

STATE OF MICHIGAN
COURT OF APPEALS

METRO COMMUNICATIONS and PETER
SIAVRAKAS,

UNPUBLISHED
June 17, 1997

Plaintiffs/Counter Defendants-
Appellants/Cross Appellees,

v

KEMP, KLEIN, UMPHREY & EDELMAN, and
IRWIN ALTERMAN,

No. 189793
Oakland Circuit Court
LC No. 94-486021-NM

Defendants/Counter Plaintiffs-
Appellees/Cross Appellants.

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right from various orders granting summary disposition in favor of defendants in this legal malpractice action. Defendants cross-appeal the issuance of a second summons and the denial of defendant Alterman's motion for summary disposition based on insufficient service of process. We affirm.

The trial court did not err in concluding that the amended complaint, which added Metro as a party plaintiff, did not relate back to the date of the original complaint. The relation-back rule does not extend to the addition of a new party. *Hurt v Michael's Food Center, Inc*, 220 Mich App 169, 179-181; 559 NW2d 660 (1996); *Employers Mutual Casualty Co v Petroleum Equipment, Inc*, 190 Mich App 57, 63; 475 NW2d 418 (1991). Because Metro's complaint was filed after the expiration of the malpractice statute of limitations, the court did not err in dismissing the amended complaint under MCR 2.116(C)(7). Plaintiffs do not appeal the court's ruling that Metro, not Siavrakas, was the only proper party plaintiff; therefore, the original timely complaint that named only Siavrakas as plaintiff was not viable either. The malpractice claim was properly dismissed because of the statute of limitations, so there is no need to address whether the court erred in dismissing plaintiffs' claims of malpractice for failure to pursue a claim under the Federal Communications Act or its state counterpart.

Next, the trial court properly granted defendants' motion for attorney fees. Plaintiffs presented no viable defense to the claim for payment. There is no indication that, had plaintiffs been informed of the implications of the two-year contractual limitations period, they would have abandoned the discrimination claim. Defendants presented various legal theories regarding why the limitations period did not apply. Further, the statute of limitations concerned only one aspect of plaintiffs' lawsuit, so a portion of the suit would have survived even had plaintiffs decided not to pursue a discrimination claim.

Plaintiffs' claim that defendants committed malpractice because there was a conflict of interest under the Rules of Professional Conduct also fails. The evidence did not clearly establish a conflict. Moreover, the failure to comply with the rules does not give rise to claim of malpractice. MRPC 1.0(b). Finally, we conclude that there was no malpractice for failing to pursue a fraud claim in the underlying lawsuit. After defendants thoroughly investigated this claim, they fully discussed with plaintiffs the reasons for abandoning the claim. There is no indication that counsel failed to exercise reasonable skill, care, discretion and judgment in the conduct and management of the underlying case. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996). For all of these reasons, the court did not err in concluding that plaintiffs did not establish a defense to the claim for fees owed on this matter.¹

On cross-appeal, defendants contend that the Wayne Circuit Court abused its discretion in issuing a second summons to be served on Alterman and that the Oakland Circuit Court erred in refusing to dismiss the claims against Alterman on the basis of insufficient service of process. We find no abuse of discretion in the issuance of the second summons. MCR 2.102(D) provides that a summons expires 91 days after the date the complaint is filed. The rule also provides that within that 91 days, on a showing of good cause, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed. As one commentator has noted:

Common sense, the realities of legal practice, and MCR 1.105, see Author's Comment, that rule, all dictate that, under ordinary circumstances, a party's request that a second summons issue should be granted by the court on only a minimal showing of good cause, and that the court should focus its discretion more on the question of what will be the expiration date of the second summons. In the majority of cases it is likely that a defendant's interest in the eventual outcome of the action will not be prejudiced if the court orders that a second summons issue.

¹ Martin, Dean & Webster, Michigan Court Rules Practice, (1996 Supp), p 28.

In this case, plaintiffs complied with the rule by requesting the second summons before the first summons expired. Plaintiffs had attempted to serve Alterman before the expiration of the first summons, but he was out of town. The court issued a second summons, which was valid for just a short period of time. Under these circumstances, and considering that only minimum good cause is required, there was no abuse of discretion in the court's decision to issue the second summons. Thus, because the second

summons was proper and that Alterman was properly served

before it expired, the court did not err in denying Alterman's motion for summary disposition based on insufficient service of process.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Janet T. Neff

/s/ Jane E. Markey

¹ Defendants also sought, but were not awarded, fees relating to another matter, "Belchunas."