

STATE OF MICHIGAN
COURT OF APPEALS

SUN VALLEY FOODS COMPANY,

Plaintiff-Appellee,

v

GEORGE E. WARD, GEORGE E. WARD, P.C.,
and KAUFMAN, ROCHE & WARD, P.C.,

Defendant-Appellants.

UNPUBLISHED
November 13, 2003

No. 238004
Wayne Circuit Court
LC No. 86-633114-NM

Before: Markey, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

This is a legal malpractice action arising out of a landlord-tenant dispute where defendant George E. Ward¹ represented plaintiff. We review the trial court's order of January 19, 2001 denying Ward's motion for summary disposition on remand from our Supreme Court as on leave granted. 465 Mich 911; 638 NW2d 747 (2001). We hold that the law of the case doctrine does not preclude granting Ward's motion and that Ward is entitled to judgment as a matter of law on plaintiff's two remaining malpractice theories. MCR 2.116(C)(10).

I Summary of Facts and Proceedings

This litigation has "an extraordinarily tortured procedural history." *Sun Valley Foods Co v Ward*, 460 Mich 230, 232; 596 NW2d 119 (1999). In the underlying landlord/tenant action, Ward represented plaintiff, the tenant of a warehouse. In 1982, the landlord, Detroit Marine Terminal (DMT), filed suit seeking back rent or possession of the warehouse.² Plaintiff's defenses were that DMT had breached, or that it was about to breach its covenant to maintain the premises. But on June 29, 1982 the trial court ruled that plaintiff's covenant to pay rent was independent of DMT's covenant to maintain the premises.³ Accordingly, on July 1, 1982, the

¹ For ease of reference, we will refer to "Ward" rather than defendants.

² See *In re Sun Valley Foods Co*, 801 F2d 186 (CA 6, 1986) for details of the underlying dispute between plaintiff and DMT.

³ The original summary proceeding was removed to circuit court because plaintiff's counter-
(continued...)

trial court entered judgment for DMT providing that a writ of restitution would issue unless plaintiff paid back rent by July 12, 1982.

The essence of plaintiff's malpractice claim in the instant case is that Ward failed to preserve plaintiff's right to redeem its property rights under MCL 600.5744(5), which provides:

If an appeal is taken or a motion for new trial is filed before the expiration of the period during which the writ of restitution shall not be issued and if a bond to stay proceedings is filed, the period during which the writ shall not be issued shall be tolled until the disposition of the appeal or motion for new trial is final.

The statute creates a tolling provision that gives a lessee or a land contract vendee a last chance to avoid forfeiture. *Sun Valley Foods Co, supra*, 460 Mich at 236, citing *Birznieks v Cooper*, 405 Mich 319, 330; 275 NW2d 221 (1979).

On July 9, 1982, Ward filed a claim of appeal, an application for bond approval, a motion for stay, and a request for an emergency same-day hearing.⁴ Ward did not file a bond within ten days of the judgment. The circuit court did not hear the motion until July 13, when it issued a writ of restitution, set the bond amount at \$400,000 and tolled the redemption period for 48 hours. Plaintiff filed a surety bond within that 48 hours but because DMT questioned the surety's sufficiency, an acceptable cash bond was not filed until August 5, 1982. *Sun Valley Foods Co, supra*, 460 Mich at 232 n 2. On October 7, 1982, the trial court stayed the writ of restitution and gave plaintiff ten days after the final order on appeal to redeem the warehouse. *Id.* at 232.

On appeal, this Court affirmed both the judgment for DMT, and the stay of the writ of restitution. *Detroit Marine Terminals v Sun Valley Foods Co*, unpublished opinion per curiam of the Court of Appeals, decided August 25, 1983 (Docket Nos. 65571 and 68493). DMT moved for clarification. This Court set aside the stay of the writ of restitution, opining:

In most cases, including the present one, a writ of restitution may not be issued until the expiration of ten days after entry of the judgment for possession. MCL 600.5744(4); MSA 27A.5744(4). If an appeal is taken and an appeal bond is filed within the ten day period, the period is tolled. MCL 600.5744(5); MSA 27A.5744(5). Sun Valley failed to meet this requirement. Sun Valley argues, however, that because it applied to the circuit court to set the appeal bond before the date that the writ was to issue, the extension of Sun Valley's redemption rights beyond those provided by statute was proper.

(...continued)

claim exceeded the jurisdiction of the district court.

⁴ The trial judge averred in an affidavit that he declined Ward's request for a same-day hearing because of the court's schedule, and that he believed that the time for hearing an application to fix the amount of a stay bond was within the court's reasonable discretion to establish. *Sun Valley Foods Co, supra*, 460 Mich at 232 n 1.

We agree that the trial court properly stayed execution of the writ for the period preceding this Court's decision on appeal after Sun Valley filed its appeal bond. Under GCR 1963, 808, the appeal bond stayed execution of the writ. However, we do not agree that Sun Valley was entitled to additional time in which to redeem its property rights. Sun Valley's appearance before the circuit court to set bond was flawed by Sun Valley's failure to give DMT any advance notice of its intentions, and by Sun Valley's subsequent failure to even attempt to have bond set within the statutory period. Even when bond was set, Sun Valley failed to post legally-acceptable bond until August 5, 1982. Sun Valley's failure to comply with the statutory requirements of MCL 600.5744 cannot be excused where Sun Valley did not assiduously seek to comply with the requirements and where such excuse would injure the rights of the opposing party. [*Detroit Marine Terminals v Sun Valley Foods Co*, unpublished order of the Court of Appeals, issued November 1, 1983 (Docket Nos. 65571 and 68493) (footnote omitted).]

The Supreme Court denied leave to appeal. *Detroit Marine Terminals, Inc v Sun Valley Foods Co*, 419 Mich 941 (1984). As a result, plaintiff settled with DMT and vacated the warehouse. *Sun Valley Foods Co, supra*, 460 Mich at 233.

Plaintiff then filed this malpractice action in November 1986. Plaintiff claimed, inter alia, that Ward was negligent in failing to actually file a bond within the period established by MCL 600.5744(5) and failing to advise plaintiff of its option to pay back rent; consequently, plaintiff lost its ability to redeem the leasehold. On August 3, 1989, the circuit court granted Ward's motion for summary disposition ruling that Ward's filing of an appeal within ten days tolled the redemption period, that Ward's interpretation of the statute was reasonable, and that an attorney's reasonable interpretation of an unsettled point of law does not constitute malpractice. *Sun Valley Foods Co, supra*, 460 Mich at 234.

Our Supreme Court reported the subsequent appellate proceedings:

The Court of Appeals reversed the order granting summary disposition, holding that "whether Ward's interpretation of the statute was reasonable is a question of fact," precluding summary disposition. Unpublished opinion per curiam, issued February 10, 1992 (Docket No. 123995). This Court denied leave to appeal. 442 Mich 866 (1993).

After the case was remanded to the trial court, Ward filed a motion asking the court to interpret the statutory provision. The trial court denied the motion, ordering that "the jury shall determine the requirements of MCLA 600.5744(5) [MSA 27A.5744(5)]" and the reasonableness of defendant's conduct. Defendant appealed the order denying the motion. The Court of Appeals denied leave to appeal, but correctly observed that the judiciary possesses the exclusive power to determine the law. [Docket No. 177701, issued September 9, 1994.] This Court again denied leave to appeal. 449 Mich 870 (1995). [*Sun Valley Foods Co, supra*, 460 Mich at 234.]

On July 28, 1995, the trial court interpreted the statute and concluded that an appeal bond need not have been filed within ten days. This Court reversed, *Sun Valley Foods Co v Ward*, 221 Mich App 335; 561 NW2d 484 (1997), but our Supreme Court reversed this Court and remanded for further proceedings consistent with its opinion, *Sun Valley Foods Co, supra*, 460 Mich 242. But before the our Supreme Court issued its 1999 opinion, plaintiff's malpractice claims were tried in March 1998. The trial court directed a verdict for Ward on two of plaintiff's claims, which plaintiff has not appealed. *Id.* at 234 n 3. The jury returned a verdict in favor of plaintiff on its remaining two claims: that Ward was negligent in failing to advise plaintiff of its option to pay back rent and in failing to preserve plaintiff's redemption rights under the statute. *Id.* at 234 n 3, 235. This Court held Ward's appeal in abeyance pending our Supreme Court's 1999 decision. Unpublished order of the Court of Appeals, issued December 21, 1998 (Docket No. 216015).

