

STATE OF MICHIGAN
COURT OF APPEALS

NANCY JAKUBIAK,

Plaintiff-Appellee,

v

CAMILLE S. ABOOD, and ABOOD, ABOOD
& RHEAUME, P.C.,

Defendants-Appellants.

UNPUBLISHED
October 15, 1996

No. 179354; 179369
LC No. 94-077529-NM

Before: Markey, P.J., and McDonald and M.J. Talbot,* JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's interlocutory order denying their motion for summary disposition pursuant to MCR 2.116(C)(7). The court rejected defendants' assertions that plaintiff's legal malpractice claims against defendants arising out of events that occurred during her divorce proceedings were barred by the statute of limitations because genuine issues of fact existed as to whether defendants continued to perform legal work for plaintiff that was related to her divorce even after the divorce was finalized. We affirm.

In reviewing the denial of defendant's motion pursuant to MCR 2.116(C)(7), we must accept all of plaintiff's well-pleaded allegations as true and construe them most favorably to plaintiff. *Grazia v Sanchez*, 199 Mich App 582, 583-584; 502 NW2d 751 (1993). Like the trial court, we must consider all affidavits, pleadings, depositions, admissions, and documentary evidence in determining whether defendants are entitled to judgment as a matter of law, and we will affirm the grant of summary disposition where no factual development could provide plaintiff with a basis for recovery. See *Vargo v Sauer*, 215 Mich App 389, 398; 547 NW2d 40 (1996); *Grazia, supra*. Upon viewing the evidence in a light most favorable to plaintiff, we believe that the trial court properly found that genuine issues of material fact existed as to whether defendant Abood continued to represent plaintiff in matters related to the divorce proceedings that form the basis for her malpractice claim.

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

Defendant Abood represented plaintiff when her divorce commenced in May 1987, when the judgment of divorce was entered in August 1988, and when the judgment was amended in June 1989. Through defendant Abood, plaintiff subsequently filed a show cause motion against her husband but that hearing was dismissed in February 1990. Defendants allege that defendant Abood's representation of plaintiff as her divorce attorney ended as of that date. It is undisputed that following the entry of the judgment of divorce, defendants represented plaintiff in other matters, including management of the children's trusts, real estate transactions, drafting a will, and distributing assets acquired in the divorce.¹ In July 1991, plaintiff discovered that defendant Abood had applied \$20,000 from what plaintiff believed was a joint asset distribution to her and her ex-husband to defendant's firm in payment of attorney fees. It was not until May 17, 1994, however, that plaintiff filed her complaint against defendants.

We recognize that legal malpractice actions must be brought within two years of the date the attorney "discontinues serving the plaintiff in a professional or pseudo-professional capacity as to matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim," pursuant to MCL 600.5838(1); MSA 27A.5838(1), or within six months after the plaintiff discovers or should have discovered the claim, which ever is later, MCL 600.5838(2); MSA 27A.5838(2). See also MCL 600.5805; MSA 27A.5805.² A lawyer discontinues serving a client when relieved of the obligation by the client or the court, *Stroud v Ward*, 169 Mich App 1, 6; 425 NW2d 490 (1988), or upon completion of a specific legal service that the lawyer was retained to perform, *Chapman v Sullivan*, 161 Mich App 558, 561-562; 411 NW2d 754 (1987). We are cognizant, however, that questions governing the date that a cause of action accrues for statute of limitations purposes is a question of fact for the jury. *Flynn v McLouth Steel Corp*, 55 Mich App 669, 671-672; 223 NW2d 297 (1974). Thus, after reviewing the pleadings and evidence in a light most favorable to plaintiff, we believe that a material dispute exists as to the time at which defendant Abood's representation of plaintiff in the "matter out of which the claim for malpractice arose" ceased.

Unfortunately, none of the parties included plaintiff's original judgment of divorce as part of the record, so this Court is unable to evaluate whether the ongoing distribution of assets and the trusteeship issues were related to any continuing obligations imposed upon plaintiff or her ex-husband through the judgment of divorce. Nevertheless, upon reviewing plaintiff's deposition, we find testimony, that when taken in a light most favorable to plaintiff, supports her allegations that her professional relationship with defendant Abood regarding her divorce continued well beyond the signing and amending of the judgment of divorce. Thus, contrary to defendants' assertions that defendant Abood completed the specific legal service for plaintiff, i.e., handling her divorce proceedings, more than two years before plaintiff filed her malpractice complaint, we find issues of fact regarding the existence of an ongoing professional relationship that involved work related to the divorce that was performed after the divorce judgment was amended. Accord *Nugent v Weed*, 183 Mich App 791, 796; 455 NW2d 409 (1990).

Specifically, plaintiff testified at her deposition that the date when plaintiff's divorce judgment was entered was not the termination of defendant Abood's relationship with plaintiff. Although she admitted that after the 1990 order to show cause was dismissed, defendant Abood did not represent

her “in any further adversary proceedings in this divorce” “as it relates to the court, but on a continuing basis, yes, as a personal representative, yes.” Plaintiff further recalled that after 1990, defendant Abood also advised her on receiving distributions from the partnerships that she and her husband had owned; apparently, she was receiving the distributions pursuant to the divorce decree. Defendant Abood suggested that she draft a will and trust agreement, which she signed in September 1989. Plaintiff considered these services as being part of the work defendant Abood performed regarding the divorce. Notably, plaintiff affirmatively stated that defendant Abood harassed and intimidated her both during his representation of her in the divorce proceedings and after the judgment of divorce was entered. She recalled that his physical advances and intimidation eventually ended in August 1992. When asked whether this relationship between her and defendant Abood had nothing to do with her divorce, plaintiff stated that “[t]hat was not to be separated because he was my only connection to -- no, I can’t separate that, no.”

We have also reviewed the February 1992 and July 1992 correspondence from defendant Abood to attorney Jack C. Davis regarding plaintiff’s children’s trust accounts “under their father’s trusteeship.” On its face, defendant Abood’s letter, which refers to plaintiff as “[m]y client,” does not detail whether plaintiff’s husband had an obligation to fund the trust pursuant to the judgment of divorce or some prior arrangement, as defendant Abood’s counsel argues. Absent any documentation regarding the origin or management of the trust, however, we also believe that defendant Abood’s February 1992 correspondence creates an additional issue of fact regarding his continued intervention on plaintiff’s behalf with respect to trustee matters allegedly addressed in the judgment of divorce.

Our decision is supported by well-recognized case law interpreting MCL 600.5838(1); MSA 27A.5838(1), which holds that an attorney does not “discontinue servicing” his client for purposes of determining whether a malpractice claim has begun to accrue until the client or the court relieves the attorney of his obligation or until he “completes a specific legal service he was retained to perform.” *Nugent, supra*. Here, defendant Abood continued to represent plaintiff in a variety of legal matters after the judgment of divorce was entered, but this does not equate with the completion of a “specific legal service” given their ongoing professional relationship.³ *Id.* Accordingly, in light of the standard of review for summary disposition motions, the allegations contained in plaintiff’s complaint, and the issues of fact raised in the pleadings and plaintiff’s deposition, we agree with the trial court’s conclusion that defendant Abood continued to represent plaintiff with respect to various items that were connected or related to the divorce.

Affirmed.

/s/ Jane E. Markey

/s/ Gary R. McDonald

¹ Notably, defendant Abood received a general power of attorney from plaintiff when she executed her will and was also named as trustee of plaintiff’s will and her children’s estates.

² MCL 600.5805(1) and (4); MSA 27A.5805(1) and (4) provide: “A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section. . . . Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.”

³ Arguably, plaintiff’s decision to hire attorney Paul Hamilton to represent her in the probate proceedings regarding her daughters’ trust accounts and Hamilton’s appearance in the probate court dated September 28, 1992, could be construed as relieving defendant Abood of his services to plaintiff, assuming that the judgment of divorce involved the continued funding or oversight of the trust accounts. This date is well within the two year statute of limitations in MCL 600.5838(1); MSA 27A.5838(1). Also, our review of the lower court record reveals that plaintiff made several references to October 1993 as the date when defendant Abood ceased representing plaintiff. Apparently, plaintiff is referring to the October 13, 1993 letters that she and Hamilton sent to defendant Abood revoking his authority to act pursuant to the power of attorney that plaintiff executed. We are not adopting this date as the point at which defendant Abood discontinued servicing plaintiff with respect to “the matters out of which the claim for malpractice arose.”