

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

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JOHN B. SASSAMAN, CAROL SASSAMAN, and  
JOHN B. SASSAMAN, INC.,

UNPUBLISHED  
July 16, 1999

Plaintiffs/Counter-  
Defendants-Appellants,

v

No. 205552  
Oakland Circuit Court  
LC No. 96-513181 NM

LEE ESTES and LAW OFFICES OF LEE  
ESTES, a/k/a ESTES & SCHWEICKERT,

Defendants/Counter  
Plaintiffs-Appellees.

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Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition of plaintiffs' legal malpractice claim pursuant to MCR 2.116(C)(10), and awarding defendants \$1,864.99 on their counterclaim for attorney fees. The trial court also determined that amendment of plaintiffs' complaint would be futile and, therefore, denied plaintiffs' motion for reconsideration. We affirm.

Plaintiffs filed this action against defendants, attorney Lee Estes (hereafter Estes) and his current and former law firm, seeking damages for alleged legal malpractice committed by Estes when rendering services in connection with plaintiffs' purchase of commercial property in 1986. A corporate entity, John B. Sassaman, Inc., was established to make the purchase, but the two individual plaintiffs, John Sassaman and Carol Sassaman, also claimed damages in connection with the transaction.

Plaintiffs' complaint alleged that Estes breached the standard of care for an attorney representing land contract purchasers of commercial property. The complaint, ¶ 10, alleged legal malpractice based on the theory that Estes failed, neglected or refused to perform a property history or environmental assessment of the property to be purchased. The trial court granted summary disposition in favor of defendants on this theory because plaintiffs failed to establish that the standard of care required Estes to conduct a property history or obtain an environmental assessment. In their first two issues on appeal,

plaintiffs challenge this decision, asserting that their proposed expert witnesses sufficiently established that the standard of care applicable in 1986 required Estes to perform a property history and environmental assessment.

Initially, we note that plaintiffs have not provided this Court with the transcript of the hearing on the motion for summary disposition. Thus, we could find that this issue is not properly before the Court. *Waterford Sand & Gravel Co v Oakland Disposal, Inc*, 194 Mich App 571; 487 NW2d 511 (1992); *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). However, because we have the benefit of the trial court's written opinion on the motion and the available record is adequate for our review, we have chosen to review plaintiffs' first two issues. *Cf. Admiral Ins Co, supra* at 305.

Our review of the trial court's grant of summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* at 337. This Court must consider the proofs filed or submitted by the parties to the trial court, MCR 2.116(G)(5), in a light most favorable to the nonmoving party, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), and grant the benefit of all reasonable doubt to the nonmoving party, *Bourne v Farmers Ins Exchange*, 449 Mich 193, 197; 534 NW2d 491 (1995). The initial burden of factually supporting the motion rests with the moving party. The burden then shifts to the opposing party to establish a genuine issue of material fact. *Quinto, supra* at 362. A genuine issue of material fact must be established by admissible evidence. *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

The standard of care element for a legal malpractice action is discussed in *Eggleston v Boardman*, 37 Mich 14, 16 (1877). *Coleman v Gurwin*, 443 Mich 59, 63 n 5; 503 NW2d 435 (1993). See also *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). In *Eggleston, supra* at 16, our Supreme Court stated:

Whenever an attorney or solicitor is retained in a cause, it becomes his implied duty to use and exercise reasonable skill, care, discretion and judgment in the conduct and management thereof.

Expert testimony is usually required to establish the applicable standard of care. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 48; 436 NW2d 70 (1989). In general, "[i]f the court determines that . . . specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." MRE 702. Counsel should elicit testimony from the expert as to the applicable standard and its substance. *Birmingham v Vance*, 204 Mich App 418, 422; 516 NW2d 95 (1994). In order for a witness to be declared an expert, it must be shown that the witness had knowledge of the applicable standard of care. *Bahr v Harper-Grace Hosps*, 448 Mich 135, 141; 528 NW2d 170 (1995). "Expert testimony in a malpractice case should be based on how a reasonable similarly-situated practitioner would act, not on

how the witness himself would act." *Francisco v Manson, Jackson & Kane, Inc*, 145 Mich App 255, 259-260; 377 NW2d 313 (1985).