On June 29, 1999, our Supreme Court issued its decision in *Sun Valley Foods Co, supra*, 460 Mich 230. The Court held:

MCL 600.5744(5); MSA 27A.5744(5) does not require the filing of an appeal bond within ten days after entry of judgment for possession. Rather, the bond must be filed within a reasonable time and is left to the discretion of the trial judge. Accordingly, the judgment of the Court of Appeals is reversed, and the case remanded for further proceedings consistent with this opinion. [*Id.* at 241-242.]

In the abeyed appeal of the March 1998 jury verdict and subsequent judgment, this Court entered the following order:

The Court orders that defendant-appellant's motion to vacate the jury verdict and April 28, 1998 judgment is GRANTED. This case is REMANDED to the trial court for new trial. We do not retain jurisdiction. [Unpublished order of the Court of Appeals, issued December 10, 1999 (Docket No. 216015).]

On remand, Ward again moved for summary disposition. The trial court denied Ward's motion because our Supreme Court's 1999 opinion and this Court's order remanding the case for a new trial established the law of the case. The trial court reasoned:

Ward incorrectly argues to this court that the Supreme Court was only asked to review the interpretation of the statute. As noted, the Supreme Court was in fact reviewing the 1997 [sic] reversal by the Court of Appeals of a summary disposition in a legal malpractice contest, not the original landlord/tenant lawsuit. The trial court had adopted Ward's interpretation of the statute and further ruled that an attorney's reasonable interpretation of an unsettled point of law does not constitute malpractice. Thus, the Supreme Court opinion must be considered in the entire context of a legal malpractice claim.

The Supreme Court noted in its opinion that appeals court docket number 216015 (jury verdict appeal) was held in abeyance pending the Supreme Court decision. The Supreme Court ordered a general remand of the case "for further proceedings

consistent with its opinion.” The Supreme Court did not state that Ward could not be liable for malpractice on the bond issue. . . .

The law of the case is the Supreme Court opinion of June 29, 1999. It is the holding of a prior decision between the same parties which is binding on the trial court on remand or on an appellate court upon subsequent review. . . . The Court of Appeals had knowledge of the “law of the case” from the Supreme Court opinion at the time of its order to this trial court. . . .

The Court of Appeals did not issue an opinion; it issued an order to this court. The Court of Appeals granted Ward’s motion to vacate the jury verdict and judgment. It’s [sic] order remanded the case to this court not for “further proceedings,” but for “new trial.”

* * *

In this matter, the law of the case was established at the time of the Court of Appeals’ order. The directions are clear. A new trial is ordered by the Court of Appeals without any caveats or exception. There being no new law or factual development since the Court of Appeals’ order, this court must follow the directive. Defendant’s motion for summary disposition is denied. A new trial will be conducted with the law of the case as directed by the Supreme Court. [Opinion and order denying defendant’s motion for summary disposition, pp 9-12 (Wayne Circuit No. 86-633114) (footnotes and citations omitted).]

The trial court sua sponte stayed proceedings to permit Ward to appeal. Before doing so, Ward moved the trial court to reconsider, which the trial court denied on January 31, 2001. This Court denied Ward’s application for leave to appeal. Unpublished order of the Court of Appeals, issued April 10, 2001 (Docket No. 232565). On November 27, 2001, our Supreme Court remanded this case as on leave granted, writing:

On order of the Court, the application for leave to appeal from the April 10, 2001 decision of the Court of Appeals is considered and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. *Sun Valley Foods Company v Ward*, 460 Mich 230, 596 NW2d 119 (1999), was limited to the resolution of defendant’s motion for statutory interpretation and specifically did not address any of the malpractice issues. On REMAND, the Court of Appeals is to address the trial court’s order of January 19, 2001 denying defendant’s motion for summary disposition on the malpractice issues. [*Sun Valley Foods Co v Ward*, 465 Mich 911; 638 NW2d 747 (2001).]

II. Standard of Review.

Whether the law of the case applies is a question of law we review de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). We also review de novo a trial court’s grant or denial of summary disposition under MCR 2.116(C)(10), which tests the factual

sufficiency of plaintiff's claims. *Persinger v Holst*, 248 Mich App 499, 502; 639 NW2d 594 (2001). The moving party must identify the undisputed factual issues, MCR 2.116(G)(4), and carry the initial burden by supporting its position with evidence, MCR 2.116(G)(3)(b); *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The trial court must consider the submitted documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). If the moving party fulfills its initial burden, the party opposing the motion then must produce evidence that a genuine and material issue of disputed fact remains for trial. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). If the opposing party fails to demonstrate that a material issue of disputed fact exists, summary disposition is properly granted as a matter of law. *Id.* at 120-121; *Smith, supra* at 455.

III. Analysis

A. The Law Of The Case Doctrine

The doctrine of the law of the case provides that “if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same.” *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000), quoting *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454; 302 NW2d 164 (1981). The doctrine also binds lower courts, which may take no action on remand that is inconsistent with an appellate court's decision on the case. *In re TM (After Remand)*, 245 Mich App 181, 191; 628 NW2d 570 (2001); *McCormick v McCormick (On Remand)*, 221 Mich App 672, 677-679; 562 NW2d 504 (1997).

Here, the legal question our Supreme Court decided was how to interpret MCL 600.5744(5). *Sun Valley Foods Co, supra*, 460 Mich at 241-242. The Court did not address the merits of plaintiff's underlying malpractice claims. *Sun Valley Foods Co, supra*, 465 Mich 911. Likewise, this Court's order vacating the March 1998 jury verdict and subsequent judgment of the trial court and remanding for new trial did not address the merits of plaintiff's underlying malpractice claims. Viewing in the light most favorable to plaintiff, one could infer from the remand that disputed facts remained for trial before a jury properly instructed consistent with our Supreme Court's holding in *Sun Valley Foods Co, supra*, 460 Mich 230. “When this Court reverses a case and remands it for a trial because a material issue of fact exists, the law of the case doctrine does not apply because the first appeal was not decided on the merits.” *Brown v Drake-Willock International, Ltd*, 209 Mich App 136, 144; 530 NW2d 510 (1995). As our Supreme Court has explained: “To straightjacket proceedings subsequent to a decision on a case by an appellate court by making assumptions regarding the disposition of arguments which the appellate court did not see fit to consider is not, in our opinion, the wisest of policies.” *People v Fisher*, 449 Mich 441, 447; 537 NW2d 577 (1995). Accordingly, the doctrine of the law of the case did not preclude the trial court from hearing a summary disposition motion as to whether “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10).

B. Ward's Alleged Failure To Advise Plaintiff Of Its Option To Pay Back Rent

In support of his motion for summary disposition on this issue, Ward presented copies of two letters addressed to plaintiff's president, Paul Tatarian. The first was dated June 30, 1982, which was the day after the trial court issued its opinion in the underlying landlord/tenant case but before entry the judgment on July 1, 1982. The letter reads in its entirety:

Enclosed please find a copy of Judge Kaufman's Opinion. There are a number of inconsistent statements in it which present good appealable issues but the bottom line is he has granted the Motions for Possession and for Rent.

The way the Order is drafted, you will have until July 12 to pay the rent or surrender possession. Mean-time, you could seek leave to appeal from the Michigan Court of Appeals or you could file a petition in bankruptcy at [sic] Chapter 11.

Please advise. Time is of the essence.

Ward's second letter addressed to Tatarian was dated July 6, 1982, and reads as follows:

Enclosed please find a true copy of the Order of Summary Judgment for Rent and for Possession.

You will notice that a Writ of Restitution will issue if the sum of \$329,061.96 has not been paid on or before July 12, 1982.

We have discussed the various action [sic] that might be taken to prevent the issuance of a Writ of Restitution and such action must be taken within the time provided by the Order.

Time is of the essence. Please advise.

Plaintiff did not address these letters at oral argument on Ward's motion for summary disposition. Nevertheless, the trial court commented in a footnote to its opinion denying the motion.

As to the payment of rent advice, the written documents are not the only contact with plaintiffs. Indeed, defendant Ward's exhibit G to this motion gives the plaintiffs four options, of which payment was only one. There may be an inference that all options will prevent eviction. Plaintiff's brief raises some issues regarding rent payments, that without full disclosure of the entire record cannot be determined as a matter of law. The Court of Appeals, presumably had the trial transcript which would have included all exhibits. The appellate court could have, but did not, enter judgment in favor of Ward on the payment of rent theory.

Plaintiff must prove the following elements to establish its malpractice claim: “(1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged.” *Persinger, supra* at 502, quoting *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). The parties do not dispute that an attorney client relationship existed between them, and therefore, “a duty to use and exercise reasonable care, skill, discretion, and judgment with regard to the representation of [plaintiff] exists as a matter of law.” *Persinger, supra*, citing *Simko, supra* at 655-656. But, a duty and its breach are necessary elements of any negligence case. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Here, Ward presented evidence that he, in fact, advised plaintiff of its option to pay the back rent, so he did not breach his duty of care. On appeal, plaintiff essentially concedes this fact. On brief, plaintiff writes:

The issue here is not just whether Ward told his client that they could pay the judgment. Anyone knows that. . . .

* * *

Thus, the issue is not whether Mr. Tatarian knew he could pay rent, but instead, whether there was a possibility that the courts would interpret the Summary Proceedings Act to require that the bond be filed with ten days. . . .

MCR 2.116(G)(4) provides: “When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.” Here, not only did plaintiff fail to rebut Ward’s evidence on this issue, but also conceded there was no factual dispute. Ward had advised plaintiff of the obvious fact that it could avoid the risk of losing its leasehold by simply paying the back rent that was due. Ward was entitled to judgment as a matter of law on this malpractice theory. MCR 2.116(C)(10); *Maiden, supra* at 120-121; *Smith, supra* at 455.

C. Ward’s Alleged Failure Preserve Plaintiff’s Redemption Rights Under The Statute

As he did below, Ward argues on appeal that MCL 600.5744(5) did not change from when first adopted in 1982 to 1999 when our Supreme Court decided *Sun Valley Foods Co, supra*, 460 Mich 230. Further, it is undisputed that Ward complied with the statute as interpreted by our Supreme Court. *Sun Valley Foods Co, supra*, 460 Mich at 241-242. Ward filed a claim of appeal within ten days of judgment for possession. Afterward, Ward followed the trial court’s reasonable directives in filing an appeal bond. So, Ward argues as a matter of law he could not have committed malpractice because he complied with the law, and his actions were sufficient to toll the redemption period. Our Supreme Court observed:

. . . a tenant tolls the redemption period by filing a claim of appeal or motion for a new trial within ten days after the entry of judgment. The writ of restitution is

then stayed until the appeal or the motion is decided, provided the bond is filed as directed by the trial court. If the party fails to file the bond as directed, the trial court must issue the writ of restitution. The bond itself, however, is not required to be filed within the ten-day period. [*Sun Valley Foods Co, supra*, 460 Mich at 239-240; footnote omitted.]

Our Supreme Court further held that an appeal bond need only be filed within a reasonable time, and that “the determination of a reasonable time is properly left to the discretion of the trial court.” *Sun Valley Foods Co, supra*, 460 Mich at 240. And in this case the Court held “that the trial court’s requirement that the appeal bond be filed within forty-eight hours was patently reasonable.” *Id.*

Despite Ward’s compliance with MCL 600.5744(5), plaintiff claims that disputed facts remain for trial on its malpractice claim. Specifically, plaintiff argues a jury should decide whether Ward’s actions were reasonable given the unsettled nature of the statute in 1982. Plaintiff is actually asserting that a trial is necessary to determine whether Ward acted unreasonably because he did not secure an appeal bond within ten days to protect plaintiff against what actually happened - - an erroneous decision by the Court of Appeals.⁵ We disagree.

Plaintiff must establish professional negligence to prove its case. *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 424; 551 NW2d 698 (1996). That is, “that counsel failed to exercise reasonable skill, care, discretion, and judgment in the conduct and management of the underlying case.” *Id.* Plaintiff’s malpractice theory would permit a jury to find Ward negligent even though he complied with the law in appealing the 1982 judgment. We find plaintiff’s theory inconsistent with *Simko, supra*, 448 Mich 648 because with a specific contract an attorney is not required to exercise extraordinary care so as to become the insurer of favorable result. *Id.* at 656-657. To accept plaintiff’s argument in this case would be to impose an extraordinary duty of care on lawyers and afford every losing litigant the ability to second-guess their former counsel. Our Supreme Court’s opinion in *Simko, supra*, precludes such a result.

