

STATE OF MICHIGAN
COURT OF APPEALS

MARIE DREILICH,

Plaintiff-Appellant,

v

NICOLETTI & ASSOCIATES, P.C., PAUL J.
NICOLETTI, and MICHAEL P. HOGAN,

Defendants-Appellees.

UNPUBLISHED

June 13, 2006

No. 258945

Oakland Circuit Court

LC No. 2004-055703-NM

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), based on the statute of limitations. We affirm.

I. FACTS

This legal malpractice action arises from defendants' representation of plaintiff in an underlying lawsuit in Macomb County in which plaintiff and her husband were sued by a contractor they hired to construct a new home. The contractor sought payment for its services, and plaintiff and her husband brought a counterclaim. Plaintiff was dissatisfied with her original attorney, so she terminated his services and retained defendants on January 2, 2002, shortly before the case was scheduled for trial. Plaintiff paid defendants a \$5,000 nonrefundable retainer. Plaintiff quickly became dissatisfied with defendants' representation. On January 11, 2002, defendants faxed plaintiff correspondence outlining a proposed course of action for the litigation. That same day, plaintiff faxed a reply stating that she believed defendants' proposal was "detrimental to our situation." Plaintiff stated, "after reviewing your fee agreement and terms we regret to inform you that we will not be utilizing your services as an attorney." Plaintiff requested return of the \$5,000 retainer fee.

Between January 12 and 18, 2002, plaintiff sent defendants numerous additional letters and faxes, accusing them of corrupt and unethical conduct and threatening to file grievances with the Attorney Grievance Commission. She demanded return of the retainer fee and threatened to bring criminal charges against them. Plaintiff refused to stipulate to defendants' motion to withdraw from her case against the contractor. Defendants moved to withdraw, and the Macomb Circuit Court granted their motion on January 28, 2004.

Plaintiff subsequently confronted defendant Paul Nicoletti at a county office and in a parking lot, and lunged toward him with her car. Nicoletti petitioned the Oakland Circuit Court for a personal protection order (PPO) prohibiting plaintiff from having contact with any of Nicoletti's firm's partners, employees, family members, or past or present clients. The court issued the requested PPO on November 21, 2003, and denied plaintiff's motion to set the PPO aside.

On January 27, 2004, plaintiff filed the present action, asserting claims for legal malpractice, negligence, fraud, conversion, uttering and publishing, violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, and perjury. In support of her legal malpractice count, plaintiff generally alleged that defendants failed to provide effective representation, failed to return her retainer, and unjustifiably obtained a PPO. The fraud count was based on allegations that defendants falsely promised effective representation and a successful outcome of the underlying action. The negligence count alleged that defendants were negligent in protecting plaintiff's legal rights. The conversion count alleged that defendants used plaintiff's retainer fee to pay for a vacation and a new home. The uttering and publishing count alleged that defendant Nicoletti "committed uttering and publishing" by "uttering and publishing the fraudulent Motion to Withdraw as Attorney and the vexatious and fraudulent PPO." Plaintiff also alleged that defendants violated several sections of the MCPA. In support of her perjury claim, plaintiff did not allege any specific wrongdoing, but merely set forth a definition of perjury.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's action was barred by the statute of limitations. They argued that the applicable two-year limitations period began to run on the last date they provided services to plaintiff, which was January 11, 2002, the day she terminated their services. Plaintiff argued that the limitations period began to run on January 28, 2002, the date the court granted defendants' motion to withdraw in the underlying action. Plaintiff also asserted that the January 11, 2002, termination letter produced by defendants was fabricated. She asserted that defendants' fax machine scans all received faxes into their computer, enabling them to alter the text while retaining the sender's signature. She challenged defendants to produce the original letter and submitted an affidavit in which she denied writing the letter. Plaintiff also submitted an affidavit from Karen Stephens, one of defendants' former clients, who alleged that defendants used this method to fabricate letters under her signature.

Defendants responded that plaintiff failed to rebut their claim that their services ended on January 11, 2002, and they submitted several faxes that plaintiff sent between January 12 and 18, 2002, which corroborated their claim that the attorney-client relationship was terminated on January 11. The faxes contain plaintiff's numerous demands for return of the \$5,000 retainer, threats to take legal action against defendants, accusations of fraud and corruption, and insults.

The trial court found that plaintiff terminated defendants' services by sending the January 11, 2002 letter and granted defendants' motion for summary disposition without oral argument. The trial court did not address plaintiff's remaining claims, but stated that the order resolved "the last pending matter" in the case.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by the statute of limitations. *Id.* When reviewing a motion under this subrule, the court should consider all documentary evidence submitted by the parties and accept the plaintiff's allegations as true, unless contradicted by the documentary evidence, to determine whether the claim is time-barred. *Id.* at 681-682.

