

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN MARSHALL,
Plaintiff-Appellant,

UNPUBLISHED
March 23, 2006

v

No. 266263
Wayne Circuit Court
LC No. 04-417715-NM

NICHOLAS J. TSALIS,
Defendant-Appellee,

and

LYGIZOS & ALLEN, P.L.C., f/k/a JOHN A.
LYGIZOS, P.C.,
Defendant.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this legal malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"In order to establish a cause of action for legal malpractice, the plaintiff has the burden of establishing the following elements: (1) the existence of an attorney-client relationship (the duty); (2) negligence in the legal representation of the plaintiff (the breach); (3) that the negligence was a proximate cause of an injury (causation); and (4) the fact and extent of the injury alleged (damage)." *Barrow v Pritchard*, 235 Mich App 478, 483-484; 597 NW2d 853 (1999).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Plaintiff retained defendant to represent him against criminal charges. Plaintiff was acquitted of the principal charges, but convicted of a lesser offense after a bench trial. He contends that the trial court erred in considering that lesser offense pursuant to the decision in *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002), and that defendant was negligent in failing to file a postjudgment motion to set aside the conviction or to appeal the conviction.

Because the lawyer's duty arises from the lawyer-client relationship, *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995), and the relationship ends when a final judgment is entered in the litigation, 7A CJS, Attorney & Client, § 276, p 308, a lawyer does not have a duty to file a postjudgment motion or to represent the client on appeal unless retained to do so. *Id.*, § 313, p 349; *State Bar Grievance Administrator v Corace*, 390 Mich 419, 432; 213 NW2d 124 (1973); *Stanosheck v State*, 168 Neb 43, 46; 95 NW2d 197 (1959). Plaintiff's expert's affidavit was insufficient to create an issue of fact because the existence of a duty is a question of law for the court, *Burnett v Bruner*, 247 Mich App 365, 368; 636 NW2d 773 (2001), and "[t]he duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses." *Reeves v Kmart Corp*, 229 Mich App 466, 475; 582 NW2d 841 (1998). Although the court did not expressly consider whether plaintiff had stated a claim for relief, we will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Plaintiff claims that defendant was negligent in advising him that he did not have an issue for appeal when, in light of *Cornell, supra*, he could challenge the court's consideration of a lesser offense. Plaintiff did not allege that defendant negligently advised him that he did not have a valid basis for appealing his conviction in his complaint. A plaintiff generally cannot litigate issues or claims not raised in the pleadings. *Belogradich v Sarnsethsiri*, 131 Mich App 241, 246; 346 NW2d 83 (1983). Given that, plus the fact that plaintiff did not seek leave to amend to include such a claim, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra