

STATE OF MICHIGAN
COURT OF APPEALS

ERIC ADAMS,

Plaintiff-Appellant,

v

FAUSONE BOHN LLP, JAMES G. FAUSONE,
and THOMAS CAMPBELL,

Defendants-Appellees.

UNPUBLISHED
January 21, 2014

No. 312578
Oakland Circuit Court
LC No. 2011-117286-CK

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

In this legal malpractice suit, plaintiff Eric Adams appeals of right the trial court's order granting defendants Fausone Bohn LLP, James G. Fausone, and Thomas Campbell's motion for summary disposition under MCR 2.116(C)(10). Because we conclude there were no errors warranting relief, we affirm.

Adams alleged that Fausone Bohn, Fausone, and Campbell breached their duty to provide competent legal services in two ways: they failed to timely object to an order for sanctions that omitted certain lawyers' names and failed to clearly exclude the sanctions issue when drafting a consent judgment. In reply, Fausone Bohn, Fausone, and Campbell claimed that the lawyer Adams hired to replace them abandoned two opportunities to save the sanctions order and eliminate all damages; specifically, they believed that Adams' new lawyer could have asked this Court to remand the case to the trial court to amend the sanctions order while the case was on appeal, see MCR 7.208(C), or could have appealed the trial court's improper interpretation of the consent judgment and had the error corrected. The trial court held that the consent judgment barred amendment of the sanctions order and this Court dismissed Adams' appeal after he failed to file a brief.

The trial court dismissed Adams' malpractice claims after it determined that Adams' subsequently hired lawyer could have corrected the sanctions order. The court relied on *Boyle v Odette*, 168 Mich App 737, 745; 425 NW2d 472 (1988), and *Estate of Mitchell v Dougherty*, 249 Mich App 668, 682; 644 NW2d 391 (2002), in which this Court held that a lawyer cannot be liable for failing to appeal after being replaced by another lawyer before the end of the statutory period. The trial court reasoned that those cases applied because Adams' new lawyer had the same opportunity to move for remand. We, however, do not agree that those cases apply to

Adams' claim that Fausone Bohn, Fausone, and Campbell negligently drafted the consent judgment in the first instance.

In order to establish his claims, Adams had to prove that he had an attorney-client relationship with Fausone Bohn, Fausone, and Campbell, that they negligently represented him, and that their negligence proximately caused his loss. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). Where reasonable minds could not differ as to whether the negligence proximately caused the loss at issue, then proximate cause is an issue of law for the court; however, where reasonable minds might differ, the issue must be submitted to the jury. *Richards v Pierce*, 162 Mich App 308, 317; 412 NW2d 725 (1987). A lawyer is not expected to anticipate every error or completely protect his or her client from aberrant rulings or jury verdicts. *Simko*, 448 Mich at 657-658.

A consent judgment is a contract and, accordingly, courts will construe such judgments using the same principles that apply to contracts. *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). When interpreting an agreement, courts should read the document as a whole. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). When a contract is ambiguous, extrinsic evidence may be used to determine the parties' intent. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-470; 663 NW2d 447 (2003). A contract is ambiguous when a reasonable person could dispute the meaning of a provision. *Laffin*, 280 Mich App at 517. The consent judgment at issue unambiguously provided that it only applied to the lawyers in their role as co-trustees of the family trust, not in their professional capacity. Therefore, the trial court plainly erred when it construed the consent judgment to the contrary. Even assuming that the consent judgment was ambiguous, there was overwhelming extrinsic evidence to establish that the consent judgment did not apply to the lawyers in their professional capacity. Thus, reasonable minds could not differ as to whether Fausone Bohn, Fausone, and Campbell should have anticipated the trial court's erroneous interpretation or that Adams would fail to appeal the interpretation. The trial court's error and the subsequent failure to correct the error broke any causal connection between the drafting of the consent judgment and Adams' ultimate loss. *Richards*, 162 Mich App at 317.

Although the trial court dismissed the claims for a different reason, it nevertheless came to the correct result; accordingly, there was no error warranting relief. See *Peninsular Construction Co v Murray*, 365 Mich 694, 699; 114 NW2d 202 (1962).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly

/s/ Michael J. Riordan