

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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THOMAS R. BARNES,

Plaintiff-Appellant,

v

KRUPP LAW OFFICES, CHRISTIAN KRUPP,  
and GEORGE KRUPP,

Defendants-Appellees.

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UNPUBLISHED

May 22, 2007

No. 274749

Kent Circuit Court

LC No. 06-006395-NM

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants in this legal malpractice case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff retained defendants to represent him in a divorce case filed by his wife in Kent County. Subsequently, defendants discovered that plaintiff's marital residence was actually located in Ottawa County, moved to dismiss the case in Kent County for lack of personal jurisdiction, and filed a complaint for divorce on behalf of plaintiff in Ottawa County. The action in Kent County was dismissed. On May 19, 2004, a judgment of divorce was entered in the Ottawa County action.

Plaintiff's amended complaint, filed on or about August 23, 2006, alleged that defendants committed legal malpractice by failing to inform him that George Krupp was involved in disciplinary proceedings with the State Bar that resulted in the suspension of his license to practice law from December 10, 2002, until March 10, 2003, and by failing to promptly realize that the petition for divorce filed by plaintiff's wife was erroneously filed in Kent County. Plaintiff asserted that defendants' act of carrying on the case in Kent County for a time caused him to suffer emotional and financial damages.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (8). Defendants asserted that they performed no legal services for plaintiff after May 24, 2004; therefore, plaintiff's original complaint for malpractice, filed on or about June 29, 2006, was untimely as it was not filed within two years after defendants last performed legal services for plaintiff. MCL 600.5838(1).

At a hearing on the motion, defendants argued that plaintiff's complaint was untimely, and that it failed to state a claim on which relief could be granted because it did not allege that plaintiff suffered actionable damages as a direct result of defendants' alleged negligence. Plaintiff's counsel conceded that plaintiff was not contending that the divorce judgment entered in Ottawa County was adversely affected by defendants' alleged malpractice.

The trial court granted summary disposition for defendants. The trial court noted that a factual dispute existed as to whether defendants had a conversation with plaintiff in early 2005 regarding the divorce judgment; however, the trial court concluded that the dispute was not material because even if a substantive conversation occurred in early 2005, the subject thereof was a follow-up to defendants' representation of plaintiff, which concluded in May or June 2004. This case was not filed until more than two years after that point, and thus was untimely. Moreover, the trial court found that plaintiff failed to show that he suffered actionable damages as a result of defendants' alleged negligence. The trial court denied plaintiff's motion for reconsideration.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Under MCR 2.116(C)(7), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997).

We first note that plaintiff provides no appellate argument to counter the trial court's alternate basis for granting summary disposition, which was that plaintiff indisputably sustained no actionable loss due to negligence.<sup>1</sup> For this reason alone, we must affirm, but we shall engage in some additional analysis.

The statute of limitations for a claim alleging legal malpractice is two years. MCL 600.5805(6). A claim for legal malpractice accrues when an attorney discontinues serving a client. MCL 600.5838(1). To establish a claim of legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of the injury; and (4) the fact and extent

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<sup>1</sup> The trial court stated that "plaintiff cannot prove actionable legal malpractice." It appears that the court may have been viewing the issue in the context of MCR 2.116(C)(10) and not (C)(8). Regardless, plaintiff fails to challenge the substance of the ruling on appeal.

of the injury alleged. *Coble v Green*, 271 Mich App 382, 386; 722 NW2d 898 (2006), quoting *Mitchell v Dougherty*, 249 Mich App 668, 676; 644 NW2d 391 (2002).

To prove proximate cause, a plaintiff in a legal malpractice action must establish that the defendant's action was a cause in fact of the claimed injury. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 586; 513 NW2d 773 (1994). A plaintiff must show that but for the attorney's alleged malpractice, he would not have been injured, and a claim of malpractice requires a showing of actual injury, not just the potential for injury. *Colbert v Conybeare Law Office*, 239 Mich App 608, 619-620; 609 NW2d 208 (2000).

We affirm the trial court's order granting summary disposition in favor of defendants. Whether plaintiff's action for legal malpractice was timely filed need not be addressed. Aside from being entitled to summary disposition because of the lack of appellate argument on causation and loss, defendants were entitled to summary disposition because plaintiff failed to allege that he suffered actionable damages. Plaintiff alleged that defendants committed malpractice by failing to inform him that George Krupp was involved in State Bar disciplinary proceedings and that his license to practice law was suspended from December 10, 2002, through March 10, 2003, and by failing to promptly recognize that the complaint for divorce filed in Kent County was jurisdictionally deficient. Plaintiff asserted that he suffered emotional and financial damages by being required to attend various hearings and proceedings such as depositions (apparently in Kent County, although the complaint does not so state) and by being required to incur the expense of renting an apartment. However, the complaint does not specify how defendants' alleged malpractice caused these damages. Plaintiff did not sufficiently allege facts to support his assertion that defendants' negligent actions resulted in these damages. A statement of conclusions unsupported by factual allegations is insufficient to satisfy the injury element of a legal malpractice action. See *Kloian v Schwartz*, 272 Mich App 232, 241; 725 NW2d 671 (2006) ("Plaintiff failed to include factual allegations regarding how the specific instances of alleged malpractice caused the alleged injuries."). Moreover, plaintiff, via counsel, acknowledged that defendants' actions had no detrimental effect on the outcome of the divorce case in Ottawa County. Therefore, plaintiff sustained no actionable loss due to any negligent conduct by defendants. *Alar v Mercy Mem Hosp*, 208 Mich App 518, 531; 529 NW2d 318 (1995).<sup>2</sup> The trial court correctly granted summary disposition for defendants.

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Janet T. Neff

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<sup>2</sup> With respect to plaintiff's complaints about having to attend divorce hearings and depositions, these events would still have taken place in the divorce action regardless of the claims of malpractice. "Injuries that would have occurred anyway cannot be said to have been proximately caused." *Alar, supra* at 531.