

STATE OF MICHIGAN
COURT OF APPEALS

DEBORRAH K. SINCHAK,

Plaintiff-Appellant,

v

WILLIAM A BRISBOIS and
BRISBOIS & BRISBOIS, P.C.,

Defendants-Appellees.

UNPUBLISHED

April 1, 1997

No. 192656

Saginaw Circuit Court

LC No. 95-006847-NM

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard*, JJ.

PER CURIAM.

Defendant William A. Brisbois represented plaintiff in a divorce action. Following the resolution of the divorce action, plaintiff brought this legal malpractice claim. The trial court granted summary disposition for defendants pursuant to MCR 2.116(C)(7) based on the expiration of the applicable statutory limitations period. Plaintiff appeals as of right. We affirm.

The basic facts are undisputed. Plaintiff tendered an attorney substitution form to defendant Brisbois on September 8, 1992. On September 16, 1992, Brisbois signed the attorney substitution form and returned it to plaintiff. The form was then presented to the circuit court and a substitution order was entered on September 25, 1992.

On September 13, 1994, plaintiff sent a letter to Brisbois in which she indicated her intent to file a malpractice claim against him based on his representation of her in the divorce action. The letter also indicated that, given the pendency of her appeal in the divorce case, plaintiff would be willing to forego filing a malpractice action against defendant until such time as the appeal might be resolved against her. To that end, plaintiff enclosed with the letter a proposed agreement to extend the applicable limitations period beyond its expiration date (which plaintiff calculated as September 26, 1994) until sixty days after a decision was issued in the appeal.

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

Defendant signed the agreement on September 21, 1994. This Court issued its opinion per curiam in the divorce case on March 14, 1995. Plaintiff filed her malpractice action on April 24, 1995.

I

The limitations period for an action alleging legal malpractice is two years from the date the claim accrues. MCL 600.5805(4); MSA 27A.5805(4). A claim accrues when the attorney discontinues serving the plaintiff in the underlying matter. MCL 600.5838(1); MSA 27A.5838(1). Plaintiff argues that an attorney does not discontinue serving a client until a court order is entered. See MCR 2.117(C)(2). We disagree. MCR 2.117(C)(2) only implicates an attorney's obligation not to withdraw from a case without notifying a court, and in no way constrains the power of a client to discharge an attorney. Rather, an attorney's services are discontinued, for purposes of the statute of limitations, when the client or the court discharges the attorney. *Hooper v Hill Lewis*, 191 Mich App 312; 477 NW2d 114 (1991). In *Hooper*, this Court explained:

An attorney discontinues serving a client, for purposes of the statute of limitations, when the attorney is relieved of the obligation to serve by either the client or the court. See *Berry v Zisman*, 70 Mich App 376, 379; 245 NW2d 758 (1976); *Basic Food Industries, Inc v Travis, Warren, Nayer & Burgoyne*, 60 Mich App 492, 497-498; 231 NW2d 466 (1975). Here, *plaintiff relieved defendants of their obligation to represent him when he ended their authority to do so by letter....* The statute requires no more.

Again, defendants were discharged, for purposes of the statute...when plaintiff ended their authority to represent him. *No additional court action was necessary to effectuate that discharge.* [*Id.* at 315-316 (emphasis added).]

Plaintiff's tender of an attorney substitution form to Brisbois effectuated his discharge. See *Dowker v Peacock*, 152 Mich App 669, 672; 394 NW2d 65 (1986). Thus, Brisbois was relieved of his obligation to serve plaintiff in the underlying action no later than the date plaintiff tendered the attorney substitution form, September 8, 1992, and the two-year limitations period for plaintiff's malpractice action expired on September 8, 1994. Because plaintiff filed her action on April 24, 1995, it was clearly untimely absent any saving circumstance.

II

Plaintiff claims that the parties' September 21, 1994 agreement extended the limitations period. Again, we disagree. Although the agreement purported to extend the applicable limitations period in exchange for plaintiff's promise to forbear from immediately filing a malpractice action against defendant Brisbois, plaintiff's promise was of no value since the limitations period applicable to her malpractice claim had already expired two weeks before, on September 8, 1994. Because plaintiff incurred no legal detriment, she provided no consideration for Brisbois' agreement to extend the limitations period; the agreement was therefore clearly unenforceable as a matter of long standing contract law. See, e.g.,

Higgins v Monroe Evening News, 404 Mich 1, 20; 272 NW2d 537 (1978) (the “essence” of consideration is “legal detriment that has been bargained for and exchanged for the promise”).

Plaintiff nonetheless argues that the parties’ “obvious” intent to extend the limitations period must be given effect. The argument is without merit. The intent of the parties to a contract should be ascertained only insofar as the contract itself is ambiguous and requires interpretation. See *Kassin v Arc-Mation, Inc*, 94 Mich App 520, 524-525; 288 NW2d 413 (1979). There is no need to ascertain the intent of parties to a contract when that contract is invalid in the first place.

The trial court correctly determined that plaintiff’s action was barred as untimely, MCR 2.116(C)(7), and summary disposition for defendants was therefore proper. *Peters v Dep’t of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard