

STATE OF MICHIGAN
COURT OF APPEALS

KASLER ELECTRIC COMPANY,

Plaintiff-Appellant/
Cross-Appellee,

v

SCHIER, DENEWETH & PARFITT, P.C., and
CHRIS M. PARFITT,

Defendants-Appellees/
Cross-Appellants.

UNPUBLISHED
October 14, 1997

No. 196864
Oakland Circuit Court
LC No. 95-506094-NM

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We affirm.

Defendants filed a breach of contract action against the United States Veterans Administration (VA) in federal court on plaintiff's behalf. The case was dismissed without prejudice on April 30, 1992, on the ground that plaintiff had failed to submit a claim to the contracting officer prior to filing suit, as required by federal statute. In May 1992, defendants informed plaintiff of its options, and advised against filing the claim with the contracting officer. In September 1992, defendants informed plaintiff that it had until May 1993 to file the claim. At that time, defendants also informed plaintiff that this was the last service defendants would provide because plaintiff had not paid its bill. In the spring of 1993, plaintiff's president wrote to defendant Parfitt on several occasions requesting the return of the fees she had paid because, she said, the federal lawsuit was "not properly started." Parfitt denied the request.

On August 17, 1994, the United States filed a complaint against plaintiff alleging that plaintiff defaulted on its contract with the VA, and obtained a judgment against plaintiff on May 5, 1995. Defendants did not represent plaintiff in that action. On October 12, 1995, plaintiff filed this action alleging that defendants' failure to file the required administrative action resulted in the dismissal of plaintiff's suit against the VA in federal court. The trial court denied defendants' motion for summary

disposition pursuant to MCR 2.116(C)(8) and (10), but granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) on the grounds that the statute of limitations on plaintiff's claim had lapsed.

This Court reviews the trial court's grant or denial of summary disposition de novo as a question of law. *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 5; 555 NW2d 496 (1996). When reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court accepts the allegations in a well-pleaded complaint as true and construes them in the plaintiff's favor. *Id.* "The burden of establishing the bar imposed by a statute of limitations is normally on the party asserting the defense." *Id.*

MCL 600.5838; MSA 27A.5838 provides that a malpractice action may be commenced at any time within the applicable period of limitation, or within six months after the plaintiff discovers or should have discovered the existence of the claim. The period of limitation for a legal malpractice action is two years from the date the claim accrues. MCL 600.5805(4); MSA 27A.5805(4); *Fante v Stepek*, 219 Mich App 319, 322; 556 NW2d 168 (1996). A legal malpractice claim accrues on the last day of the attorney's service to the client. *Id.* 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. *Hooper v Hill Lewis*, 191 Mich App 312, 315; 477 NW2d 114 (1992).

On appeal, plaintiff argues that summary disposition was improper. Plaintiff does not dispute the fact that it brought this action more than two years after the date of defendants' last service, but rather relies on the six-month discovery rule of MCL 600.5838; MSA 27A.5838. Plaintiff argues that because it did not incur damage as a result of defendants' malpractice until the federal government obtained a judgment against it on May 5, 1995, it did not discover its cause of action until that date. Because this action was brought on October 12, 1995, plaintiff argues that it was within the relevant six-month period, and therefore was not barred by the statute of limitations. We disagree.

As in any negligence action, damages are an element of a claim of legal malpractice. Therefore, the statute of limitations on a legal malpractice action is tolled until the plaintiff has discovered, or should have discovered, damages. *Gambino v Cardamone*, 163 Mich App 574, 579; 414 NW2d 896 (1987). It is the fact of identifiable and appreciable loss, and not the finality of monetary damages that gives birth to the cause of action. *Dowker v Peacock*, 152 Mich App 669, 672; 394 NW2d 65 (1986).

We conclude that plaintiff knew or should have known it had a cause of action for malpractice when the federal lawsuit was dismissed for failure to comply with the statutory requirements. This conclusion is supported by plaintiff's correspondence with defendant Parfitt in which plaintiff clearly and unequivocally expressed its belief that, because of the dismissal of the federal lawsuit, defendants had committed legal error and had made "costly mistakes." The dismissal of the federal lawsuit was an identifiable and appreciable loss and was so recognized by plaintiff at the time of its occurrence. Therefore, plaintiff discovered or should have discovered its cause of action no later than June 1993, the date of last correspondence between the parties, regardless of whether the full extent of damages was known. Plaintiff filed its complaint in October 1995, which was more than two years after the date of

last service and more than six months after discovery of the cause of action. Therefore, because plaintiff's claim was barred by the statute of limitations, the trial court properly granted summary disposition to defendants under MCR 2.116(C)(7).

On cross-appeal, defendants argue that, even if plaintiff's claim was not barred by the statute of limitations, summary disposition was proper under MCR 2.116(C)(8) and 2.116(C)(10). Because we conclude that summary disposition was proper under MCR 2.116(C)(7), we need not address these alternative arguments.

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Robert P. Young, Jr.