# STATE OF MICHIGAN

# COURT OF APPEALS

DEAN S. HAZEL,

Plaintiff-Appellant,

v

CZERYBA & GODFROY P.C., DENNIS J. CZERYBA, WILLIAM P. GODFROY, and CHRISTOPHER D. MARRIOTT,

Defendants-Appellees.

UNPUBLISHED
March 20, 2012

No. 301692
Monroe Circuit Court
LC No. 08-0261410-NM

Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendants on plaintiff's legal malpractice claim on the basis that there was no genuine issue of material fact. MCR 2.116(C)(10). We affirm but remand for correction of the trial court's October 28, 2010, order.

Plaintiff's claims arise from the representation provided by defendant Marriott to plaintiff in two somewhat related cases. The first was a district court case against plaintiff where he had been charged with driving without a license and for not wearing a seat belt. The second was a circuit court matter regarding the enforcement of a writ of mandamus that plaintiff had obtained a few years earlier to require the Secretary of State to renew his driver's license. The district court matter was resolved with a plea bargain in which the driving without a license charge was dismissed in exchange for plaintiff's admitting to the seat-belt violation. The complaint regarding the handling of the circuit court matter arises from defendant Marriott signing a satisfaction of judgment after the Secretary of State reinstated plaintiff's driver's license and paid the amount ordered by the circuit court in the enforcement action on the writ of mandamus.

Plaintiff first argues that there was no change of venue from the 38th Circuit to the 3rd Circuit. Plaintiff is correct. After the recusal of all of the 38th Circuit judges, the matter was ultimately assigned to Judge Borman of the 3rd Circuit, who was assigned by the State Court Administrator as a visiting judge on the 38th Circuit. The problem arises in that, while Judge Borman issued an opinion on the summary disposition motion that clearly identified her as a visiting judge on the 38th Circuit, the actual order granting summary disposition was captioned as being from the 3rd Circuit. We could perhaps take the position that there was no actual final

order entered by the 38th Circuit and dismiss the appeal and return the matter to that court. But that would undoubtedly result in a correctly captioned order being entered, reaching the same result, and a new appeal filed. We are of the opinion that the improper caption on the order granting summary disposition was a mere clerical error and that this issue is best handled by exercising our authority under MCR 7.216(A)(1) to order that the summary disposition order be amended to read that it is from the 38th Circuit.

Turning to the merits of the issues raised, plaintiff first argues that there was a genuine issue of material fact regarding whether there was a contract between the parties which required defendant Marriott to act with greater than ordinary care and diligence. But the general principle is that an action alleging a professional failure by an attorney is one that sounds in the tort of malpractice and not as a contract action. See *Brownell v Garber*, 199 Mich App 519, 524-526; 503 NW2d 81 (1993). Moreover, even if this were the unusual case in which a contract action could be maintained, plaintiff fails to identify any contractual provision that created a higher duty than that normally owed a client by his attorney. See *Brownell*, 199 Mich App at 525.

Plaintiff's next argument, that the trial court failed to recognize the malpractice which lead to the breach of contract, is without merit because it is premised on there being a breach of contract. But as discussed above, there is no action which sounds in contract.

Next, plaintiff argues that the trial court incorrectly based its decision on there being no dispute regarding whether plaintiff had, in fact, renewed his driver's license after obtaining the writ of mandamus. But even assuming that the trial court's observation is erroneous, that does not change the outcome of this matter. Plaintiff was not convicted of driving without a license. That charge was dismissed as part of the plea bargain. We fail to see how an attorney can be guilty of malpractice by obtaining dismissal of a charge for which his client is not guilty.

Finally, plaintiff argues that the trial court failed to consider the evidence in the light most favorable to the non-moving party as required in considering a motion under MCR 2.116(C)(10). See *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). But, with the possible exception of the previous issue, plaintiff fails to identify any fact relied upon by the trial court in its opinion that was not viewed in the light most favorable to plaintiff. "A party may not leave it to this Court to search for the factual basis to sustain or reject its position, but must support its position with specific references to the record." *Begin v Michigan Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009).

Affirmed but remanded to the trial court for the ministerial task of correcting the clerical error in the October 28, 2010, order to read that it is from the 38th Circuit Court. Defendants may tax costs. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael J. Talbot