The statute of limitations for professional malpractice is two years, MCL 600.5805(6), and begins when the claim accrues, MCL 600.5827. A legal malpractice claim accrues when the last services are provided. MCL 600.5838(1).

III. ANALYSIS

Plaintiff argues that her legal malpractice claim did not begin to accrue until January 28, 2002, the date the court granted defendants' motion to withdraw in the underlying action. We disagree. 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). No formal discharge by the client is required, and termination can be implied by the actions of the client. *Estate of Mitchell v Dougherty*, 249 Mich App 668, 684; 644 NW2d 391 (2002). A client can terminate an attorney's representation by sending a letter stating that the attorney does not have authority to act on her behalf. *Id.*; *Hooper v Hill Lewis*, 191 Mich App 312, 315; 477 NW2d 114 (1991).

In this case, the January 11, 2002 faxed letter bearing plaintiff's signature unambiguously terminated defendants' services. The letter plainly indicates that plaintiff no longer wanted defendants to represent her in the underlying contractor's litigation, and plaintiff demanded the return of her retainer fee. That correspondence clearly signified the end of defendants' services to plaintiff. Although plaintiff denied writing the January 11 letter, defendants submitted additional correspondence that plaintiff sent between January 12 and 18, 2002, the authenticity of which is not challenged, which clearly corroborates defendants' contention that plaintiff had terminated their services. Plaintiff repeatedly demanded the return of her retainer fee, threatened to take disciplinary and legal action against defendants, and accused defendants of being dishonest, incompetent, and corrupt. Additionally, plaintiff's response to defendants' motion to withdraw did not oppose their withdrawal, but instead consisted of a lengthy diatribe against defendants and concluded with a demand for "costs from Mr. Nicoletti to the Dreilichs in the amount of \$5,000 for misrepresentation." Thus, even if there is a question of fact concerning the authenticity of the January 11, 2002 letter, the remaining correspondence sent by plaintiff between January 12 and 18, 2002, clearly establishes that plaintiff had terminated defendants' services. *Mitchell, supra* at 684. Plaintiff did not offer any evidence showing that defendants' services continued, or that she continued to seek defendants' services, after January 11, 2002. Thus, the trial court did not err in finding that plaintiff's legal malpractice claim began accruing

more than two years before she filed her complaint on January 27, 2004, and, therefore, was time-barred.

Plaintiff argues that the two-year statute of limitations for legal malpractice does not apply to her claims of negligence and fraud.¹ Actions for negligence are subject to the general three-year limitations period prescribed in MCL 600.5805(10). *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 41; 709 NW2d 589 (2006). Actions for fraud are subject to the six-year limitations period prescribed in MCL 600.5813. *Badon v Gen Motors Corp*, 188 Mich App 430, 435; 470 NW2d 436 (1991).

For purposes of applying the correct statute of limitations, however, “[i]f a client attempts to characterize a malpractice claim as a fraud or other type of claim, a court will look through the labels placed on the claim and will make its determination on the basis of the substance and not the form.” *Brownell v Garber*, 199 Mich App 519, 532-533; 503 NW2d 81 (1993). A client’s claim against an attorney which is characterized as a negligence claim is treated as a malpractice claim if the duty element of the negligence claim is supplied by the existence of an attorney-client relationship. *Barnard v Dilley*, 134 Mich App 375; 350 NW2d 887 (1984). However, when a complaint alleges not only malpractice, but also all the necessary elements of fraud, the statute of limitations governing fraud actions will apply to the fraud count. *Brownell, supra* at 533.

Plaintiff’s negligence count does not allege any duty independent of the attorney-client relationship. Therefore, this claim is properly characterized as a malpractice claim, and is subject to the two-year period of limitations. Plaintiff’s fraud count asserts that defendants falsely informed plaintiff that they would follow a “beneficial” course of action that would result in a victorious trial for plaintiff and her husband. The material misrepresentation element of plaintiff’s fraud claim pertains to the quality of defendants’ legal representation, therefore, the substance of the claim is for legal malpractice, and is also subject to the same two-year limitations period. Therefore, these claims were properly dismissed as untimely.

Affirmed.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper

¹ Plaintiff does not present any arguments or cite any authority in support of any claim that her remaining counts for conversion, uttering and publishing, violation of the MCPA, or perjury were not barred by the applicable statutes of limitations. Therefore, any issue involving these remaining counts is deemed abandoned. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).