STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0008

Mark Rodgers, et al.,
Appellants,

vs.

Ronald K. Carpenter, et al.,
Respondents.

Filed July 18, 2022
Affirmed
Halbrooks, Judge[*]

Beltrami County District Court
File No. 04-CV-20-1419

Michael A. Bryant, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellants)

Scott D. Jensen, Camrud, Maddock, Olson & Larson, Ltd., Grand Forks, North Dakota (for respondents)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Halbrooks, Judge.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellants Mark Rodgers and Rodgers & Garbow, PLLC (collectively, Rodgers) challenge the district court's grant of summary judgment to respondents Ronald Carpenter

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

and Carpenter & Wangberg, P.A. (collectively, Carpenter) in a legal-malpractice action, arguing that the district court erred in granting Carpenter summary judgment on the ground that the statute of limitations had expired. Because we conclude that some damage resulting from the underlying cause of action accrued on February 14, 2012, more than six years prior to service of the complaint, we affirm.

FACTS

Carpenter is a lawyer who did periodic work for Rodgers, who is also a lawyer, and Rodgers's law firm. In 1999, Rodgers and another attorney hired Carpenter to assist with the dissolution of their former firm and to help them form a partnership agreement for their new firm, Hazelton & Rodgers, P.C. In 2005 and 2006, Carpenter assisted with the dissolution of Hazelton & Rodgers, P.C. In 2005, Rodgers hired Carpenter to assist in the formation of Rodgers Law Office, PLLC, and Carpenter completed that work in 2006.

In 2008, Rodgers hired attorney Michael Garbow. From 2008-2011, Garbow and another attorney were responsible for "all litigation work" at the firm. In 2009, Rodgers contacted Carpenter about changing the name of the Rodgers Law Office to include Garbow. In 2010 and 2011, Rodgers contacted Carpenter to discuss the possibility of selling a portion of the Rodgers Law Office to Garbow. As a result, Carpenter prepared drafts of a buy-in agreement and a stock-purchases-and-control agreement for Rodgers, Garbow, and another attorney in 2011.

On February 9, 2012, Rodgers emailed Carpenter, asking for advice on how to facilitate a transfer of shares in the firm to Garbow. Carpenter replied with several suggestions the following day.

On February 14, 2012, Rodgers and Garbow signed an agreement for Garbow to become a part owner of the firm. The agreement, drafted by Rodgers, stated that Rodgers would sell Garbow 50% of the shares in the firm, to be called Rodgers and Garbow, and set out some additional terms and conditions to accompany that sale.

Rodgers emailed Carpenter the agreement on the same day and asked if it needed to be more formal: "Let me know if the agreement is not ok. If this has to be more formal, let me know please." Carpenter did not reply to that email. Rodgers emailed Carpenter again on March 21, 2012, writing, "Ron, any input on this?" Carpenter did not reply to the email. But on March 22, 2012, Carpenter sent Rodgers two new stock certificates that Rodgers had requested, which Carpenter backdated to January 1, 2012.

In 2016, Garbow terminated his relationship with the firm and sued Rodgers for his share of the firm's assets and finances. The suit was referred to an arbitrator, who found that the February 14, 2012 agreement was a valid, binding contract. The arbitrator's decision awarding damages to Garbow was subsequently upheld by the district court.

On May 23, 2019, Rodgers sued Carpenter for legal malpractice. In the complaint, Rodgers alleged that he had retained Carpenter to provide legal advice regarding adding Garbow to the law firm and that Carpenter was negligent in the provision of that advice.

Carpenter moved for summary judgment. The district court determined that the February 14, 2012 agreement between Rodgers and Garbow was a contract and concluded that Rodgers had alleged sufficient facts to survive a motion to dismiss on the substantive elements of a legal-malpractice claim. The district court noted that the statute of limitations for a legal-malpractice claim is six years and determined that the claim accrued on February

14, 2012, when the contract was formed. Because the date of service of the legal-malpractice claim was more than six years after the claim accrued, the district court concluded that there were no issues of material fact regarding whether the claim was time-barred and granted Carpenter summary judgment. This appeal follows.

DECISION

"We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotations omitted). There are no genuine issues of material fact here. The issue is a legal one—whether the district court erred in its determination of when Rodgers' damages accrued.

