

STATE OF MICHIGAN  
COURT OF APPEALS

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CAROL FRAZIER,

Plaintiff-Appellant,

v

BOBBY J. THOMAS,

Defendant-Appellant.

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UNPUBLISHED

March 31, 1998

No. 198955

Wayne Circuit Court

LC No. 95-502859-CZ

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On June 12, 1989, plaintiff was divorced from her husband, Robert Frazier. Defendant was plaintiff's attorney. In conjunction with the divorce, defendant drafted a qualified domestic relations order that included a provision for plaintiff to be named as her ex-husband's surviving spouse in his pension plan. The parties intended for the provision to entitle plaintiff to pre-retirement annuity benefits in the event that her ex-husband died before retiring; however, a fact allegedly unknown to defendant was that plaintiff had signed a waiver of her rights to those benefits on April 18, 1986, while the couple was still married. Plaintiff's ex-husband died in July of 1992 before retiring, and plaintiff was denied benefits under his pension plan by the plan administrator.

Plaintiff brought this suit against defendant, claiming that defendant had negligently drafted the provision or, in the alternative, caused her to lose her right to bargain for a greater share of the marital estate. In granting defendant's motion for summary disposition, the lower court held that plaintiff could not show that legal malpractice was the proximate cause of her injury. We review de novo a trial court's determination of a motion for summary disposition. *Stewart v Fairlane Community Mental Health Centre (On Remand)*, 225 Mich App 410, 415; 571 NW2d 542 (1997). We accept as true plaintiff's well-pleaded factual allegations, construing them in the light most favorable to plaintiff, and consider the pleadings and other documentary evidence to determine if there is a genuine issue of material fact. *Id.* at 416.

To establish her claim of legal malpractice, plaintiff bears the burden of proving the following elements: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent of the injury alleged. *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 612-613; 563 NW2d 693 (1997). Upon review of the record, we find that plaintiff cannot establish that any negligence on defendant's part was the proximate cause of her injury because plaintiff waived her rights to benefits from her ex-husband's pension plan. Therefore, we hold that the lower court correctly granted defendant summary disposition.

We decline to review plaintiff's remaining issues because they are moot.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Hilda R. Gage