STATE OF MICHIGAN

COURT OF APPEALS

SARAH JOHNSON,

Plaintiff-Appellant,

v

RIFKIN & KINGSLEY, MICHAEL J. KINGSLEY, and JAMES M. RIFKIN,

Defendant-Appellee.

UNPUBLISHED
November 22, 1996

No. 181343
LC No. 94-416198-NM

Before: Michael J. Kelly, P.J., and Hood and H.D. Soet*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendants' motion for summary disposition in this legal malpractice claim. We affirm.

Plaintiff retained defendants as counsel in a medical malpractice action. The matter was submitted to mediation, and plaintiff was awarded $60,000. Against defendants' advice, plaintiff rejected the mediation award and proceeded to trial. After failing to appear at an initial settlement conference, plaintiff was informed by defendants that the trial court indicated that if she did not appear at the second settlement conference her case would be dismissed. Plaintiff failed to appear, and defendants agreed to a stipulation and order for dismissal of the case with prejudice and without costs, and settled the case for the $60,000 mediation award.

Defendants did not receive the cooperation of plaintiff to have releases signed and the settlement proceeds distributed, and they brought a motion for authority to pay settlement proceeds. A hearing was held and an order for disbursement of the settlement proceeds was entered on March 3, 1992. The defendant in the medical malpractice action was ordered to issue separate checks to defendants and to the Wayne County Clerk. The court also ordered defendants to notify plaintiff in writing that her share of the proceeds had been paid to the Wayne County Clerk, from which she could secure her

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

moneys. Defendants complied with the court's order by sending plaintiff letters on April 6, 1992, and May 19, 1992.

On May 13, 1992, plaintiff filed a complaint against defendants with the Attorney Grievance Commission. The Attorney Grievance Commission informed plaintiff on November 30, 1992, that it was dismissing the investigation.

Plaintiff filed this legal malpractice action on May 18, 1994. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), asserting that plaintiff filed her claim after the expiration of the two-year statute of limitations. The motion was granted.

Plaintiff argues that the trial court erred in granting defendants' motion for summary disposition. She asserts that she filed her claim within the two-year limitations period. We review a trial court's decision on a motion for summary disposition de novo. *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 124; 550 NW2d 826 (1996). Pursuant to MCR 2.116(C)(7), we accept the plaintiff's well-pleaded allegations as true and consider all documentary evidence submitted by the parties. MCR 2.116(G)(5); *Bowers v Bowers*, 216 Mich App 491, 495-496; 549 NW2d 592 (1996).

Under MCL 600.5805(4); MSA 27A.5805(4) and MCL 600.5838(1); MSA 27A.5838(1), the applicable period of limitation within which to bring a legal malpractice action is two years from the time the claim accrues, with the claim accruing at the time the attorney discontinues serving the plaintiff in a professional or pseudoprofessional capacity in the matters out of which the claim for malpractice arose. On appeal, plaintiff asserts that defendants stopped serving her in a professional capacity on May 22, 1992, when the final proof of service was filed in the underlying medical malpractice action. Therefore, plaintiff states that when she filed her legal malpractice claim on May 18, 1994, she was within the two-year statute of limitations. We disagree.

The question presented by plaintiff is when does an attorney stop serving the client. This Court has held that the date of last service for purposes of the statute of limitations in a legal malpractice case occurs on the date on which the attorney is relieved of his duties by order of the court or the date on which the client relieves the attorney by virtue of discharging the attorney. *Hooper v Hill Lewis*, 191 Mich App 312, 315; 477 NW2d 114 (1991); *Berry v Zisman*, 70 Mich App 376, 379; 245 NW2d 758 (1976). Here, we find that under either alternative, the last day defendants served plaintiff was outside of the statutory two-year period.

On these facts, we find that defendants were relieved by the court of their professional services owed to plaintiff on March 3, 1992, when the order for disbursement of settlement proceeds was entered. The court-ordered letters written by defendants to plaintiff on April 6, 1992, and May 19, 1992, with final proof of service filed on May 22, 1992, were duties owed to the trial court, not to plaintiff. See *Basic Food Industries, Inc v Travis Warren Nayer & Burgoyen*, 60 Mich App 492, 497; 231 NW2d 466 (1975). In addition, the fact that the order of disbursement specified the amount

of defendants' costs and attorney fees demonstrates the court's termination of the parties' professional relationship.

Moreover, we find that plaintiff herself effectively discharged defendants on May 13, 1992, when she filed a request for an investigation with the Attorney Grievance Commission., alleging that defendants had mishandled her malpractice action. We find this conduct to be equivalent to a discharge of counsel, as plaintiff's claims of negligence destroyed the faith and trust between the parties, rendering it impossible for them to further cooperate. See *Genrow v Flynn*, 166 Mich 564, 568; 131 NW2d 1115 (1911); *Berry*, *supra* at 379-380.

A determination of the last day of service by defendants to plaintiff by either the court's order of the date on which plaintiff effectively discharged defendants sets May 13, 1994, as the outside date on which a claim of legal malpractice could be brought. Therefore, when plaintiff filed her legal malpractice claim on May 18, 1994, she was outside the two-year statutory limitations period and her claim is barred. The trial court's grant of defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) was proper.

Plaintiff also asserts that the trial court's decision should be reversed and remanded because the lower court erred in reassigning her legal malpractice action to the judge who presided over her medical malpractice claim. Her legal malpractice action was reassigned pursuant to MCR 8.111(D)(1). We find no reversible error.

MCR 8.111(D)(1) mandates that "if one of two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge." Actions can be labeled as arising from the same transaction or occurrence "only if each arise from the identical events leading to the other or others." *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 156; 532 NW2d 899 (1995). Here, it is clear that the two actions did not arise from identical events. Therefore, reassignment under MCR 8.111(D)(1) was improper. However, when no allegations are made that the reassignment was motivated by impermissible considerations or that the judge was biased or partial, reversal is not mandated. *Armco Steel Corp v Dep't of Treasury*, 111 Mich App 426, 439-439; 315 NW2d 158 (1981). Although informed by the lower court judge that if plaintiff felt the judge was prejudiced she should bring the appropriate motion, plaintiff failed to move for the judge's disqualification under the procedure outlined in MCR 2.003. While reassignment under MCR 8.111(D)(1) may have been erroneous, it would be a waste of judicial resources to reverse and remand this case to be heard before another judge, only to have it again appealed to this Court. *Armco Steel*, *supra* at 439.

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ H. David Soet