

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LITTLE,

Plaintiff-Appellant,

v

GERALD LORENCE,

Defendant-Appellee.

UNPUBLISHED

June 9, 2011

No. 294669

Wayne Circuit Court

LC No. 09-012514-NM

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, acting in *propria persona*, appeals by leave granted the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff asserts that the trial court erred in granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) because the complaint was filed within the statute of limitations. The trial court's decision regarding a motion for summary disposition and the application of the statute of limitations are reviewed *de novo*. *Zwiers v Growney*, 286 Mich App 38, 41-42; 778 NW2d 81 (2009). Generally, the limitations period for a legal malpractice claim is two years from the date the claim accrues. MCL 600.5805(6); *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006). A claim of malpractice accrues at the time the person discontinues serving the plaintiff in a professional capacity out of which the claim for malpractice arose. MCL 600.5838(1). "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). In the present case, it is undisputed that defendant discontinued serving plaintiff on May 22, 2007, the last day of professional service between the parties. Therefore, plaintiff had to commence his suit against defendant by May 22, 2009. *Gebhardt v O'Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994).

Plaintiff, an incarcerated prisoner, alleges that his complaint was filed when he submitted his complaint and motion to waive fees. MCL 600.2963(1) governs the procedure for allowing an incarcerated prisoner to file a civil action and provides in relevant part:

If a prisoner under the jurisdiction of the department of corrections submits for filing a civil action as plaintiff in a court of this state or submits for filing an appeal in a civil action in a court of this state and states that he or she is indigent

and therefore is unable to pay the filing fee and costs required by law, the prisoner making the claim of indigency shall submit to the court a certified copy of his or her institutional account, showing the current balance in the account and a 12-month history of deposits and withdrawals for the account. The court then shall order the prisoner to pay fees and costs as provided in this section. The court shall suspend the filing of the civil action or appeal until the filing fee or initial partial filing fee ordered under subsection (2) or (3) is received by the court. If the court orders that a prisoner pay a filing fee or partial filing fee, all documents submitted by the prisoner that relate to that action or appeal shall be returned to the prisoner by the court along with 2 certified copies of the court order. An additional certified copy of the court order shall be sent to the department of corrections facility where the prisoner is housed. The prisoner then shall, within 21 days after the date of the court order, resubmit to the court all documents relating to the action or appeal, accompanied by the required filing fee or partial filing fee and 1 certified copy of the court order. If the filing fee or initial partial filing fee is not received within 21 days after the day on which it was ordered, the court shall not file that action or appeal, and shall return to the plaintiff all documents submitted by the plaintiff that relate to that action or appeal.

Plaintiff attempted to file his initial complaint coupled with a motion to waive fees on or about April 17, 2009. Due to a defect, the complaint was rejected, and plaintiff resubmitted his corrected complaint and motion to waive fees on April 24, 2009. On May 19, 2009, the trial court entered an order instructing plaintiff to pay a \$90 partial filing fee within 21 days from the date of the order. Plaintiff claims that he complied with that order by resubmitting his complaint and summons with the filing fee on May 22, 2009. Notwithstanding plaintiff's assertion, the time-stamped copy of the complaint reflects a filing date of May 26, 2009.

The resolution of this issue requires analysis of the statutory language. An issue of statutory construction is reviewed *de novo*. *Mich Ed Ass'n v Secretary of State*, 488 Mich 18, 26; 793 NW2d 568 (2010). The rules of statutory construction are well established:

Assuming that the Legislature has acted within its constitutional authority, the purpose of statutory construction is to discern and give effect to the intent of the Legislature. Accordingly, a Court must interpret the language of a statute in a manner that is consistent with the legislative intent. In determining the legislative intent, the actual language of the statute must first be examined. As far as possible, effect should be given to every phrase, clause, and word in the statute. When considering the correct interpretation, a statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words within a statute, a court must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. When a statute explicitly defines a term, the statutory definition controls. [*Id.* at 26-27 (footnotes and quotations omitted).]

According to the plain meaning rule, the word "shall" is mandatory and should be given its ordinary and accepted meaning. *AFSCME v Detroit*, 267 Mich App 255, 260; 704 NW2d 712

(2005). On the contrary, the word “may” indicates permissive action. *Id.* Terms that are not defined in a statute must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). Application of the law to the facts presents a question of law subject to review de novo. *Miller-Davis Co v Ahrens Constr, Inc*, 285 Mich App 289, 299; 777 NW2d 437 (2009).

Applying the plain language of the statute to the facts at hand, the trial court did not err in granting defendant’s motion for summary disposition. The plain language of MCL 600.2963(1) provides that the filing of a civil action is suspended until the filing fee or initial partial filing fee is received by the court. In fact, MCL 600.2963(1) does not allow for the filing to occur before the filing of the fee or partial fee. Rather, the statute requires that the trial court return the documents to the prisoner. The use of the term “shall” indicates mandatory action. *AFSCME*, 267 Mich App at 260. Therefore, plaintiff’s claim was not filed until he resubmitted his documents with the partial filing fee on May 26, 2009, after the two-year statute of limitations had expired. “The mere tendering of the complaint to the clerk of the court without the appropriate fees does not constitute a completed ‘filing’.” *Hadley v Ramah*, 134 Mich App 380, 384-385; 351 NW2d 305 (1984).¹

Affirmed.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

¹ Plaintiff contends that his complaint is timely pursuant to *Keenan v Dep’t of Corrections*, 250 Mich App 628; 649 NW2d 133 (2002). We disagree. In *Keenan*, the plaintiff sought to file an application for direct review of a prison misconduct decision pursuant to MCL 791.255. *Id.* at 629. The *Keenan* Court held that “an application for direct review is filed for purposes of MCL 791.255(2) when it is submitted to, and received by, the circuit court for filing with either the filing fee or a claim of indigency within the sixty-day time limitation imposed by the statute.” *Id.* at 633. The *Keenan* Court agreed with the holding of *Hadley*, that an original civil action was not a completed filing without the required filing fees. However, for the limited purposes of applying MCL 791.255(2), an application for direct review with a claim of indigency within 60 days constituted a sufficient filing. *Id.* at 633-634. Because plaintiff filed an original civil action asserting legal malpractice and not a petition for direct review of a prison decision, the trial court did not err in granting defendant’s motion for summary disposition.