

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 17, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-3538

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JAMES P. BRENNAN, D/B/A BRENNAN & COLLINS,

**PLAINTIFF-RESPONDENT-CROSS-
APPELLANT,**

v.

**MIDWEST SECURITY INSURANCE COMPANY, F/K/A
MIDWESTERN NATIONAL INSURANCE CORPORATION,**

**DEFENDANT-APPELLANT-CROSS-
RESPONDENT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Judge. *Reversed and cause remanded; cross-appeal affirmed.*

SCHUDSON, J.¹ Midwest Security Insurance Company, formerly known as Midwestern National Insurance Corporation, appeals from the trial court

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

judgment, following a small claims court bench trial, awarding James P. Brennan and his law firm, Brennan & Collins, \$2,288.00, plus costs, for legal services Brennan provided to Midwest. Midwest argues that the statute of limitations bars the portion of Brennan's recovery that Midwest has challenged. Brennan cross-appeals the trial court's denial of his request for attorney's fees and disbursements. He challenges the trial court's conclusion that Midwest's defense of the action was not frivolous.

This court concludes that Midwest is correct; the statute of limitations bars the portion of Brennan's recovery that Midwest has challenged. Therefore, needless to say, this court also concludes that Midwest's defense was not frivolous. Accordingly, this court reverses on the appeal and affirms on the cross-appeal.

On December 18, 1996, Brennan brought the underlying action for payment of legal services rendered Midwest in three lawsuits. As summarized by the trial court:

Mr. Brennan became an independent contractor as an attorney employed by or doing business for [Midwest] ... approximately 23 years ago, and for 17 years provided legal services to [Midwest] on hundreds and hundreds of legal actions in which [Midwest] ... was involved....

At some point in the late eighties ... early nineties that relationship ended. There were three files that Mr. Brennan subsequently billed [Midwest] for.

Just so it's clear, two of them he had completed all work on, two of those files more than six years prior to his billings. The third file ... he completed his work on that file within six years of his billing on that file.

Finding that legal services in two of the lawsuits had been performed more than six years prior to the commencement of Brennan's action, but that some of the legal services in the third suit had been rendered within the prior six years, the trial

court first concluded that Brennan's claims were barred on the two earlier suits but not on the third. The trial court, however, reserved judgment in order to hear further arguments on Brennan's contention that the statute of limitations was inapplicable because he had rendered the services to Midwest under a "continuing contract."

After a subsequent hearing, the trial court concluded that "it is more appropriate under the circumstances of this case to view the statute of limitations commencing when [Brennan] ceased all work for [Midwest], not when he ceased work on each individual file." The trial court therefore entered judgment in Brennan's favor for the legal fees for all three lawsuits.

Midwest argues that "[l]egal services, like any personal or professional services, are payable when the service is rendered, and the statute of limitations begins to run on that date." Midwest maintains, therefore, that the trial court erred in concluding that it had a "continuing contract" with Brennan that somehow altered the application of the statute of limitations. Midwest is correct.

Section 893.43, STATS., in relevant part, provides:

Action on contract. An action upon any contract, obligation or liability, express or implied, *including an action to recover fees for professional services*, ... shall be commenced within 6 years after the cause of action accrues or be barred.

(Emphasis added.) In this case, based on the evidence and the trial court's findings, the parties agree that Brennan's services on the three lawsuits were rendered more than six years prior to the commencement of his action, except for four time entries recorded on his bill for the third suit. Whether the statute of limitations requires dismissal of an action where the facts are undisputed presents

a question of law subject to this court's *de novo* review. *Linstrom v. Christianson*, 161 Wis.2d 635, 638, 469 N.W.2d 189, 190 (Ct. App. 1991).

Section 893.43, STATS., expressly applies to contract claims involving "fees for professional services." Brennan offers no authority that would carve out an exception for what he terms his "continuing contract" with Midwest.

In the case of a general retainer to represent a client in all litigation, an attorney's cause of action for a fee accrues when a service is rendered, and the statute of limitations begins to run from that time....

....

Where an attorney's services are severable and distinct, with no identifying continuity, the statute begins to run on each service at the time it is rendered.

7 AM. JUR. 2D *Attorneys at Law* § 290 (1997). Thus, as Midwest argues, "[w]hether an attorney's services are rendered under a general retainer or, as here, on distinct files with separate billing for each item of service, the statute of limitations begins to run on the date the service is rendered."

Accordingly, this court reverses the judgment and remands the case to the trial court for entry of judgment awarding Brennan recovery only for those services rendered on the third lawsuit within the six-year period.

By the Court.—Judgment reversed and cause remanded; cross-appeal affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

