

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR STENLI,

Plaintiff-Appellant,

v

DOUGLAS A. KEAST and CHIRCO,
HERRINGTON, RUNDSTADLER & THOMAS,
L.L.P.,

Defendants-Appellees,

and

BERRY MOORMAN,¹

Defendant.

UNPUBLISHED
February 25, 2003

No. 237741
Macomb Circuit Court
LC No. 01-000498-NM

Before: Markey, P.J., and Smolenski and Meter, JJ.

METER, J. (*dissenting*)

I respectfully dissent from the majority opinion. I conclude that the circuit court properly granted summary disposition pursuant to MCR 2.116(C)(10), in that the plaintiff was unable to demonstrate a genuine material factual dispute on the element of proximate causation.

As noted in the majority opinion, the plaintiff must establish that, but for the alleged negligence of the defendants, the outcome of the underlying case would have been favorable to the plaintiff. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). Both the trial judge in the underlying action and the circuit judge herein concluded that the plaintiff had not established the validity of the July 1990 assignment and the plaintiff's derivative ability to bring suit against the Alams on the promissory note. Further, both courts determined

¹ Prior to the final disposition of the case, the circuit court entered an order, dismissing with prejudice all claims against Berry Moorman, P.C. Berry Moorman, P.C., is not a party to this appeal. For ease of reference, this opinion will refer to Keast and his law firm as "defendants."

that there was sufficient evidence to allow them to conclude that the \$65,000 promissory note at issue was fully paid by the Alams.

While I acknowledge that there was contradictory evidence which could have allowed a different conclusion on both of these issues, the record evidence supported both judges' conclusions. More importantly, upon a de novo review, I cannot conclude that the plaintiff established a genuine material factual dispute that but for any negligence of the defendants, plaintiff would have prevailed in the underlying action.

The majority makes note of the fact that the circuit court's opinion and order revealed that the court did not review copies of recorded instruments that plaintiff produced in opposition to the summary disposition motion. Nevertheless, at the trial in the underlying action, the unrecorded promissory note was introduced into evidence by defendants and there was no dispute about the terms and provisions of the underlying promissory note. Therefore, I fail to see how plaintiff's allegation that defendants did not produce relevant recorded documents at the underlying trial is material to this dispute.

In conclusion, I do not believe that plaintiff has sufficiently demonstrated a material factual dispute on the requisite element of proximate causation to support his cause of action for legal malpractice. Thus, I would affirm the decision of the circuit court granting defendants summary disposition.

/s/ Patrick M. Meter