

STATE OF MICHIGAN
COURT OF APPEALS

DARNELL E. DICKERSON,

Plaintiff-Appellant,

V

LAUREL STUART-FINK,

Defendant-Appellee.

UNPUBLISHED

August 28, 2001

No. 221751

Wayne Circuit Court

LC No. 98-800378-NM

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders granting defendant summary disposition under MCR 2.116(C)(8) and (10), in this legal malpractice case. Plaintiff alleges that defendant mishandled plaintiff's appeals of his convictions for delivery of cocaine. We affirm.

The trial court properly granted summary disposition to defendant with respect to plaintiff's claim that defendant breached the standard of care by failing to provide transcripts to plaintiff. Plaintiff failed to demonstrate a genuine issue of material fact with respect to defendant's handling of the transcripts. An affidavit from an expert was necessary to establish the standard of conduct and breach of that standard of conduct. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 48; 436 NW2d 70 (1989). A breach of professional care with respect to the handling the transcripts was not "so manifest that within the common knowledge and experience of an ordinary layman it can be said that the defendant was careless[.]" *Id.*; see also *Beattie v Firnschild*, 152 Mich App 785, 792-793; 394 NW2d 107 (1986).

While we agree with plaintiff that the record does not show that the trial court issued a separate ruling on plaintiff's motion for leave to amend his first amended complaint for malpractice, we are not persuaded that plaintiff is entitled to relief. The motion for leave to amend, a motion to amend, and a supplement to the latter motion were filed on the same day. The motions sought to add a claim of "gross negligence." The trial court issued an order dismissing the "supplemented motion to amend first amended complaint," without addressing the motion for leave to amend. The motion for leave to amend and the motion to amend were essentially redundant, however, and a ruling dismissing the supplemented motion to amend made

a ruling on the motion for leave to amend unnecessary. Furthermore, the motion was futile. *Barnard v Dilley*, 134 Mich App 375; 350 NW2d 887 (1984). Thus, appellate relief is not warranted.

Lastly, we agree with the trial court that the debt that plaintiff allegedly incurred to retain successor appellate counsel was not proximately caused by defendant's alleged negligence. In his discussion of the substantial-factor test,¹ plaintiff has conceded that defendant's actions were harmless until acted upon by plaintiff in deciding to retain counsel. Under the circumstances, we are not persuaded that the trial court's conclusion was in error.

Affirmed.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Jessica R. Cooper

¹ See *Poe v Detroit*, 179 Mich App 564, 576-577; 446 NW2d 523 (1989), quoting 2 Restatement Torts, 2d, § 433, p 432.