacks standing."

Summary disposition is appropriate under MCR 2.116(C)(7) when collateral estoppel operates to bar a claim. Whether a party is collaterally estopped from challenging an issue addressed in a prior proceeding involves a question of law that is reviewed de novo. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996).

The trial court properly granted summary disposition pursuant to MCR 2.116(C)(7) in favor of defendant with regard to plaintiff. A party who has unsuccessfully litigated a claim of ineffective assistance of counsel in a criminal proceeding is precluded from challenging the same representation in a civil malpractice action. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 347; 657 NW2d 759 (2002); *Barrow*, 235 Mich App at 484-485. Plaintiff in the present action

seeks to relitigate the very same assertions of attorney error that were raised and rejected in his criminal appeal.³

The trial court also properly granted summary disposition pursuant to MCR 2.116(C)(8) in favor of defendant with regard to plaintiff Moniqua Landrum. A plaintiff seeking to bring a legal malpractice claim must first establish the existence of an attorney-client relationship. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). Here, no evidence was presented that Moniqua Landrum, a relative of plaintiff, had an attorney-client relationship with defendant. Summary disposition was therefore properly granted in favor of defendant for failure to state a claim. MCR 2.116(C)(10).

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

³ We note that summary disposition would have been appropriately granted on the ground that decisions made involving trial tactics or litigation strategy are generally not subject to attack in an action for legal malpractice. See, e.g., *Mitchell v Dougherty*, 249 Mich App 668, 679; 644 NW2d 391 (2002). “[M]ere errors in judgment by a lawyer are generally not grounds for a malpractice action where the attorney acts in good faith and exercises reasonable care, skill, and diligence.” *Simko v Blake*, 448 Mich at 658. Accordingly, where a plaintiff’s allegations cannot support a breach of duty because they are based on mere errors of professional judgment and not breaches of reasonable care, summary disposition is appropriate. *Id.* at 659.