

STATE OF MICHIGAN
COURT OF APPEALS

RYAN FRANCIS FOLEY,

Plaintiff-Appellant,

v

DAVID I. MEGDELL,

Defendant-Appellee.

UNPUBLISHED

May 2, 1997

No. 192267

Genesee Circuit Court

LC No. 95-040460-NM

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

In this legal malpractice action, plaintiff appeals as of right from the circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

At the outset, we deny plaintiff's motion to compel the court reporter to produce the transcript of circuit court proceedings without plaintiff first securing payment. Neither due process nor equal protection principles, nor MCR 2.002, requires that such a fee for services payable to a private person be waived or underwritten at public expense in civil litigation on behalf of indigent litigants. *Reist v Bay Circuit Judge*, 396 Mich 326, 359; 241 NW2d 55 (1976)(Coleman, J., concurring); *Mead v Batchlor*, 435 Mich 480, 498; 460 NW2d 493; 32 ALR5th 737 (1990); *Wells v MDOC*, 447 Mich 415, 419-420; 523 NW2d 217 (1994); *Gaffier v St Johns Hosp*, 68 Mich App 474, 477; 243 NW2d 20 (1976); see also *City of Lake Oswego v \$23,232.23 in Cash*, 121 Or App 432; 855 P2d 201, 203; *Ex parte Tsimpides*, 272 Ala 430; 131 So2d 873, 879-880 (1961) *cert den* US 804; 82 S Ct 644; 7 L Ed 2d 551.

After reviewing the record de novo, we conclude that summary disposition was properly granted. Plaintiff's complaint failed, as a matter of law, to allege that defendant breached the duty owed by an attorney to a client to exercise "reasonable skill, care, discretion and judgment in the conduct and management of the case." *Simko v Blake*, 448 Mich 648, 654-655; 532 NW2d 842 (1995). Plaintiff also failed to establish that the outcome of defendant's representation of plaintiff in the underlying criminal matter would have been altered but for the alleged malpractice. *Id.* at 659; *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996). Plaintiff's claim of

entrapment by the police was found to be without merit in the trial court, and this Court affirmed that decision in plaintiff's subsequent appeal as of right. *People v Foley*, unpublished opinion per curiam of the Court of Appeals (Docket No. 175314, issued 3/1/96). Plaintiff's claim that his prior OUIL convictions were invalid and should have been suppressed was reviewed by the trial court, which ruled that plaintiff was not entitled to attack the prior convictions collaterally because he either had counsel or knowingly waived counsel during each of those proceedings, citing *People v Ingram*, 439 Mich 288, 294-295; 484 NW2d 241 (1992). This Court affirmed that decision. *Foley, supra*. Plaintiff's remaining allegations are wholly without legal or factual basis. Accordingly, summary disposition was properly granted.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski