STATE OF MICHIGAN

COURT OF APPEALS

ANGELA A. JOSEPH,

Plaintiff-Appellant,

v

R. SCOTT OSWALD, KELLEE BOULAIS KRUSE, TOM HARRINGTON, and THE EMPLOYMENT LAW GROUP, PC,

Defendants-Appellees.

UNPUBLISHED
August 12, 2025
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No. 369994
Genesee Circuit Court
LC No. 23-119811-NM

Before: CAMERON, P.J., and GARRETT and MARIANI, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order dismissing her legal-malpractice action against defendants on statute of limitations grounds pursuant to MCR 2.116(C)(7). We affirm.

I. BACKGROUND

This case arises from defendants' alleged malpractice in representing plaintiff in an underlying employment discrimination case against her former employer, the United States Department of Veterans Affairs (the VA). The parties entered into a retainer agreement on February 16, 2019 under which defendant The Employment Law Group, PC (TELG) agreed to represent plaintiff "before the United States District Court against the VA." The retainer agreement stated that the firm's representation "is limited to this matter."

On September 23, 2021, the federal district court granted the VA's motion for summary judgment and dismissed plaintiff's claims with prejudice. A few days later, TELG scheduled a call with plaintiff on October 1, 2021 to discuss the district court's order. On September 30, 2021, the day before the call, defendant Tom Harrington sent plaintiff an email stating, in pertinent part:

> I'm writing in anticipation of our call tomorrow . . . . For the reasons I'm going to review with you in a moment, Scott and I believe it is not in your best interest to appeal the judge's [order]. . . . The magistrate judge determined that the evidence was insufficient to overcome summary judgment. While we disagreed then with

> the court and disagree now with the court's adoption, it is our considered review that your chances on appeal are very low, maybe less than 10%. The reason for this is that courts of appeal routinely defer to district court determinations at summary judgment and we believe the U.S. Court of Appeals for the Sixth Circuit would do the same here. We do not believe it is a good investment of your money to proceed with something that is likely to be unavailing. I have prepared and attached a draft appeal notice for you to file, should you wish to proceed pro se. To the extent that you hire alternate counsel, we will cooperate with that counsel by sending your file to her/him and will do expeditiously. Your deadline to appeal is Monday, November 22, 2021. We can discuss tomorrow.

At some point, though it is unclear from the record exactly when, plaintiff decided to proceed pro se in filing a motion for reconsideration and notice of appeal. On October 8, 2021, TELG sent plaintiff another email, stating, in pertinent part:

> We have compiled most of the documents you requested and included additional ones that we thought would be helpful. The transcript is not available until Oct. 27th and we do not have a copy of your original EEO complaint because we did not file it. We will send the thumb drive with all the documents loaded onto it in the mail tomorrow but to give you access right away, we created a Sharefile link and included it below.

On October 19, 2021, plaintiff emailed Harrington with questions regarding the evidence presented to the district court. The email begins, "Tom, Please help me out by letting me know about some of the questions listed below that can help me if they were part of the evidence," which is then followed by plaintiff's questions regarding whether she could use certain pieces of evidence in her pro se briefing. Harrington responded the same day with answers to plaintiff's questions, advising her as to what documents she could use and arguments she could make. At the close of the email, Harrington wrote:

> As a reminder, your deadline to appeal is Monday, November 22, 2021. We understand that you will take the necessary actions to appeal, *pro se*, and we prepared and sent you a draft appeal notice for you to file. . . . Scott will shortly send a "close out" email to you, ending our representation.

The next day, on October 20, 2021, TELG sent a brief email stating, "As TELG has completed its work on your behalf, I write to let you know that I am closing your file at TELG. This will now end TELG's . . . representation of you."

Plaintiff filed a pro se motion for reconsideration in the underlying case on October 21, 2021. On November 16, 2021, defendants moved for leave to withdraw representation in the district court, and plaintiff filed her notice of appeal to the Sixth Circuit Court of Appeals. The district court denied plaintiff's motion for reconsideration and granted defendants' motion for leave to withdraw on May 2, 2022. The Sixth Circuit Court of Appeals affirmed the district court's decision on December 27, 2022. Plaintiff sought certiorari, but the United States Supreme Court denied her petition on October 2, 2023.

Plaintiff, still proceeding pro se, then commenced this action against defendants on October 19, 2023, alleging breach of contract, professional negligence, and common-law negligence. Defendants sought summary disposition on the ground that plaintiff's claims were all legal-malpractice claims and therefore subject to a two-year statutory limitations period. Defendants argued that the attorney-client relationship lasted until October 8, 2021, at the latest, but that the relationship most likely terminated on September 23, 2021 or September 30, 2021, and that plaintiff's October 19, 2023 complaint was therefore untimely. The trial court determined that defendants' representation of plaintiff ended on September 23, 2021, because that was the date of the final judgment in the underlying case and because defendants did not represent plaintiff after that date. Accordingly, the trial court dismissed plaintiff's claim with prejudice as time barred. Plaintiff moved for reconsideration, but the trial court denied the motion. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *Terlecki v Stewart*, 278 Mich App 644, 649; 754 NW2d 899 (2008). Summary disposition is proper when a claim is barred by the statute of limitations. *Id*. When considering a motion under MCR 2.116(C)(7), the court must accept all well-pleaded factual allegations as true unless other evidence contradicts them. *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). The court must consider the affidavits, pleadings, depositions, and other documentary evidence, if any, and determine whether a genuine issue of material fact exists. *Id*. at 429. If there are no such questions of fact, whether a claim is time barred is an issue of law. *Id*.

III. DISCUSSION

While we do not agree with the entirety of the trial court's reasoning, we agree with the court's ultimate conclusion that there is no genuine factual dispute that plaintiff's legal-malpractice claim accrued outside of the applicable limitations period, and therefore defendants are entitled to summary disposition under MCR 2.116(C)(7).

The statutory period of limitations for a legal malpractice action is two years. MCL 600.5805(8); MCL 600.5838b(1)(a). Plaintiff filed her complaint on October 19, 2023, meaning that if her claim accrued prior to October 19, 2021, the complaint was untimely. A malpractice claim against a state-licensed professional, such as an attorney, accrues "at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose." MCL 600.5838(1).[1]

[1] MCL 600.5838(2) provides that a malpractice claim may also be commenced "within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later." In her reply brief on appeal, plaintiff makes a passing argument that the six-month discovery rule applies in this case. While we view briefs filed by parties proceeding pro se more leniently, see, e.g., *Hein v Hein*, 337 Mich App 109, 115; 972 NW2d 337 (2021), plaintiff's argument on this point is too undeveloped, even under that more lenient standard, to permit

"Special rules[,]" which address specific factual circumstances, "have been developed in an effort to determine exactly when an attorney discontinues serving the plaintiff in a professional capacity for purposes of the accrual statute." *Kloian v Schwartz*, 272 Mich App 232, 238; 725 NW2d 671 (2006) (cleaned up). For instance, this Court has stated that an attorney's representation of a client generally continues until the attorney is relieved of that obligation by the client or the court and that "[r]etention of an alternate attorney effectively terminates the attorney-client relationship." *Mitchell v Dougherty*, 249 Mich App 668, 683; 644 NW2d 391 (2002). But the general rule is that a legal-malpractice claim "accrues on the attorney's last day of professional service in the matter out of which the claim for malpractice arose." *Kloian*, 272 Mich App at 238.

In this case, defendants' professional service to plaintiff ended, at the latest, when plaintiff made clear to defendants that she would be proceeding pro se with her motion for reconsideration and appeal, thereby relieving defendants of their obligation to represent plaintiff and terminating the attorney-client relationship. *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994) ("A lawyer discontinues serving a client when relieved of the obligation by the client[.]"). Contrary to plaintiff's assertion, no formal discharge by a client is required to terminate the attorney-client relationship. *Mitchell*, 249 Mich App at 684. Instead, "termination of an attorney-client relationship can be implied by the actions or inactions of the client." *Id*. And here, plaintiff's course of conduct served to terminate the attorney-client relationship prior to October 19, 2021.

In defendants' September 30, 2021 email, they advised plaintiff that pursuing an appeal would likely not be worth the cost and informed plaintiff of her options, including her ability to proceed pro se or with other retained counsel.[2] Though neither party takes a position as to what specific date plaintiff communicated to defendants that she had made the decision to proceed pro se, it is clear from the record that the decision was made, and defendants were aware of plaintiff's intent to proceed pro se, prior to October 19, 2021. Following defendants' September 30, 2021 email and the parties' call on October 1, 2021, plaintiff requested that defendants send her the summary judgment briefing and other documents, which defendants did on October 8, 2021. And

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substantive consideration. Because plaintiff failed to adequately brief this issue, we deem it abandoned. See *Twp of Grayling v Berry*, 329 Mich App 133, 154-155; 942 NW2d 63 (2019) (finding that the appellants abandoned an issue on appeal where the issue was raised only in the reply brief and in a conclusory fashion).

[2] Defendants argue that the limitations period began running on September 30, 2021 because defendants "affirmatively notified [plaintiff] of [defendants'] withdrawal" in the email sent on that date. But defendants overstate the contents of their email. In the email, defendants explained the district court's reasoning for dismissal, offered an opinion as to the likelihood of success on appeal and whether appeal would be worth the cost, and advised plaintiff of her ability to represent herself or to retain other counsel. While this certainly provides relevant context to the termination of representation that followed, the email itself does not contain any statement expressly terminating the parties' relationship and does not foreclose the possibility that defendants would represent plaintiff further if she were willing to pay defendants' fee to do so. Cf. *Kloian*, 272 Mich App at 236 (concluding that the attorney's letter which explained that success on appeal was unlikely and stated "I shall not be representing you on appeal" served as notice of the attorney's withdrawal).

it is evident from plaintiff's October 19, 2021 email to defendants, in which she sent defendants several questions about what evidence she could rely on in her pro se briefing, that plaintiff had already communicated and begun moving forward with her decision to proceed pro se at some prior date. Because the record makes clear that the attorney-client relationship ended prior to October 19, 2021, plaintiff's complaint was untimely and the trial court correctly granted defendants' motion for summary disposition.

Plaintiff argues that the statutory limitations period did not start running until October 20, 2021, when defendants sent their email notifying her that "[t]his will now end TELG's . . . representation of you." This Court has held "that in the absence of an attorney's dismissal by the court or the client, and in the event that an attorney sends notice of withdrawal as his or her final act of professional service, a legal malpractice claim with respect to a particular matter that has been finally dismissed by order of the trial court accrues at the time affirmative notification of withdrawal is sent." *Kloian*, 272 Mich App at 238. Under this rule, assuming plaintiff took no preceding actions that expressly or impliedly terminated the attorney-client relationship, plaintiff's argument has merit. But because, as discussed, plaintiff took actions that served to terminate the attorney-client relationship prior to defendants' October 20 email, this rule is not applicable to this case. Rather, the record as a whole makes clear that defendants' October 20 email, along with their email the day prior regarding the close-out of her file, functioned only to formally memorialize a termination of representation that had, through plaintiff's earlier conduct, already occurred.

Plaintiff also stresses that defendants did not discontinue their services to her and, in support, points to the fact that defendants continued to act relative to her case, such as by sending her documents and answering her legal questions. "In general, once an attorney has discontinued serving the plaintiff-client, additional acts by the attorney will not delay or postpone the accrual of a legal malpractice claim." *Id*. at 238 n 2. And, as this Court has explained, there is a distinction between "an ongoing attorney-client relationship and a remedial effort concerning past representation." *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 538; 599 NW2d 493 (1999). Courts must ask "whether the new activity occurs pursuant to a current, as oppose to a former, attorney-client relationship." *Id*. at 539. It is clear from the record that, in performing the activities raised by plaintiff, defendants were attempting to facilitate plaintiff's post-termination transition to pro se status. Such "follow-up activities attendant to otherwise completed matters of representation" do not extend the length of the attorney-client relationship once that relationship has been terminated. *Id*.; see also *Seyburn, Kahn, Ginn, Bess, Deitch, and Serlin, PC v Bakshi*, 483 Mich 345, 360; 771 NW2d 411 (2009) (holding that tasks such as reviewing, copying, and returning a client's file do not extend the date of accrual beyond the termination of the attorney-client relationship). Plaintiff also points to the fact that defendants did not move to withdraw their appearance on her behalf in the district court until November 16, 2021, and that the district court did not grant the motion until May 2, 2022. But defendants' formal withdrawal from the case, like their other post-termination actions such as closing out plaintiff's file, was simply a "remedial effort concerning past representation." *Bauer*, 235 Mich App at 538-539. Plaintiff's decision to proceed pro se and accompanying actions to that effect served to terminate the attorney-client relationship and "[n]o additional court action was necessary to effectuate that discharge." *Hooper v Lewis*, 191 Mich App 312, 316; 477 NW2d 114 (1991).

For the reasons discussed, the record in this case makes clear that the attorney-client relationship between plaintiff and defendants terminated prior to October 19, 2021. Accordingly, plaintiff's complaint was filed outside of the applicable two-year statute of limitations, and defendants were entitled to summary disposition pursuant to MCR 2.116(C)(7). Because we conclude the trial court reached the corrected result, albeit for slightly different reasons, we affirm. *Helton v Beaman*, 304 Mich App 97, 100; 850 NW2d 515 (2014) (explaining that this Court ordinarily affirms if the trial court reached the correct result, even if for the wrong reasons).

Affirmed.

/s/ Thomas C. Cameron
/s/ Kristina Robinson Garrett
/s/ Philip P. Mariani