STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1376

James A. Compart, et al.,
Appellants,

vs.

Michael K. Riley, Sr., et al.,
Respondents.

Filed April 6, 2020
Affirmed
Connolly, Judge

Nicollet County District Court
File No. 52-CV-18-501

Matthew C. Berger, Christopher E. Bowler, Gislason & Hunter LLP, New Ulm, Minnesota (for appellants)

Joseph A. Gangi, Farrish Johnson Law Office, Mankato, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellants challenge the dismissal of their legal malpractice claims. Because the district court correctly concluded that the statute of limitations barred these claims, we affirm.

FACTS

The facts underlying this case involve appellants James and Diana Compart's purchase of real property in Sherburne County, Minnesota. This property is divided into four parcels: A, B, C, and D.[1] In 1992, Philip and Donna Larson (the Larsons) contracted with Berlinson Associates (Berlinson), the title owners of Parcels A, B, C, and D, and acquired an interest in those parcels. Five years later, appellants executed a purchase agreement with the Larsons for Parcels A and B. By their agreement, the Larsons and appellants also intended that appellants would take title to Parcel D, subject to an easement for the Larsons to access Parcel C. As part of the closing, the Larsons executed a quitclaim deed intending to convey their right, title, and interest in Parcels A, B, and D to appellants. Similarly, Berlinson intended to convey its right, title, and interest in Parcels A, B, and D to appellants through the delivery of a warranty deed.

Both deeds were recorded at the county recorder's office. But each deed contained similar scrivener errors: neither described Parcel D and neither conveyed any interest in

[1] Our opinion in the related case involving this land contains a diagram and additional facts about the property. *See Compart v. Wolfstellar*, 906 N.W.2d 598, 600-02 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018).

that parcel to appellants. Instead, these deeds conveyed only Parcels A and B to appellants, while allowing Berlinson to retain fee title in Parcel D subject to any equitable interest of the Larsons. Despite these errors, appellants farmed Parcel D without interference from the Larsons or Berlinson.

In August 2000, Berlinson conveyed a warranty deed to the Larsons for Parcels C and D. Again, appellants allege that this conveyance violated the intent of their purchase agreement with the Larsons. To correct these title errors, appellants retained respondents Michael Riley and his law firm, Riley-Tanis & Associates, PLLC, in February 2001.[2]

The Larsons executed a mortgage in 2008 that encumbered Parcels C and D. In March 2012, Riley prepared a quitclaim deed by which the Larsons conveyed Parcel D to appellants. This 2012 quitclaim deed said it sought "to correct an error in the legal description set forth in" the August 2000 warranty deed. Also in 2012, Riley prepared a road easement agreement, which purported to grant the Larsons an easement over Parcel D to access Parcel C.

The Larsons' 2008 mortgage was foreclosed in May 2012. Parcels C and D were then sold at a sheriff's sale on July 26, 2012. The next day, the Sheriff's Certificate and Foreclosure Record were filed in the county recorder's office. This foreclosure terminated appellants' ownership of Parcel D granted under the 2012 quitclaim deed. Appellants knew nothing about the mortgage or foreclosure sale.

[2] We refer to respondents collectively as "Riley."

New owners purchased Parcels C and D from Wells Fargo Bank in 2013. Starting in the spring of 2014, these new owners prevented appellants from farming Parcel D. Riley then filed a quiet title action against the new owners on appellants' behalf in 2016. *Compart*, 906 N.W.2d at 601. After the district court in that case granted summary judgment against them, appellants retained new counsel and appealed that decision.

This court reversed the grant of summary judgment and remanded appellants' suit against the owners. *Id.* at 611. On July 24, 2018, appellants sued Riley for legal malpractice. Riley did not answer, but moved to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted.

The district court granted Riley's motion to dismiss, offering two alternative grounds for dismissal. It first reasoned that appellants' claims were untimely because they suffered "some damage" in 2008 when the Larsons obtained their mortgage and in March 2012 when foreclosure occurred. The district court also found dismissal appropriate for claims not discussed in appellants' affidavit of expert disclosure. This appeal follows.

D E C I S I O N

To begin, we observe that the parties dispute the applicable legal standard. Appellants assert that the rule 12 standard governs, while Riley contends that the rule 56 summary-judgment standard governs. We apply the rule 12 standard because Riley moved to dismiss for failure to state a claim and because we do not reach the expert-affidavit issue.

We review de novo whether a complaint states a claim sufficient to survive a motion to dismiss. *Hansen v. U.S. Bank, N.A.*, 934 N.W.2d 319, 325 (Minn. 2019). In doing so, we accept the facts alleged in the complaint as true and construe all reasonable inferences

in the nonmoving party's favor. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 831 (Minn. 2011). Whether the district court erred in applying the law surrounding the accrual date and the running of the statute of limitations presents a legal question that we review de novo. *Antone v. Mirviss*, 720 N.W.2d 331, 334 (Minn. 2006).

Legal malpractice claims have a six-year statute of limitations. Minn. Stat. § 541.05, subd. 1(5) (2018).[3] An assertion that the statute of limitations bars a claim is an affirmative defense, and the asserting party must establish each of the elements. *MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008). This limitations period begins to run when a legal malpractice claim accrues. *Antone*, 720 N.W.2d at 335. A claim accrues when a plaintiff can allege sufficient facts to survive a motion to dismiss under Minn. R. Civ. P. 12.02(e). *Id.* So accrual occurs when operative facts supporting each element exist. *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 496 (Minn. 2018).

"To state a claim for legal malpractice, a plaintiff must allege (1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of the plaintiff's damages; and (4) that but for the attorney-defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action." *Frederick v. Wallerich*, 907 N.W.2d 167, 173 (Minn.

