STATE OF MICHIGAN

COURT OF APPEALS

DALE FURNELL,

Plaintiff–Appellant,

v

GEORGE R. PERRY, DAVID J. PERRY, and PERRY & PERRY ASSOCIATES,

Defendants–Appellees.

UNPUBLISHED
August 20, 1996

No. 178282
LC No. 94-419392-CK

Before: Jansen, P.J., and Reilly and M.E. Kobza,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an August 19, 1994, order of the Wayne Circuit Court granting summary disposition pursuant to MCR 2.116(C)(7) in favor of defendants. We affirm.

This is a legal malpractice case. Plaintiff's claim arises out of defendants' representation of him from August 1987 until July 1988. Plaintiff retained George Perry to pursue a claim arising out of a fire in a warehouse in which plaintiff lost approximately $200,000 in personal property. Plaintiff ultimately recovered only $11,895.09. Plaintiff then filed his complaint alleging legal malpractice, breach of contract, and misrepresentation on June 23, 1994. The trial court later granted defendants' motion for summary disposition on the basis that plaintiff's claim was barred by the statute of limitations.

Plaintiff first argues that defendant George Perry breached his contract with plaintiff because he allowed defendant David Perry to represent plaintiff and failed to recover $200,000.

Although plaintiff is asserting that George Perry breached their retainer contract, plaintiff is essentially claiming that George Perry failed to adequately represent him. As such, plaintiff's claim in one for legal malpractice and is governed by the applicable statute of limitations under § 5805(4). *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 326-327; 535 NW2d 187 (1995); *Aldred v O'Hara-Bruce*, 184 Mich App 488, 490; 458 NW2d 671 (1990); *Stroud v Ward*, 169 Mich App 1, 9; 425 NW2d 490 (1988).

* Circuit judge, sitting on the Court of Appeals by assignment.

A determination whether and when a plaintiff discovered or should have discovered a claim is usually a question for the jury to decide, however, if the facts are undisputed, the trial court can properly decide the issue as a matter of law. *Moll v Abbott Laboratories*, 444 Mich 1, 26; 506 NW2d 816 (1993); *Kermizian v Sumcad*, 188 Mich App 690, 692-693; 470 NW2d 500 (1991).

At the latest, plaintiff terminated his relationship with defendants in July of 1988. The complaint was filed on June 24, 1994, five years and eleven months after the cessation of his relationship with defendants. As such, plaintiff's legal malpractice claim is barred by the two-year statute of limitations. MCL 600.5805(4); MSA 27A.5805(4); *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994); *Midland v Helger Construction Co, Inc*, 157 Mich App 736, 743; 403 NW2d 218 (1987). Additionally, plaintiff's claim is barred under the six-month discovery statute of limitations, because plaintiff filed a malpractice claim against defendants in federal district court on April 2, 1990, three years and ten months before filing this claim, and thus knew he had a cause of action as of that date. MCL 600.5838(2); MSA 27A.5838(2); *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994). As such, the lower court properly granted summary disposition on the ground that plaintiff's claim against George Perry was time barred. *Kermizian*, *supra* at 692-693.

Plaintiff also argues that David Perry was not competent to represent plaintiff because he had no knowledge of plaintiff's claim.

Plaintiff has presented a claim for legal malpractice against David Perry and therefore his claim is governed by the applicable statute of limitations. *Aldred*, *supra* at 490; *Bronson v Sisters of Mercy Health Corp*, 175 Mich App 647, 652; 438 NW2d 276 (1989). Because plaintiff's claim was filed five years and eleven months after he had terminated his relationship with David Perry, plaintiff's legal malpractice claim is barred by the general statute of limitations. MCL 600.5838(1); MSA 27A.5838(1); *Maddox*, *supra* at 450; *Midland*, *supra* at 743. Additionally, his claim is barred even under the six-month discovery statute of limitations, because plaintiff knew of the existence of the claim when he filed a malpractice claim against David Perry in federal district court three years and ten months earlier. MCL 600.5838(2); MSA 27A.5838(2); *Gebhardt*, *supra* at 544.

Plaintiff next contends that David Perry's representation of him, without his authority, constituted criminal contempt. Because this issue was not raised below or decided by the trial court, it is not preserved for appellate review. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).

Finally, plaintiff argues that the trial court was prejudiced against him because it signed an order immediately following its ruling and the trial court had pre-determined that plaintiff had no cause of action. Because plaintiff failed to pursue a claim of disqualification before the trial court on the ground that the court was biased against him and acted improperly, and did not request for referral to the chief judge, this issue is not properly before this Court. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989); *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 23; 436 NW2d 70 (1989). Moreover, disqualification based on bias or prejudice cannot be established merely by rulings against a litigant, even if the rulings are erroneous, which in this case they were not. *Wayne*

Co Prosecutor v Parole Bd, 210 Mich App 148, 155; 532 NW2d 899 (1995); *Band v Livonia Assoc*, 176 Mich App 95, 118; 439 NW2d 285 (1989).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Michael Eugene Kobza