STATE OF MICHIGAN

COURT OF APPEALS

J. EDWARD KLOIAN, Assignee of DAY LIVING TRUST and FINANCIAL ASSOCIATES OF AMERICA, LTD, Plaintiff-Appellant,	UNPUBLISHED October 17, 2017
v	No. 333293 Washtenaw Circuit Court
ALEXANDER V. LYZOHUB, Defendant-Appellee.	LC No. 15-000531-NM

Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant under MCR 2.116(C)(7) (statute of limitations) and (C)(10) (no genuine issue of material fact). We affirm.

I. FACTS

The underlying lawsuits involved a lengthy dispute to quiet title to property at 228 Packard Street in Ann Arbor and to obtain possession of the property. Plaintiff, who was never a party to those proceedings, claims that he retained defendant to represent "his interests," as well as the interests of Financial Associates of America (FAA) and Day Living Trust (DLT). He claims that DLT purchased the subject property by way of land contract from FAA and that any interests of those two entities, including interests pertaining to lawsuits, were transferred to him.

The facts of the underlying lawsuits were set forth in *Day Living Trust v Kelley*, unpublished opinion per curiam of the Court of Appeals, issued June 6, 2013 (Docket Nos. 309531 and 309566), and will not be repeated here.

Plaintiff filed his complaint in the case at hand in Wayne Circuit Court. He labeled himself the "assignee of [DLT's and FAA's] interests." The legal malpractice allegations pertained to both a possession proceeding held in the district court and a quiet title proceeding held in the circuit court. Along with his answer to the complaint, defendant filed a motion for change of venue. Defendant argued that because the alleged legal malpractice occurred in Washtenaw County, and all actions associated with the case giving rise to the complaint occurred

in Washtenaw County, venue was proper in Washtenaw County. The circuit court agreed, and the case was transferred to Washtenaw Circuit Court (hereinafter the "trial court") pursuant to MCR 2.222(A).

In the trial court, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10), and plaintiff responded. After listening to arguments, the trial court dismissed plaintiff's claims brought in his individual capacity, finding that plaintiff lacked "standing as a matter of law." The trial court found that plaintiff was not defendant's client, that he was not a party in the prior circuit-court proceeding, and that no evidence was presented to show that he had an individual interest in the subject property. Additionally, the trial court ruled that FAA's and DLT's claims were time-barred and that there was no genuine issue of material fact with regard to DLT's claims.

II. ANALYSIS

A. VENUE

Plaintiff argues that the transfer of the case from Wayne Court Court to Washtenaw Circuit Court was erroneous. Plaintiff sought leave to appeal the forum transfer when it occurred, and this Court denied leave, explaining that "[v]enue was proper in Washtenaw County under both [MCL 600.1629(1)(a) and (b)], as the original injury occurred in Washtenaw County and defendant conducts business (and plaintiff lives) in that same county." *Kloian v Lyzohub*, unpublished order of the Court of Appeals, issued July 11, 2014 (Docket No. 320980). We are bound by this prior determination. See *People v Freedland*, 178 Mich App 761, 770; 444 NW2d 250 (1989).

B. STATUTE OF LIMITATIONS

Next, defendant argues that the trial court erred when it found that the two-year limitations period for legal malpractice had run. This Court reviews de novo the grant or denial of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted pursuant to MCR 2.116(C)(7) when the claim is barred by an applicable statute of limitations. *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010). "A legal malpractice claim must be brought within two years of the date the claim accrues, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006), citing MCL 600.5805(6) and MCL 600.5838.

1. FAA

The trial court ruled that the malpractice claim brought on behalf of FAA was time-barred pursuant to MCL 600.5805(6). Plaintiff argues that defendant waived his statute-of-limitations defense because he did not raise it in his first responsive pleading. See MCR 2.116(D)(2) ("The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading."). Defendant did raise the statute-of-limitations defense in his

first responsive pleading. Although defendant did not set forth an explanation regarding why the limitations period had expired, the court rule does not require this much specificity.

The parties dispute what event triggered the two-year limitations period. "[A] plaintiff's legal malpractice claim accrues on the day that the attorney last provides professional service in the specific matter out of which the malpractice claim arose." *Kloian*, 272 Mich App at 238. On July 31, 2011, the trial court signed an order for the substitution of attorney in the matter of *Day Living Trust*. The order was filed and served on the parties on August 8, 2011. Accordingly, as of August 8, 2011, at the latest, defendant was no longer providing services to FAA. Plaintiff filed the lawsuit on behalf of FAA on September 9, 2013, missing the two-year period by over a month. Because the complaint was filed outside of the two-year limitations period, the malpractice claim is barred as untimely.

Plaintiff asserts that because the complaint was filed within six months of this Court's opinion in *Day Living Trust*, issued on June 6, 2013, his complaint was timely under MCL 600.5838(2) (the "discovery rule"). Under § 5838(2), "[t]he plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim."

Plaintiff argues that with the issuance of *Day Living Trust* he first learned that malpractice had occurred. This is not a tenable argument. There was nothing in this Court's opinion revealing acts of alleged malpractice that were not known or discoverable before issuance of the opinion. Clearly plaintiff had knowledge that defendant had not obtained a result favorable to plaintiff, or else he would have had no need to appeal in this Court.

2. DLT

The trial court found that DLT was the predecessor in interest to FAA. Plaintiff challenges this finding, and we agree that it is erroneous.

However, it is clear from the trial court's statements on the record that it granted defendant's motion for summary disposition with regard to DLT's claims under MCR 2.116(C)(10). Plaintiff does not adequately address on appeal the trial court's ruling regarding the lack of a genuine issue of material fact and has thus abandoned his claim of error. See *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). "A party may not merely announce his position and leave it to [this Court] to discover and rationalize the basis for his claim."). Plaintiff *states* in general terms that the trial court "erred in granting [defendant's] motion for summary disposition" under MCR 2.116(C)(10), but in briefing the issue and setting forth what he believes to be genuine issues of material fact, he simply does not adequately address the trial court's findings that defendant "preserved the appellate rights of [DLT]," that plaintiff's claims regarding DLT were based on speculation, that the Court of Appeals cured any possible deficits by way of the earlier ruling, that plaintiff retained a subsequent attorney who obtained relief for plaintiff, and that, therefore, there was no genuine issue of material fact regarding legal malpractice. We will not unravel plaintiff's arguments for him. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

C. STANDING

Plaintiff also challenges the trial court's finding that he lacked standing because there was no attorney-client relationship between defendant and plaintiff.[1] The trial court concluded that pursuant to the fee agreement between DLT and defendant, it was clear that defendant represented DLT. The trial court explained that the agreement stated that plaintiff was a guarantor of payment with regard to the agreement made between DLT and defendant, not a party to the agreement. We review issues of standing de novo. *Manuel v Gill*, 481 Mich App 637, 642; 753 NW2d 48 (2008).

The fee agreement clearly identifies *DLT* as defendant's client and states that plaintiff is a guarantor of payment. The agreement states, in capital letters: "CLIENT IS DAY LIVING TRUST." As such, the trial court did not err in finding that there was no basis for claims of plaintiff in his capacity as an individual.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Michael F. Gadola

[1] We note that, despite any wording in the complaint alluding to additional causes of action, plaintiff clearly labeled his complaint as a "complaint for legal malpractice," and in his appellate brief he refers to his bringing of a "Legal Malpractice" claim against defendant.