[3] We note that appellants alleged separate claims against Riley for breach of contract, breach of fiduciary duty, negligent misrepresentation, intentional misrepresentation, and breach of the covenant of good faith and fair dealing. The same accrual analysis applies to all claims because they depend on when appellants suffered some damage as a result of Riley's alleged malpractice. *See Antone*, 720 N.W.2d at 338 (dismissing the plaintiff's claims under the same accrual analysis).

2018). In a transactional matter—such as this case—the fourth element of a legal malpractice claim requires the plaintiff to show that, but for the attorney's conduct, the plaintiff would have obtained a more favorable result. *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 819 (Minn. 2006).

Here, the parties dispute when damages accrued. Minnesota follows the "some damage" rule of accrual. *Sec. Bank & Tr. Co.*, 916 N.W.2d at 498. This rule requires that some damage result from the alleged malpractice, but does not require a prospective plaintiff to be aware of all operative facts that could create a cause of action. *Id.* (citing *Antone*, 720 N.W.2d at 335-36). The occurrence of any compensable damage, even if not identified in the complaint, creates some damage. *Hansen*, 934 N.W.2d at 327. Either financial liability or the loss of a legal right can create some damage. *Sec. Bank & Tr. Co.*, 916 N.W.2d at 499.

Applying these principles here leads us to the conclusion that appellants suffered some damage in 2008 when the Larsons executed the mortgage encumbering Parcel D. At that point, a cloud existed on Parcel D's title, which represents some damage to appellants. *See May v. First Nat'l Bank of Grand Forks*, 427 N.W.2d 285, 289 (Minn. App. 1988) (observing in a legal malpractice case that "[a] cloud on a title to real estate is damage [because] [t]ime, money[,] and energy have to be expended, either to pay it off or to prove that it should not exist, and have it formally removed"), *review denied* (Minn. Oct. 26, 1988). But for Riley's negligence between 2001 and 2005, the Larsons could not have encumbered Parcel D in 2008. Thus, appellants could have brought a legal malpractice claim in 2008 sufficient to withstand a motion to dismiss. *See Antone*, 720 N.W.2d at 335.

Appellants argue that the 2008 mortgage cannot constitute some damage because foreclosure remained speculative. They instead identify the recording of the sheriff's sale certificate on July 27, 2012, as representing some damage because they knew nothing about the 2008 mortgage before that date. But this position contradicts the well-established rule that "the running of the statute does not depend on the ability to ascertain the exact amount of damages . . . [and] the statute is not tolled by ignorance of the cause of action." *Herrmann v. McMenomy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999).

Even if we find that appellants suffered some damage in 2008, they still urge us to reverse the district court. They highlight Riley's actions in 2012 as constituting independent acts of malpractice and argue that Riley committed distinct acts of legal malpractice while representing them.[4] First, their complaint asserted that Riley acted negligently from 2001 to 2005. Essentially, appellants fault Riley for not resolving the title defects during this period and for not notifying them about the Larsons' mortgage. Second, appellants' complaint alleged that Riley negligently drafted two documents in March 2012—the quitclaim deed and the road easement agreement. Again, the drafting of these documents aimed to resolve title defects.

The supreme court recently addressed independent acts in *Frederick*, where an attorney prepared an antenuptial agreement for a client. 907 N.W.2d at 170. But the

[4] Appellants also contend that Riley committed malpractice in 2016, but any argument on Riley's 2016 actions appears only in appellants' reply brief. An appellate court may decline to consider issues raised for the first time in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Thus, we consider only Riley's 2012 actions.

attorney did not ensure proper execution of that agreement because it lacked any attesting witness signatures. *Id.* at 170-71. One year later, the attorney prepared a new will for the same client. *Id.* at 171. This new will reflected the client's intention to use the prior antenuptial agreement and impliedly relied on its purported validity. *Id.* When the client's wife later filed for divorce, she successfully argued that the antenuptial agreement lacked enforceability. *Id.* The client then sued his attorney, alleging independent acts of malpractice. *Id.* at 172.

On appeal, the supreme court identified five factors to be applied as a "fact-specific approach to determine when multiple acts are sufficiently distinct to give rise to separate legal-malpractice claims . . . ." *Id.* at 177. Applied here, these factors require us to consider whether: (1) appellants' position was significantly worsened by Riley's later malpractice; (2) the two acts represent the same "type" of negligent conduct; (3) the acts of negligence occurred at different times and during different transactions; (4) the two acts flowed from the same underlying negligence; and (5) the later act relied on the continued validity of Riley's prior work. *See id.* at 175-76.

Under *Frederick*, we first observe that appellants have alleged that they suffered adverse consequences from Riley's 2012 acts. But appellants' complaint does not reveal how their position "significantly worsened" due to Riley's 2012 acts. The 2008 mortgage remained on Parcel D even after Riley prepared the two documents in March 2012. Second, Riley's negligent conduct appears to be the same "type" in 2012 as it was between 2001 and 2005. Both instances involved his failure to cure the title defects that did not grant Parcel D to appellants.

Third, the acts of negligence happened at different times. But they did involve similar transactions. At both times, Riley sought to prepare legal documents clearing the title defects and establishing appellants' ownership of Parcel D. Fourth, the two acts flow from the same negligence—Riley's failure to secure ownership of Parcel D for appellants. Fifth, Riley's 2012 acts did not rely on the validity of his prior work. In fact, appellants assert that he initially did little to correct the title defects, requiring these later acts.

Because we hold that application of the *Frederick* factors weighs against the conclusion that Riley's 2012 acts constitute independent acts of negligence sufficient to create a separate malpractice claim, we affirm the district court's ruling on this issue. Based on this analysis, we need not address the alternative basis on which the district court dismissed the case.

Affirmed.