An attorney has the duty to fashion such a strategy so that it is consistent with prevailing Michigan law. *However, an attorney does not have a duty to insure or guarantee the most favorable outcome possible. An attorney is never bound to exercise extraordinary diligence, or act beyond the knowledge, skill, and ability ordinarily possessed by members of the legal profession.* See 7 Am Jur 2d, Attorneys at Law, § 199, p 249, n 92, citing *Babbitt [v Bumpus]*, 73 Mich 331; 41 NW 417 (1889)], *supra*; *Goodman & Mitchell v Walker*, 30 Ala 482 (1857);

⁵ The November 1, 1983 decision by this Court in Dockets 65571 and 68493 is not the law of the case “because the parties to the underlying suit and the present action are not the same and the present action does not represent merely ‘subsequent proceedings in the same case.’” *Sun Valley Foods Co, supra*, 221 Mich App 339 n 2, quoting *Brucker v McKinlay Transport, Inc*, 212 Mich App 334, 338; 537 NW2d 474 (1995), rev’d on other grounds 454 Mich 8; 557 NW2d 536 (1997).

Glenn v Haynes, 192 Va 574; 66 SE2d 509; 26 ALR2d 1334 (1951); *Ward v Arnold*, 52 Wash 2d 581; 328 P2d 164 (1958). [*Simko, supra*, 448 Mich at 656; emphasis added.]

Our Supreme Court explained that it would impose an unreasonable burden to require professionals to perform beyond average skill, learning and ability. *Simko, supra*, 448 Mich at 657. Particularly, apropos of the instant case, our Supreme Court quoted this Court's opinion in *Simko v Blake*, 201 Mich App 191, 194; 506 NW2d 258 (1993).

There is no motion that can be filed, no amount of research in preparation, no level of skill, nor degree of perfection that could anticipate every error or completely shield a client from the occasional aberrant ruling of a fallible judge or an intransigent jury. To impose a duty on attorneys to do more than that which is legally adequate to fully vindicate a client's rights would require our legal system, already overburdened, to digest unnecessarily inordinate quantities of additional motions and evidence that, in most cases, will prove to be superfluous. *And, because no amount of work can guarantee a favorable result, attorneys would never know when the work they do is sufficiently more than adequate to be enough to protect not only their clients from error, but themselves from liability.* [*Simko, supra*, 448 Mich at 657, quoting 201 Mich App 194 (emphasis added by our Supreme Court).]

The *Simko* Court also quoted *Babbitt, supra* at 337, that "a lawyer is not an insurer of the result in a case in which he is employed," unless a special contract to the contrary exists. *Simko, supra*, 448 Mich at 656. The *Babbitt* Court further opined:

Any other rule would subject his rights to be controlled by the vagaries and imaginations of witnesses and jurors, and not infrequently to the errors committed by courts. This the law never has done; and the fact that the best lawyers in the country find themselves mistaken as to what the law is, and are constantly differing as to the application of the law to a given state of facts, and even the ablest jurists find themselves frequently differing as to both, shows both the fallacy and danger of any other doctrine; and especially is this so as to questions of practice, the construction of statutes, . . . [*Babbitt, supra*, 73 Mich at 333.

But, we need not reach the question of whether an attorney's reasonable, but incorrect interpretation of an unsettled area of the law may support a claim of malpractice. *Sun Valley Foods Co, supra*, 460 Mich at 234 n 4. Rather, we hold that an attorney cannot have acted unreasonably where it is undisputed that the attorney complied with the law. Ward cannot have committed malpractice where the parties agree he complied with the legal requirements at issue, here MCL 600.5744(5). Accordingly, Ward was entitled to summary judgment pursuant to MCR 2.116(C)(10).

IV. Conclusion

We reverse the trial court's order of January 19, 2001 denying defendant's motion for summary disposition and we remand this case to the trial court for entry of judgment for defendant. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Mark J. Cavanagh

/s/ Henry William Saad