

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAIRONDA MCGEHEE, as the Personal  
Representative of the Estate of DESMOND  
MCGEHEE, Deceased,

Plaintiff-Appellant,

V

BERTRAM L. JOHNSON and BERTRAM L.  
JOHNSON & ASSOCIATES, P.C.,

Defendants-Appellees,

and

KENNETH WATKINS and SOMMERS,  
SCHWARTZ, SILVER & SCHWARTZ, P.C.,

Defendants.

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UNPUBLISHED  
October 24, 2006

No. 267653  
Wayne Circuit Court  
LC No. 03-340718-NM

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendants pursuant to MCR 2.116(C)(10) on plaintiff's claim alleging legal malpractice. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On September 19, 1998, plaintiff's decedent died from an asthma attack during an inter-hospital transfer. Plaintiff retained Bertram L. Johnson and Bertram L. Johnson & Associates, P.C. (defendant) to represent her in a medical malpractice action. On June 3, 1999, defendant filed a petition in Wayne Probate Court to open an estate for the decedent and to appoint plaintiff as the personal representative. Defendant also prepared notices of intent, dated March 20, 2001, under MCL 600.2912b, for service on potential medical malpractice defendants.

In November 2001, defendant referred the medical malpractice case to attorney Kenneth Watkins of Sommers, Schwartz, Silver & Schwartz, P.C. Watkins acknowledged the referral in a letter to defendant, dated November 15, 2001. The letter referenced defendant's one-third co-advisory fee. Watkins also sent a letter dated November 15, 2001, to plaintiff, informing her that defendant had referred her case to him and his firm to investigate a potential medical malpractice claim. The letter also covered enclosed medical authorizations, a retainer agreement, and

medical malpractice questionnaires, and stated that time was of the essence. Plaintiff claims that she executed the documents, returned them to Watkins, and then met with Watkins in his office. Watkins denies that plaintiff returned the documents. According to plaintiff, during the meeting Watkins again told her that time was of the essence because the limitation period would expire in late January or early February 2002. Further, plaintiff maintains that she asked Watkins for a copy of her file for her own records, which Watkins provided. Plaintiff contends that she did not discharge Watkins or defendant as her attorney at that meeting and that Watkins did not advise plaintiff that he was discontinuing his representation of her at that time.

Several weeks after plaintiff met with Watkins, plaintiff called him. Watkins informed plaintiff that the limitation period on her medical malpractice claim expired on December 2, 2001, and that defendant had picked up her file from his office. Plaintiff subsequently brought this lawsuit against defendant, Watkins, and Sommers, Schwartz, Silver & Schwartz, P.C., alleging professional malpractice for allowing the limitation period to expire on her medical malpractice claim.

Watkins and Sommers, Schwartz, Silver & Schwartz, P.C. moved for summary disposition, which the trial court granted, concluding that the limitation period had expired before Watkins and Sommers, Schwartz, Silver & Schwartz, P.C. had agreed to represent plaintiff. Defendant then moved for summary disposition, which the circuit court granted, concluding that the attorney-client relation between plaintiff and defendant had terminated before the expiration of the limitation period on the underlying medical malpractice claim. The circuit court determined that defendant did not have any involvement in the case after October 2001.

Plaintiff appeals by right, arguing that an attorney-client relationship existed between plaintiff and defendant and that the relationship did not terminate before the expiration of the limitation period on plaintiff's medical malpractice claim. This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition under MCR 2.116(C)(10) is appropriate where there is no genuine issue of material fact and one party is entitled to judgment as a matter of law.

“A legal malpractice claim must be brought within two years of the date the attorney discontinues serving the client, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.” *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994). MCL 600.5838(1) provides that a malpractice claim against a lawyer accrues at the time that the lawyer discontinues serving the plaintiff in a professional capacity with regard to the matters out of which the claim for malpractice arose. Michigan courts have construed the phrase, “discontinues serving,” in one of three ways. “A lawyer discontinues serving a client when relieved of the obligation by the client or the court, or upon completion of a specific legal service that the lawyer was retained to perform.” *Maddox, supra* at 450 (citations omitted). No formal discharge by the client is required because termination of the attorney-client relationship can be implied by the actions of the client. *Estate of Mitchell v Dougherty*, 249 Mich App 668, 684; 644 NW2d 391 (2002).

In this case, the circuit court hearing the medical malpractice action did not allow defendant to withdraw from his representation of plaintiff. Also, defendant did not complete his

representation of plaintiff in litigating plaintiff's medical malpractice. Rather, defendant informed plaintiff that he was referring her case to a law firm that would assist him. According to the November 15, 2001 letter to defendant from Watkins, defendant would receive a one-third co-advisory fee. A co-advisory fee arguably suggests that defendant would continue in his representation of plaintiff as a co-advisor. Further, plaintiff claims that she did not discharge defendant. Defendant admits that plaintiff never specifically said that she was discharging him after she had met with Watkins. Rather, defendant maintains only that "her [plaintiff's] actions had totally changed and she didn't act like she had any relationship with me."

Moreover, defendant admits that he first learned that plaintiff had allegedly fired him when Watkins told him that plaintiff said that she had fired him. The record indicates that Watkins wrote two letters to defendant. One letter, dated December 5, 2001, states in relevant part that Watkins spoke with George McGehee on December 5, 2001, and that George McGehee advised him that plaintiff discharged defendant "as their attorney some time ago." The other letter, dated December 7, 2001, states in relevant part that he met with "Mr. and Mrs. McGehee" that morning and they advised him that "they fired you as their attorney some time ago. Consequently, I am unable to provide with a 1/3 co-advisory fee."<sup>1</sup> The letter also stated that Watkins "provided the clients with a copy of their entire file and they indicated they would think about what they are going to do with the case over the weekend." Defendant does not remember if he discussed his firing with Watkins before or after Watkins wrote the December 5 and 7, 2001 letters.

Assuming, based on the record, that the limitation period on plaintiff's medical malpractice claim expired on December 2, 2001, and if defendant did not learn from Watkins that he had been discharged until he received the December 5, 2001 letter, then defendant may have thought that he was still plaintiff's attorney and acted as such after the December 2, 2001 expiration of the limitation period. However, if plaintiff never discharged defendant, then the attorney-client relationship arguably continued until she sued defendant for legal malpractice.

Although a formal discharge is not required to terminate an attorney-client relationship, any claim that plaintiff impliedly terminated the relationship raises additional factual issues. The fact that plaintiff obtained a copy of her complete file from Watkins arguably could be construed to suggest that plaintiff did not intend to use Watkins and his firm to represent her. But it is not as clear that picking up a copy of her file from Watkins arguably indicates that plaintiff also did not intend to use defendant to represent her. Nevertheless, plaintiff counters any such implication by stating in her affidavit that she wanted a copy of the file to "apprise [her]self of the progress being made on her case."

Based on this record, we conclude that genuine issues of material fact exist regarding whether the attorney-client relationship between plaintiff and defendant terminated before the

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<sup>1</sup> According to plaintiff's deposition testimony, she is not married. The man named George who accompanied her to Watkins's office has the surname Magee and not McGehee, is her godfather and not her husband, and is not authorized to speak for her.

limitation period for plaintiff's medical malpractice action expired, thereby precluding summary disposition.

Reversed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder