2013 IL App (1st) 122789-U

FIFTH DIVISION
August 30, 2013

No. 1-12-2789

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL CANFIELD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 7383
	)	
ROBERT BADESCH, individually and	)	
as duly authorized agent of	)	
BADESCH ABRAMOVITCH, ATTORNEYS	)	
AT LAW,	)	Honorable
	)	James N. O'Hara,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

ORDER

¶ *1* *HELD*: The trial court order which dismissed plaintiff's complaint for legal malpractice based on its finding that the statute of limitations expired prior to filing of the complaint, is affirmed.

¶ 2 On July 15, 2011, plaintiff Michael Canfield, filed a legal

malpractice lawsuit against his former attorney and law firm, Robert Badesch and Badesch Abramovitch, Attorneys at Law, defendants. In response to the complaint, defendants filed a motion to dismiss, claiming that the complaint had been filed after the statute of limitations had expired. The trial court granted defendants' motion and dismissed the complaint. The trial court found that the statute of limitations had begun to run on February 6, 2009, making the July 15, 2011 filing untimely.

¶ 3 On appeal, plaintiff argues that the trial court erred in granting defendants' motion to dismiss by: (1) concluding that the statute of limitations began to run on February 6, 2009, even though a different date was alleged within plaintiff's complaint; (2) failing to take into consideration a reasonable amount of time for plaintiff to learn of the malpractice after February 6, 2009 and (3) determining that plaintiff's complaint was untimely as a matter of law. For the reasons that follow, we affirm the trial court's ruling.

¶ 4 BACKGROUND

¶ 5 On July 15, 2011, plaintiff filed a one-count legal malpractice lawsuit against defendants. The legal malpractice claim arises out of defendants' representation of plaintiff beginning in July 2006.

¶ 6 According to plaintiff's complaint, in July 2006, plaintiff hired the defendants to assist him in modifying the joint parenting agreement that was currently in place between plaintiff and his former wife. At the time that plaintiff hired the defendants, he had no obligation to pay child support. The defendants assured plaintiff on multiple occasions that any efforts to modify his parenting agreement "would have no bearing on the parties' no child support order, or the parties' percentage of the children's expenses."

¶ 7 However, following these assurances, between 2008 and 2009, plaintiff alleged that four adverse orders were entered against him due to defendants' failure to comply with discovery requests of opposing counsel. Three of these adverse orders had a direct affect on the parties' "no child support order." On May 5, 2008, the court entered an order granting sanctions against plaintiff, specifically striking all of plaintiff's pleadings and barring him from testifying, presenting any evidence and/or maintaining any claim or defense relating to any issue relative to information requested by his former wife in discovery. On May 13, 2008, the court entered an order requiring plaintiff to pay $173.00 a month in child support. On September 5, 2008, the court granted plaintiff's former wife residential custody of their daughter and ordered plaintiff to pay $1,360.00 per month

in child support, retroactive through June 25, 2007. And on February 6, 2009, the court entered an order granting plaintiff's former wife's attorneys $19,000.00 in attorneys' fees due to defendants' failure to comply with discovery orders. This order also required plaintiff to pay $22,840.00 in child support arrearage. The complaint alleged that these adverse orders were the result of defendants' failure to comply with numerous discovery requests and court orders.

¶ 8 The complaint further alleged that "sometime after the February 6, 2009 hearing, instead of explaining to his client that the fees had been awarded due to his own discovery violations, [defendants] paid [plaintiff] $10,000, and further promised to pay half of the attorneys' fees that were awarded and to assist [plaintiff] in obtaining improved visitation." Although the complaint does not state when this money was paid to plaintiff, it does state that by "on or about July 14, 2009, [plaintiff] terminated his attorney client relationship with [defendants]." The complaint also alleged that had plaintiff known that his child support payments could be adversely affected, "it is more likely than not that [plaintiff] would not have pursued the modification of custody."

¶ 9 The complaint alleged that it was not until July 27, 2009, after plaintiff reviewed his file with a new attorney, that he

"discover[ed] he had a possible cause of action against [defendants]." Plaintiff filed his complaint, containing the above allegations, on July 15, 2011.

¶ 10 On December 20, 2011, defendants filed an appearance and a motion to dismiss pursuant to 735 ILCS 5/2-619(a)(5), claiming that the plaintiff's claims were time barred under 735 ILCS 5/13-214.3(b). *See* 735 ILCS 5/2-619(a)(5) (West 2008); 735 ILCS 5/13-214.3(b) (West 2008). Defendants' motion to dismiss attaches a copy of plaintiff's complaint. On March 30, 2012, after the parties had fully briefed the motion to dismiss, the trial court granted defendants' motion to dismiss, finding that the statute of limitations on plaintiff's claim had begun to run on February 6, 2009, making his July 15, 2011 filing untimely.

¶ 11 Defendants filed a motion to reconsider the trial court's March 30, 2012 order, which was denied on August 20, 2012. Of note, there is no indication in the record that plaintiff ever requested leave to amend his complaint. For the reasons that follow, we affirm the trial court's ruling granting defendants' motion to dismiss.

¶ 12 ANALYSIS

¶ 13 A motion to dismiss pursuant to section 2–619 of the Code of Civil Procedure enables the court to dismiss a complaint after considering issues of law or easily proved issues of fact. *SK*

Partners I, LP v. Metro Consultants, Inc., 408 Ill. App. 3d 127, 135 (2011); 735 ILCS 5/2-619(c) (West 2008). When ruling on a 2-619 motion, the court admits as true all well-pleaded facts and the legal sufficiency of the complaint. *King v. City of Chicago*, 324 Ill. App. 3d 856, 859 (2001). Section 2–619(a)(5) allows a cause of action to be dismissed if it was not commenced within the time limited by law. *Compton v. Ubilluz,* 351 Ill. App. 3d 223, 227–28 (2004). Our review of a section 2–619 motion to dismiss is *de novo*. *Porter v. Decatur Mem'l Hosp.*, 227 Ill. 2d 343, 352 (2008).

¶ 14 In Illinois, a legal malpractice claim must be commenced "***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). This statute of limitations incorporates the " 'discovery rule,' which serves to toll the limitations period to the time when a person knows or reasonably should know of his or her injury." *Hester v. Diaz,* 346 Ill. App. 3d 550, 553 (2004). However, "[t]he discovery rule has never been interpreted to delay commencement of the statute of limitations until a person acquires actual knowledge of negligent conduct. Rather, it has been interpreted to delay commencement until the person has a reasonable belief that the injury was caused by wrongful conduct, thereby creating

an obligation to inquire further on that issue." *Dancor Int'l, Ltd. v. Friedman, Goldberg & Mintz,* 288 Ill. App. 3d 666, 673 (1997).

¶ 15 Here, based upon the allegations in the complaint, plaintiff retained defendants in order to modify the parenting agreement regarding his daughter. Plaintiff retained defendants after receiving multiple assurances from defendants that plaintiff's "no child support order" would not be affected. Plaintiff alleged that he more likely than not would not have retained defendants if he knew his child support would be adversely affected.

¶ 16 However, despite the purported purpose of the attorney-client relationship being only to modify the parenting agreement and multiple assurances that there would be no changes to plaintiff's "no child support order," the complaint alleged that on four separate occasions adverse orders were entered against plaintiff, including three orders requiring plaintiff to pay child support. On May 13, 2008, the court entered an order requiring plaintiff pay $173.00 a month in child support. On September 5, 2008, the court ordered plaintiff pay $1,360.00 per month in child support, retroactive through June 25, 2007. On February 6, 2009, the court entered an order requiring plaintiff pay $22,840.00 in child support arrearage.

¶ 17 Following the entry of these adverse orders, defendants paid plaintiff, their client, $10,000.00 and promised to pay plaintiff more in the future. Before additional monies could be paid, plaintiff terminated defendants' services on July 14, 2009.

¶ 18 From the above facts alleged in plaintiff's complaint, the trial court concluded that the statute of limitations began to run on February 6, 2009, making the July 15, 2011 filing of the complaint untimely. Therefore, the trial court granted defendants' motion to dismiss. We agree with the trial court. By February 6, 2009, four adverse orders had been entered against plaintiff, three of which required him to pay child support. At a minimum, these orders should have placed him on notice that he should inquire into the representation defendants were providing, especially given defendants' earlier assurances that there would be no changes in his child support.[1]

¶ 19 Even assuming *arguendo* that we did not agree with the trial court's finding that the statute of limitations began to run on February 6, 2009, the latest possible date on which the statute

[1]The assurances made by defendants are emphasized to show that plaintiff should have known that the adverse orders were a result of defendants' wrongdoing. When defendants assured plaintiff that there would be no changes in plaintiff's child support and subsequently three orders were entered forcing him to pay increasing amounts of child support, this should have raised red flags for plaintiff. By that time, plaintiff should have known that the adverse orders were a result of wrongful conduct.

could begin to run would be July 14, 2009. By that date, plaintiff had been ordered to pay child support and defendants had already paid plaintiff $10,000.00, admitting that they had done something wrong, or at a minimum, making it clear that plaintiff should have inquired into defendants' behavior. And, by that date, plaintiff had fired defendants. However, even if we were to assume that the statute began to run on July 14, 2009, the latest possible date we could assume based upon the pleadings, plaintiff's July 15, 2011 filing would still be untimely.

¶ 20 Plaintiff argues the statute of limitations began to run on July 27, 2009 because his complaint alleged that he did not discover that he had a possible cause of action until July 27, 2009 when he was able to review his file with a new attorney. However, under Illinois law, actual knowledge of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *Blue Water Partners, Inc. v. Edwin D. Mason, Foley & Lardner*, 2012 IL App (1st) 102165 (2012); *SK Partners I, LP*, 408 Ill. App. 3d at 130. Rather, the statute of limitations begins to run when plaintiff had a reasonable belief that his injury was caused by wrongful conduct, not when he definitively knew he had an actionable legal malpractice claim. *See* 735 ILCS 5/13-214.3(b) (West 2008); *Butler II v.*

Mayer, Brown and Platt, 301 Ill. App. 3d 919, 923 (1998) ("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 wrongly caused."). As stated above, the test is when the plaintiff "has a reasonable belief that the injury was caused by wrongful conduct." Here, plaintiff should have had a "reasonable belief" of wrongful conduct prior to July 14, 2009 because of the entry of the adverse orders against him and defendants' payment of $10,000 to him.

¶ 21 Plaintiff also argues that by finding that the statute of limitations began running on February 6, 2009, the date on which the final adverse order was entered, the court failed to take into consideration a reasonable time thereafter for plaintiff to learn of that February 6, 2009 adverse order. However, Illinois courts have held that the statute of limitations in legal malpractice claims will generally run from the date the adverse order or judgment was entered. *See Zupan v. Berman*, 142 Ill. App. 3d 396 (1986) (statute of limitations in legal malpractice action started to run from the date of judgment, not from the denial of the post-trial motions); *Belden v. Emmerman*, 203 Ill. App. 3d 265, 270 (1990) (statute of limitations in legal malpractice action started to run when the circuit court entered

the order that was the subject of the legal malpractice action, not when the circuit court declined to vacate the order or thereafter).

¶ 22 Moreover, based on the facts alleged in plaintiff's complaint, any "reasonable time" for plaintiff to learn that the February 6, 2009 order had been entered could not have extended beyond July 14, 2009. By July 14, 2009, defendants had already paid plaintiff $10,000.00 for the adverse February 6, 2009 order and plaintiff had already fired defendants. Thus, even if this Court entertained plaintiff's argument that the running of the statute of limitations needs to take into consideration a "reasonable time" for plaintiff to learn of the adverse order that was entered on February 6, 2009, from the face of the complaint, it is clear that plaintiff learned of the adverse order before July 14, 2009.

¶ 23 Last, plaintiff argues that the trial court erred in deciding that as a matter of law his complaint was untimely. Although the commencement of the limitations period usually presents a question of fact, it may be decided as a matter of law when the answer is clear from the pleadings. *Clay v. Kuhl*, 189 Ill. 2d 603, 609-10 (2000). When "ruling on a 2-619 motion, where the facts are undisputed and only one conclusion is evident, the court may determine the date of the commencement of

the statute of limitations as a matter of law." *Goran v. Glieberman*, 276 Ill. App. 3d 590, 596 (1995).

¶ 24 Here, none of the facts or dates within the complaint are disputed by the parties.[2] As such, the face of the complaint shows that plaintiff should have known of the potential wrongdoing by February 6, 2009, the date on which an order was entered requiring him to pay more than $20,000 in child support. This finding, that plaintiff should have known of the wrongful conduct by February 6, 2009, is further supported by other allegations contained in the complaint including: (1) the fact that prior to the entry of that order defendants assured plaintiff that there would be no changes to his child support, (2) Plaintiff would not have hired defendants if any changes to his child support were to occur, (3) following the entry of that order, defendants paid the plaintiff $10,000.00 and promised to pay more in the future and (4) by July 14, 2009 plaintiff had fired defendants. Each of these undisputed facts, as alleged in the complaint, show that plaintiff should have known on February 6, 2009, or at the very latest before July 14, 2009, that the adverse orders were the result of wrongful conduct. From the face of the complaint, it is clear that plaintiff's July 15, 2011

[2]Further, there are no indications in the record that plaintiff ever requested leave to amend his pleadings in any way.

filing, even when considering all the facts alleged therein in a light most favorable to plaintiff, was untimely as a matter of law.

¶ 25 The only dates that are alleged in the complaint that span beyond July 14, 2009 are July 21, 2009, the date on which defendants were granted leave to withdraw as plaintiff's counsel after being fired by plaintiff, and July 27, 2009, the date on which plaintiff reviewed his file with a new attorney and discovered that the adverse orders were directly caused by defendants' alleged negligence. However, under Illinois law and as stated above, neither of these dates trigger the running of the statute of limitations. And, more importantly, in this case, the statute of limitations had been triggered prior to both dates.

¶ 26 For the foregoing reasons, we affirm the trial court's decision granting defendants' motion to dismiss.

¶ 27 Affirmed.