

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER KOPULOS, Individually and as Next
Friend of CODY KOPULOS and ZACHARY
KOPULOS, Minors, and STEVE KOPULOS,

UNPUBLISHED
February 17, 2011

Plaintiffs-Appellants,

v

No. 295766
Wayne Circuit Court
LC No. 08-123149-NM

SAUN-ROLAND SCOTT,

Defendant,

and

MARK J. WARBA and WALZ & WARBA, P.C.,

Defendants-Appellees.

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the trial court's order granting summary disposition in favor of defendants Mark Warba and his law firm Walz & Warba P.C. ("defendants") in this action for legal malpractice. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In October or November 2003, plaintiff Heather Kopulos ("plaintiff") contacted defendants about a potential claim against her landlord for carbon monoxide poisoning. During the consultation, plaintiff referred to a December 2002 motor vehicle accident in which she was involved. After investigating the potential carbon monoxide claim, defendants ultimately declined to represent plaintiff. In September 2008, plaintiffs filed this action for legal malpractice, alleging that defendants failed to advise plaintiff, during the discussions concerning the potential carbon monoxide claim, of her right to pursue, and the time limit for seeking, no-fault benefits for injuries she sustained in the earlier motor vehicle accident. The trial court concluded that plaintiff could not pursue the malpractice action on the ground there was no attorney-client relationship between plaintiff and defendants. Accordingly, the court granted defendants' motion for summary disposition.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendants moved for summary disposition under MCR 2.116(C)(8) and (10). Although the trial court did not specify the subrule under which it granted defendants' motion, because the basis for the trial court's decision required consideration of evidence outside the pleadings, we review the order under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

The existence of an attorney-client relationship is a necessary element of an action for legal malpractice. *Pantely v Garris, Garris, & Garris, PC*, 180 Mich App 768, 778-779; 447 NW2d 864 (1989). The relationship is not dependent on the payment of a fee or a formal contract, and a contract may be implied by the parties' conduct. *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Sch*, 455 Mich 1, 11; 564 NW2d 457 (1997). "The rendering of legal advice and legal services by the attorney and the client's reliance on that advice or those services is the benchmark of an attorney-client relationship." *Id.*

Here, plaintiffs contend that the evidence shows that plaintiff sought and defendant Warba "provided legal advice and assistance specifically related to her auto accident and that Mr. Warba took some action on her behalf specifically related to her auto accident, all before the one-year anniversary of that December 22, 2002 auto accident" However, Warba's recommendation that plaintiff obtain a medical evaluation to differentiate the causes of her ailments was not a "rendering of legal advice" from which this Court can conclude that an attorney-client relationship existed. The parties' conduct in this case was consistent only with a consultation and investigation, not an agreement that defendants would represent plaintiff. Moreover, to the extent that the evidence supports the existence of an attorney-client relationship, it establishes that the scope of that relationship was limited to a potential claim against plaintiff's landlord for carbon monoxide poisoning, not any claims arising from a motor vehicle accident. Although plaintiffs emphasize that defendants were aware of the accident, defining the scope of an attorney's representation and duty by the attorney's mere knowledge of facts that may give rise to a claim is both unworkable and contrary to the contractual nature of the attorney-client relationship.

Accordingly, the trial court did not err in granting defendants' motion for summary disposition. In light of our decision, it is unnecessary to consider whether any legal malpractice action was barred by the statute of limitations.

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder