

STATE OF MICHIGAN
COURT OF APPEALS

PAUL W. SMITH,

Plaintiff-Appellant,

v

CHIAMP & ASSOCIATES, P.C., and HICKEY,
CIANCIOLO, FISHMAN & FINN, P.C.,

Defendants-Appellees.

UNPUBLISHED
January 29, 2013

No. 306225
Wayne Circuit Court
LC No. 11-003827-NM

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) in this legal malpractice action. The court concluded that the action was barred by the statute of limitations. See MCL 600.5805(6). We affirm.

Defendants represented plaintiff in his divorce action. Plaintiff was also represented by James Alle. This appeal concerns defendants' last date of service for purposes of commencing the two-year limitations period. Plaintiff filed this action on March 30, 2011. The parties dispute whether defendants' representation ended before an order of withdrawal was entered in the underlying action on April 10, 2009. The trial court concluded that the submitted evidence showed that the limitations period began running more than two years before plaintiff filed this action and, accordingly, granted defendants' motion for summary disposition.

Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a claim is barred by the statute of limitations. This Court reviews de novo a trial court's grant of summary disposition based on the statute of limitations. *Mayberry v Gen Orthopedics, PC*, 474 Mich 1, 5; 704 NW2d 69 (2005). "If no facts are in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law." *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999). However, if a material factual dispute exists such that factual development could provide a basis for recovery, then summary disposition should not be granted. *Id.*

“A legal malpractice claim must be brought within two years of the date that the attorney discontinues serving the client or within six months after the client discovers or should have discovered the claim, whichever is later.” *Hooper v Hill Lewis*, 191 Mich App 312, 314; 477 NW2d 114 (1991), citing MCL 600.5805(6) and MCL 600.5838. Discovery of the claim is not at issue in this case. Rather, the focus is on the discontinuation of service.

In general, an attorney’s representation of a client continues “until the attorney is relieved of the obligation by the client or the court.” *Mitchell v Dougherty*, 249 Mich App 668, 683; 644 NW2d 391 (2002). An attorney-client relationship can be terminated by implication. *Id.* at 685. A client terminates his attorney’s representation by informing the attorney that the attorney no longer has authority to act on the client’s behalf. *Id.* at 684; *Hooper*, 191 Mich App at 315.

In this case, plaintiff, through his attorney Alle, sent letters in January 2009 to opposing counsel in the divorce action stating that Alle alone had authority to act on plaintiff’s behalf and that Alle was conveying that information because he had been instructed to do so. These letters indicated that they were copied to plaintiff, as well as Carole Breitmayer, an attorney at defendant Hickey, Cianciolo, Fishman & Finn, P.C. Although Alle did not expressly state that it was plaintiff who gave the instruction, plaintiff’s statement, through Alle, that defendants did not have authority to act on his behalf is evidence of plaintiff’s intent to terminate the relationship, *Hooper*, 191 Mich App at 315, and plaintiff did not submit any contrary evidence to establish an issue of fact concerning the accuracy of the statement.

Plaintiff suggests that Alle’s statements may not have reflected plaintiff’s intentions. However, an attorney is an agent of the client. *Fletcher v Bd of Ed of Sch Dist Fractional No 5*, 323 Mich 343, 348; 35 NW2d 177 (1948). “[A] longstanding principle derived from agency law is that a client is bound by the actions and inactions of that client’s attorney that occurred within the scope of the attorney’s authority.” *Kloian v Domino’s Pizza LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006). Accordingly, plaintiff was bound by Alle’s actions if they were within the scope of Alle’s authority. Plaintiff did not submit any evidence that he ever sought to correct the assertions made by Alle in his January 2009 letters. When Breitmayer, an attorney at defendant Hickey, Cianciolo, Fishman & Finn, P.C., informed plaintiff in a February 12, 2009 letter that she understood Alle’s letters as a termination of defendant’s relationship, plaintiff did not respond. Plaintiff’s inaction is evidence that Alle acted within his authority and that plaintiff intended to discharge defendants. Plaintiff argued below that Alle should be deposed to determine whether he had the authority to terminate defendants’ relationship with plaintiff. However, plaintiff did not present any evidence (such as his own affidavit) to show a material factual dispute concerning Alle’s authority, or to show that further discovery was warranted. Therefore, plaintiff failed to show that summary disposition was inappropriate or premature. See *Mitchell*, 249 Mich App at 686 n 10.

In sum, the evidence showed that plaintiff discharged defendants more than two years before plaintiff filed this action on March 30, 2011. Plaintiff's malpractice claim began accruing on the last date of service, which was no later than when plaintiff discharged defendants in January 2009. Accordingly, the malpractice action was barred by the statute of limitations.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Mark T. Boonstra