On appeal, plaintiffs correctly argue that it is not necessary that an expert use the phrase "standard of care" in his or her opinion. However, the substance of the opinion must establish the requisite knowledge of the applicable standard of care. In the case at bar, viewed in a light most favorable to plaintiffs and resolving all reasonable doubt in their favor, plaintiffs did not establish that their expert, David Tripp, was qualified to give an expert opinion on the applicable standard of care (i.e., that Tripp was familiar with the reasonable skill, care, discretion and judgment that an attorney for a purchaser of commercial property would use in 1986 in the conduct and management thereof). Plaintiffs' other proposed expert, Wilfred Steiner, Jr., was qualified, but his deposition testimony does not establish factual support for plaintiffs' position that the applicable standard of care required Estes to perform a property history and environmental assessment. Viewed in a light most favorable to plaintiffs and resolving all reasonable doubt in their favor, Steiner's deposition testimony established that the standard of care required an attorney for the purchaser of commercial property to inform the client about environmental laws (e.g., the potential liability risks that exist for a purchaser of property) and to make recommendations (e.g., that an environmental assessment should be done). The standard of care did not require that the attorney take action on environmental matters without consulting with the client. Because Steiner did not testify that the standard of care required a property history or environmental assessment, and because Tripp was not qualified to give expert testimony on the applicable standard of care in this context, we hold that the trial court correctly granted summary disposition in favor of defendants on this theory of liability.

Next, relying on Steiner's deposition testimony, plaintiffs contend that they established that the standard of care in 1986 required Estes to address environmental issues in the purchase agreement. However, as the trial court correctly determined, Steiner did not testify that the standard of care required Estes to obtain concessions on environmental issues for a client. Steiner testified that, "[i]f the purchase agreement didn't deal with the environmental issue, then Mr. Estes should have discussed the matter with his client to advise him of the consequences of not having environmental protection." Steiner also testified that:

A. I don't know what the average attorney was doing in 1986. All I can say is that I believe that -- it's my opinion that anyone practicing real estate law in the State of Michigan in a commercial transaction would have advised his client as to the consequences of the environmental laws of the state and have, *depending on what his client's reactions* [sic], put something in the purchase agreement to protect his client if he was buying property.

Q. You say would have, you mean should have.

A. Yeah, he should have. He should have told his client, no question. [ Emphasis added.]

Viewed in a light most favorable to plaintiffs and giving them the benefit of all reasonable doubt, Steiner's testimony cannot be construed as requiring that the purchase agreement address environmental issues. The bottom line for Steiner was that the client be informed and advised about environmental laws. We therefore conclude that plaintiffs have not shown any error on the part of the trial court when ruling on this potential theory of liability.

Plaintiffs next challenge the trial court's grant of summary disposition on their theory involving the personal guarantees that were executed in conjunction with the purchase of the commercial property. We decline to address this issue because it is given only cursory treatment in plaintiffs' briefs, and lacks citation to supporting evidence in the record. See *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990) (a party may not leave it to this Court to search for a factual basis to sustain or reject a position); *Community Nat'l Bank of Pontiac v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987) (this Court may decline to consider an issue that is given only cursory treatment in a brief, with little or no citation of supporting authority).

Plaintiffs next contend that the trial court reached incorrect conclusions with regard to the issue whether Estes' failure to apprise them of the environmental risks associated with the purchase of commercial property, or to recommend an environmental assessment, was a cause in fact of their damages. As with the prior issue, this issue is not properly before us because plaintiffs do not set forth citations to record evidence in support of their argument. *Norman, supra* at 260. We also note that plaintiffs' argument fails to address the basis of the trial court's decision. Although the trial court examined evidence on causation, it did so for the purpose of determining whether plaintiffs should be given an opportunity to amend their complaint to allege that Estes was negligent in failing to apprise them of the environmental risks associated with the purchase of commercial property and in failing to recommend an environmental assessment. We hold that plaintiffs' failure to brief this necessary issue precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Because plaintiffs have not demonstrated any basis for disturbing the judgment, we find it unnecessary to address defendants' argument that the trial court could have granted their motion for summary disposition on grounds other than those relied upon in its written opinion.

Affirmed.

/s/ Hilda R. Gage  
/s/ Michael R. Smolenski  
/s/ Brian K. Zahra