

NOTICE
Decision filed 04/01/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0180
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DENZIL RIDENOUR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Madison County.
)	
v.)	No. 05-L-660
)	
RICHARD GIBSON, ESTATE OF MORRIS)	
B. CHAPMAN, and JOSEPH HOEFERT,)	Honorable
)	A. A. Matoesian,
Defendants-Appellees.)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Justices Wexsten and Spomer concurred in the judgment.

RULE 23 ORDER

Held: The trial court properly granted a summary judgment to an attorney who was added to a legal malpractice claim after the running of the statute of limitations for such actions, and the time was not tolled by the doctrine of fraudulent concealment.

Plaintiff, Denzil Ridenour, appeals the summary judgment order entered by the circuit court of Madison County in favor of defendant, Joseph Hoefert. We affirm.

Plaintiff was seriously injured in August of 1994 while employed as a truck driver. He retained defendant Hoefert as his attorney to represent him in his personal injury claim. Hoefert referred the case to codefendant attorney Richard Gibson. As a part of the referral, Hoefert and Gibson agreed that Hoefert would share in any legal fee recovered in connection with the personal injury case. Gibson filed suit on plaintiff's behalf in 1995. Plaintiff's suit remained pending for almost 10 years. When the matter finally came to trial in 2005, Gibson failed to appear and plaintiff's case was dismissed with prejudice. Shortly thereafter, plaintiff sought advice from Hoefert regarding a possible malpractice claim. Hoefert referred plaintiff

to attorney Morris B. Chapman. In July of 2005, Chapman filed a legal malpractice action against Gibson, on plaintiff's behalf. Unfortunately, Chapman passed away, and plaintiff retained new counsel. Plaintiff subsequently learned in 2008 that he might also have a viable claim against Hoefert for the negligence of Gibson because of the fee-sharing agreement. Plaintiff amended his complaint to include Hoefert as a party defendant in his malpractice action. In response, Hoefert filed a motion for a summary judgment, asserting that the two-year statute of limitations for such actions was a bar to any recovery against him. Plaintiff countered that the statute of limitations had been tolled by the doctrine of fraudulent concealment. The court granted Hoefert's motion for a summary judgment and further entered an order pursuant to Supreme Court Rule 304(a) (eff. Jan. 1, 2006) that there was no just reason to delay enforcement or appeal.

Plaintiff argues on appeal that the court erred in granting Hoefert's motion for a summary judgment. Plaintiff agrees that, generally, legal malpractice claims have to be brought within two years (735 ILCS 5/13-214.3(b) (West 2008)). Plaintiff contends, however, that if an attorney has fraudulently concealed the existence of the malpractice claim, then the statute of limitations is extended to five years (735 ILCS 5/13-215 (West 2008)). According to plaintiff, Hoefert stood in a fiduciary capacity to plaintiff when he met with him in 2005 to discuss a possible legal malpractice claim. He asserts that a referring attorney who is going to share in any legal fee generated also agrees to assume the same legal responsibility for the performance of the services just as if he were a partner of the lawyer who received the referral. Plaintiff argues that Hoefert's failure to disclose his own responsibility for any negligence of Gibson in handling plaintiff's claim is as much a fraud at law as an actual affirmative false representation or act and that his silence amounted to fraudulent concealment. Because plaintiff amended his complaint to include Hoefert within the five-year limitations period for fraudulent concealment, he concludes that the court

should not have granted Hoefert's motion for a summary judgment.

We initially note that a summary judgment is properly granted if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Chatham Foot Specialists, P.C. v. Health Care Service Corp.*, 216 Ill. 2d 366, 376, 837 N.E.2d 48, 54 (2005); *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335, 775 N.E.2d 987, 994 (2002). Appellate review of a trial court's ruling on a motion for a summary judgment is *de novo*. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004); *Cain v. Finnie*, 337 Ill. App. 3d 318, 320, 785 N.E.2d 1039, 1041 (2003).

The statute of limitations for legal malpractice claims provides that the action must be brought "within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b) (West 2008). In this instance, the dismissal of plaintiff's personal injury lawsuit triggered the running of the statute of limitations on plaintiff's legal malpractice claim. Plaintiff learned in January 2005 that his personal injury lawsuit had been dismissed, but plaintiff did not name Hoefert in his malpractice action until June of 2008, some three years after his malpractice claim arose. On the surface, plaintiff's claim appears to be time-barred. Plaintiff counters that Hoefert had a fiduciary duty to disclose to plaintiff that plaintiff could file a legal malpractice claim against him. Because he did not do so, plaintiff argues, the statute of limitations was tolled until he was advised by counsel that he had a potential claim against Hoefert. Plaintiff claims that Hoefert's purported fraudulent concealment makes his otherwise untimely claim timely. Hoefert, however, advised plaintiff to consult with another attorney to explore the legal options available to him. He did not have to advise plaintiff of his own possible malpractice. See *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1025, 929 N.E.2d 1167, 1184 (2010). Plaintiff admitted that after he learned that his personal injury case had been dismissed, he was angry with Hoefert for referring him to

Gibson in the first place, and he further admitted that he had related to Chapman that Hoefert had referred Gibson to handle his personal injury claim. A professional opinion that legal malpractice has occurred is not required before a plaintiff is charged with knowing facts that would cause him to believe that his injury was wrongfully caused. *Racquet v. Grant*, 318 Ill. App. 3d 831, 837, 741 N.E.2d 1008, 1012-13 (2000). More importantly, the doctrine of fraudulent concealment pertains only to the fraudulent concealment of a cause of action, not the identity of a tortfeasor. See *McDaniel v. La Salle Ambulance Service, Inc.*, 108 Ill. App. 3d 1042, 1045, 440 N.E.2d 158, 160 (1982); *Pratt v. Sears Roebuck & Co.*, 71 Ill. App. 3d 825, 830, 390 N.E.2d 471, 475 (1979). Hoefert did not fraudulently conceal plaintiff's cause of action. In fact, Hoefert might have been the one who first told plaintiff of the dismissal of his personal injury case. The doctrine does not apply in this instance, and the trial court correctly entered a summary judgment in favor of Hoefert on the grounds of the running of the statute of limitations for legal malpractice actions.

For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

Affirmed.