

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT L. ANDERSON, JR., LISA A.  
ANDERSON, 1098 INVESTMENTS L.L.C., and  
COOPERSVILLE MOTORS, INC.,

UNPUBLISHED  
April 10, 2012

Plaintiffs-Appellants,

v

DAVID & WIERENGA, P.C., and RONALD E.  
DAVID,

No. 301946  
Kent Circuit Court  
LC No. 09-012883-CK

Defendants-Appellees.

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Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

In this legal malpractice case, plaintiffs appeal as of right the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(7). We affirm.

This case arises out of defendant Ronald E. David's legal representation of plaintiffs in conjunction with plaintiffs' purchase of an automobile dealership from Terry Kraker. The purchase of the dealership closed in February and March of 2007. In December 2009, plaintiffs filed a claim against defendants, alleging that defendants committed malpractice by, among other things, failing to adequately perform due diligence in conjunction with the purchase, structuring the purchase as a stock sale, and failing to protect plaintiffs' interests. Plaintiffs also asserted a quantum meruit claim, contending that as a result of the malpractice, defendants were unjustly enriched. Defendants moved for the grant of summary disposition by the trial court, alleging that plaintiffs' claims were barred by the statute of limitations for malpractice actions and that plaintiffs failed to establish genuine issues of fact as to the proximate cause and duty elements of their claims. The trial court granted defendants' motion pursuant to MCR 2.116(C)(7), finding that defendants' legal service had terminated in February and March of 2007 or, at the latest, in October of 2007 and that, as a result, plaintiffs' claims were time barred.

"A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo on appeal." *Young v Sellers*, 254 Mich App 447, 449; 657 NW2d 555 (2002). When no disputed questions of fact are presented, whether a claim is barred by a statute of limitations is also a question of law reviewed de novo. *Id.* at 450. A motion for summary disposition under MCR 2.116(C)(7) requires a reviewing court to consider all of the documentary evidence

submitted by the parties and to accept all of the plaintiff's well-pleaded allegations as true unless those allegations are specifically contradicted by the documentary evidence. *Kuznar v Raksha Corp*, 481 Mich 169, 175-176; 750 NW2d 121 (2008).

Pursuant to MCL 600.5805(6), a malpractice claim must be commenced within two years of the date when the claim accrued. *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006). MCL 600.5838(1) provides that a malpractice claim against a licensed professional "accrues at the time that [professional] discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose."

"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 v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994) (citations omitted). The formal discharge of an attorney is not required to end the attorney-client relationship. *Wright v Rinaldo*, 279 Mich App 526, 537; 761 NW2d 114 (2008). "Some of a lawyer's duties to a client survive the termination of the attorney-client relationship." *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 539; 599 NW2d 493 (1999). To determine whether such activities extend the legal representation, "the proper inquiry is whether the new activity occurs pursuant to a current, as opposed to a former, attorney-client relationship." *Id.* Follow-up activities such as advising a former client of a change in the law or investigating and attempting to remedy any mistake in the earlier representation are insufficient to extend the period of service. *Id.*

In this case, the specific legal service for which defendants were retained was to provide representation related to the purchase of an automobile dealership. The purchase was finalized in February and March of 2007. There is no evidence that defendants engaged in any activity related to the purchase on behalf of plaintiffs after that time. As a result, there is no question of fact that defendants discontinued serving plaintiffs at that time in their capacity as to the matters out of which the claim for malpractice arose. Plaintiffs' claims related to the purchase of the dealership accrued when the purchase closed in February and March of 2007. Thus, plaintiffs had two years from that time in order to file their legal malpractice action. Since plaintiffs filed the instant action in December 2009, the trial court correctly found that plaintiffs' malpractice claim was barred by the statute of limitations. Additionally, plaintiffs' quantum meruit claim, because it was based on plaintiffs' claims of inadequate representation, also is barred by the malpractice statute of limitations. See *Brownell v Garber*, 199 Mich App 519, 525-526; 503 NW2d 81 (1993).

Plaintiffs' contention that e-mails submitted to the trial court established an ongoing attorney-client relationship continuing into February 2008 is without merit.<sup>1</sup> In these e-mails,

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<sup>1</sup> Plaintiffs also submitted other documentation to this Court that was only submitted to the trial court with their motion for reconsideration. But because the trial court did not have these materials available *at the time it made its decision on the motion for summary disposition*, we will not consider them. *Quinto v Cross & Peters Co*, 451 Mich 358, 366 n 5; 547 NW2d 314 (1996); *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

Robert Anderson informed David that the dealership had been sold,<sup>2</sup> told David that plaintiffs were considering legal action against other parties, and asked David for advice in rescinding the stock purchase and returning the stock to Kraker. David responded by telling Anderson that he could not force Kraker to take the stock back and by asking if Buckman was working on the issues. Looking at these communications in a light most favorable to plaintiffs shows that the e-mails do not suggest an ongoing representation surrounding the purchase of the dealership, but rather indicate that plaintiffs were seeking new legal services in dealing with the problems encountered in the acquired dealership. This type of activity does not affect our analysis because this type of representation was unrelated to the “matters out of which the claim for malpractice arose.” See *Balcom v Zambon*, 254 Mich App 470, 484; 658 NW2d 156 (2002).

In sum, in March 2007, defendants discontinued representing plaintiffs regarding the purchase of the dealership, at which time plaintiffs’ claims accrued. The statute of limitations expired on plaintiffs’ claims two years later, MCL 600.5805(6), in March 2009. But plaintiffs filed their complaint approximately nine months after this deadline in December 2009. Therefore, the trial court properly granted defendants’ motion for summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder  
/s/ Christopher M. Murray

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<sup>2</sup> Previously, Anderson informed David that he intended to sell the dealership. David referred Anderson to another attorney, Jeffrey Buckman, who represented plaintiffs during the sale.