STATE OF MICHIGAN

COURT OF APPEALS

TONY MORGAN,

Plaintiff-Appellant,

v

ERIC I. KUTINSKY, LAW OFFICES OF ERIC KUTINSKY, P.C., and LEVITT & MORRIS, P.L.L.C.,

Defendants-Appellees.

UNPUBLISHED
July 27, 2006

No. 259815
Oakland Circuit Court
LC No. 04-55615-NM

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

In this legal malpractice case, plaintiff appeals the trial court's order that granted summary disposition to defendants. We affirm.

"We review de novo a trial court's ruling on a motion for summary disposition." *Maskery v Bd of Regents of Univ of Michigan*, 468 Mich 609, 613; 664 NW2d 165 (2003).[1] To

[1] Where the parties rely on documentary evidence in support of their arguments, appellate courts proceed under the standards of review applicable to a motion made under MCR 2.116(C)(10). *Krass v Tri-County Security*, 233 Mich App 661, 665; 593 NW2d 578 (1999). A motion made under MCR 2.116(C)(10) tests the factual support for a claim, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties
(continued…)

establish legal malpractice, a plaintiff must show "(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 an injury; and (4) the fact and extent of the injury alleged." *Manzo v Petrella*, 261 Mich App 705, 712; 683 NW2d 699 (2004) (citation omitted). "In a malpractice action, expert testimony is usually required to establish a standard of conduct, breach of that standard of conduct, and causation." *Stockler v Rose*, 174 Mich App 14, 48; 436 NW2d 70 (1989).

To prove negligence, a plaintiff must show that the attorney failed to exercise reasonable skill, care, discretion and judgment in representing the client. *Simko v Blake*, 448 Mich 648, 656; 532 NW2d 842 (1995). An attorney is not liable for mere errors in judgment if the attorney acted in good faith and exercised reasonable care, skill and diligence. *Id*. at 658. Further, to establish proximate cause, "plaintiff must show that, but for an attorney's alleged malpractice, the plaintiff would have been successful in the underlying suit." *Manzo, supra* at 712.

Plaintiff argues that the trial court erred when it granted summary disposition to defendants on his claim that defendant Eric Kutinsky failed to object at plaintiff's parole revocation hearing because the hearing did not take place within the 45-day time period required by MCL 791.240a(1). Plaintiff presented no expert testimony (1) to establish the standard of care applicable to Kutinsky, (2) to indicate that Kutinsky breached the standard of care in failing to object to the revocation hearing occurring outside the 45-day period, and (3) to indicate that Kutinsky's failure to make that objection resulted in plaintiff's parole revocation. Accordingly, under MCR 2.116(C)(10), plaintiff failed to raise a genuine issue of material fact and the trial court correctly granted summary disposition to defendants. *Stockler*, *supra* at 48.

Plaintiff further claims that the trial court erred when it granted summary disposition to defendants on his claim that Kutinsky failed to assert plaintiff's alleged right to change therapists. Plaintiff fails to cite any legal authority that a parolee who receives sex offender therapy as a condition of parole has a right to switch therapists. While the mental health code states that "[a] recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program . . . within the limits of available staff in the community mental health services program," MCL 330.1713, we find no authority that this right applies to a parolee receiving sex offender therapy as a condition of parole.

In any case, plaintiff's position is mere speculation and conjecture because he failed to present any evidence that a change of therapists would have produced a different result in the parole revocation proceedings. *Colbert v Conybeare Law Office*, 239 Mich App 608, 620; 609 NW2d 208 (2000). Therefore, the trial court correctly granted summary disposition to defendants on this issue.[2]

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in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

[2] In light of our resolution of the above issues, plaintiff's venue argument is moot. *Ewing v*
(continued…)

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ Jessica R. Cooper

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Bolden, 194 Mich App 95, 104; 486 NW2d 96 (1992). Moreover, because MCL 600.1645 precludes appellate relief based solely upon improper venue, effective review of a venue decision may only be granted from an interlocutory appeal. *Bass v Combs*, 238 Mich App 16, 22; 604 NW2d 727 (1999).