STATE OF MICHIGAN

COURT OF APPEALS

NANCY JAKUBIAK,

Plaintiff-Appellee,

v

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

Defendant-Appellants.

UNPUBLISHED

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

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

TALBOT, C.J. (concurring in part and dissenting in part).

I concur in part and dissent in part. Reviewing this matter from a (C)(7)[1] perspective, I agree that a question of fact exists regarding the time at which defendants' representation of plaintiff in the matter out of which her claim for malpractice arose ceased. Specifically, I am referring to the claim for malpractice as it concerns the allegations that defendant Abood failed to properly represent plaintiff in the divorce when he failed to include her as co-trustee on the children's trust account in the final judgment of divorce. My concurrence in this matter is not to be understood as an indication that I believe this allegation, nor any of plaintiff's other allegations, could survive a (C)(8) or (C)(10)[2] motion for summary disposition. Those matters, however, are not before this Court.

The majority opinion does not specifically address count VII, a claim for fraud and misrepresentation. The trial court did not specifically decide this issue either, but merely denying defendants' motion allowed plaintiff to proceed with this claim. I would hold that the claim of fraud is time barred. An action for malpractice against an attorney is barred by the statute of limitations concerning legal malpractice if the suit is filed in excess two years after the alleged malpractice unless the lawyer fraudulently conceals his misconduct. If a client can prove that an attorney, by his conduct, fraudulently concealed his potential liability to a client, a legal malpractice action may be commenced at any time within two years after the client discovers or should have discovered the existence of the claim. *Corly v Logan*, 35 Mich App 200, 203; 192 NW2d 319 (1971).

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

The record in this case supports plaintiff's allegation that defendants may have concealed the use of the $20,000 for payment of attorney fees. Under the discovery rule, however, a plaintiff's claim accrues when the plaintiff discovers, or through the exercise of reasonable diligence, should have discovered (1) an injury, and (2) the causal connection between the plaintiff's injury and the defendant's breach. *Moll v Abbott Laboratories*, 444 Mich 1, 16; 506 NW2d 816 (1993). A plaintiff is deemed to be aware of a possible cause of action when the plaintiff becomes aware of an injury and its possible cause. MCL 600.5805(4); MSA 27A.5805(4); MCL 600.5838a (1) and (2); MSA 27A.5838(1)(1) and (2); *Gebhardt v O'Rourke*, 444 Mich 535, 544-545; 510 NW2d 900 (1994); *Shawl Dhital*, 209 Mich App 321, 325, 529 NW2d 661 (1995).

Through her own deposition testimony, plaintiff admitted she discovered that in May of 1988, defendant had applied $20,000 from what plaintiff believed to have been a joint asset distribution to her and her former husband, to himself for attorney fees. She contacted Abood about the matter in August of 1991. It was at this time, when Abood refused to return the money, that she became aware of both the injury and its possible cause, thereby becoming aware, as a matter of law, of a possible cause of action. Therefore, her claim of fraud should be barred by the statue of limitations.

/s/ Michael J. Talbot

[1] MCR 2.116(C)(7).

[2] MCR 2.116(C)(8) and (C)(10).