The statute of limitations for a legal-malpractice claim is six years. Minn. Stat. § 541.05, subd. 1(5) (2020). The statute-of-limitations period begins to run when a cause of action accrues, which occurs when the plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted. *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006). 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; (4) that but for the [attorney] defendant's conduct the plaintiff would have been successful in the prosecution or defense of the action." *Id.* (citing *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279, 281 (Minn. 1983)). Here, the disputed element is when damages accrued.

There are three types of accrual rules based on the damages element: the "occurrence," "discovery," and "some damage" rules. *Id.* at 335-36. Under the "occurrence" rule, damages accrue, and the statute of limitations begins to run, simultaneously with the performance of the negligent or wrongful act. *Id.* at 335. Most jurisdictions, including Minnesota, have rejected the occurrence rule. *Id.* Under the "discovery" rule, the cause of action accrues, and damages begin to run, only when the plaintiff knows or should know of the injury. *Id.* Minnesota has also rejected the discovery rule. *Id.*

Minnesota follows the "some damage" rule to determine when the accrual date occurs. *Id.* at 335-36. Under that rule, a cause of action accrues, and the statute of limitations begins to run, when "'some' damage has occurred as a result of the alleged malpractice." *Id.* at 336 (quoting *Herrmann v. McMenomy & Severson*, 590 N.W.2d 641, 643 (Minn. 1999)). In *Antone*, the supreme court specifically addressed when "some damage" occurs, holding that "a cause of action accrues, and the statute of limitations begins to run, on the occurrence of any compensable damage, whether specifically identified in the complaint or not." *Id.* at 336.

The plaintiff in *Antone* hired an attorney to draft an antenuptial agreement to protect his premarital property interests, but discovered, on the dissolution of the marriage, that the antenuptial agreement had not properly protected those interests. *Id.* at 333. The plaintiff sued his attorney for malpractice, and the defendant-attorney moved to dismiss on the ground that the statute of limitations had expired. *Id.* Applying the "some damage" rule of accrual, the supreme court concluded that some damage had accrued on the date of

the marriage because that was the point at which the plaintiff "passed a point of no return" and "lost the legal right to unfettered ownership in his premarital property." *Id.* at 337-38. Because that date was more than six years before the legal malpractice action commenced, the supreme court held that the district court properly determined that the statute of limitations barred the plaintiff's action.

Here, Rodgers hired Carpenter to assist him in facilitating a transfer of shares in his law firm to Garbow. When Rodgers and Garbow signed the February 14, 2012 agreement to share ownership of the firm, Rodgers lost his legal right to unfettered ownership in the firm. Therefore, just as the plaintiff in *Antone* accrued some damage—the loss of his unfettered ownership in his property interests—upon the formation of his marriage contract, Rodgers accrued some damage—the loss of his unfettered ownership in the firm—on February 14, 2012.

Rodgers argues that the supreme court's reasoning in *Antone* is incorrect and that the supreme court should change the rule governing when a statute of limitations begins to run in a legal-malpractice action. As this court must follow supreme court precedent, this argument is unpersuasive. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010).

Rodgers also argues that the district court incorrectly applied the "occurrence" rule of accrual. We disagree. The district court correctly determined that "some damage" resulting from the alleged negligence accrued when Rodgers and Garbow formed their contract, just as "some damage" resulting from the allegedly negligent antenuptial agreement in *Antone* accrued upon the formation of the marriage contract.

Rodgers further contends that the district court found that Rodgers sustained damage when Garbow left the law firm in 2016 and that, because of this finding, the district court erred in dismissing the legal-malpractice claim on statute-of-limitations grounds. To support this contention, Rodgers points to the "Analysis" section of the district court's order, where the district court stated that Rodgers "ran into difficulty when Mr. Garbow left the law firm and Mr. Rodgers incurred damages through litigation."

Rodger's argument focuses on the district court's general reference to damages in its order to describe the circumstances at the time the law firm dissolved. It was not intended to be a legal conclusion regarding the accrual date. To the contrary, the district court's order, when read in its entirety, clearly states: "The legal malpractice claim accrued on February 14, 2012."

We conclude that because some damage accrued to Rodgers when he signed the contract with Garbow on February 14, 2012 and he lost full ownership of his firm, the six-year statute of limitations for a legal-malpractice action expired before the service of his complaint in May 2019.

Affirmed.