No. 2—10—0011
Order filed April 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LAURIE C. CHRISTOPHERSEN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 07—L—139
	)	
RANDY W. FRANKLIN,	)	Honorable
	)	Christopher C. Starck,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: Where there were genuine issues of material fact with respect to when plaintiff discovered her legal malpractice claim, the trial court erred in granting summary judgment in defendant's favor.

Plaintiff, Laurie C. Christophersen, appeals from the trial court's order granting summary judgment in favor of defendant, Randy W. Franklin. Christophersen sued attorney Franklin for legal malpractice arising out of his representation in her marriage dissolution case. The trial court granted summary judgment in Franklin's favor on the basis that the action was untimely under the two-year statute of limitations for legal malpractice claims, 735 ILCS 5/13—214.3(b) (West 2008).

Christophersen appeals. For the following reasons, we reverse the trial court's order granting summary judgment in Franklin's favor and remand for further proceedings.

BACKGROUND

Christophersen filed a legal malpractice complaint against Franklin on February 14, 2007. She alleged that Franklin negligently represented her in her dissolution of marriage case. Specifically, Christophersen claimed that Franklin recommended a stipulated bench trial but never explained the impact of the stipulations. Franklin allegedly assured Christophersen prior to trial that she would receive her share of all marital assets including her husband's pension. However, Franklin allegedly "was unaware of the effect disability issues and a pension going into pay status for disability reasons would have" and was unaware that there was or could be a great disparity in income and potential income between Christophersen and her husband. Christophersen further claimed that Franklin did not investigate or litigate the issues of spousal maintenance or division of marital debt. She alleged that as a result of Franklin's negligence, she did not receive a portion of her former husband's disability pension, and the trial court neither awarded her maintenance nor allocated debt to her former husband. Franklin filed an answer and affirmative defenses including that Christophersen's legal malpractice claim was barred by the applicable two-year statute of limitations.

Franklin moved for summary judgment on statute of limitations grounds. Franklin argued that the legal malpractice action accrued on any of the following dates: (1) June 25, 2004, when the dissolution of marriage judgment was entered; (2) November 10, 16, or 19, 2004, when the trial court made postdecree rulings regarding the distribution of marital assets; or (3) February 7, 2005, when Christophersen retained successor counsel in the dissolution case.

The record reveals the following undisputed facts. A stipulated bench trial in the dissolution proceeding occurred on May 19, 2004. On June 25, 2004, the trial court entered a judgment for dissolution of marriage. The judgment provided, *inter alia*, that Christophersen was entitled to 60% of the parties' retirement accounts through a qualified domestic relations order (QDRO). The judgment did not provide for spousal maintenance. Christophersen attended postdecree hearings in the divorce case on November 10, 16, and 19, 2004, during which she was represented by Franklin. During these hearings, Christophersen learned that she would not receive a portion of her former husband's pension because the pension was a disability pension. She also learned during these hearings which debts would be considered marital debts to be divided according to the judgment for dissolution of marriage.

On November 10, 2004, the day of the first postdecree hearing, Christophersen sent Franklin a letter by facsimile, in which she stated:

> "GET OVER IT? HOW AM I TO GET OVER IT? IT IS MY LIFE, my trauma, my anxiety, my inability to pay my bills, late mortgage payments, poor credit rating. All because [her former husband] and his attorney have set the tone for this case since Julie Carpenter took his case. One day she says look at all this debt for children's clothing and men's shoes —which the Judge ruled on May 10, 2004 any outstanding debts on that date were to be considered marital, and now she backs off. The two of you met almost two years ago and agreed the debt as marital.
>
> So exactly when are [*sic*] and Julie going to 'get together' to work out the financial details?
>
> Will that be presented to the Judge before next Friday?

> Please understand this—I am broke. There is no money to pay you until the house is refinanced with all the debt issues resolved. NO MORTGAGE COMPANY OR BANK WILL TAKE ON THIS MORTGAGE WITH THE OUTSTANDING DEBT AND A HOLD HARMLESS AGREEMENT FROM [her former husband]. This clearly means that I cannot pay you until such time as that occurs. If it does not occur before next Friday, I will have to forfeit everything and declare bankruptcy.
>
> I think I have had enough setbacks to last ten lifetimes. If you cannot help me—who can? Obviously I cannot go to the Judge myself.
>
> As far as the pension goes—the Carpenters Union is ready to pay me what I am entitled to—call it disability, early retirement, the amount he is receiving today, would be the amount he would receive at age 65. So do I have to wait until he is 62 or 65 before I get my rightful share?"

On January 19, 2005, Christophersen paid Franklin's outstanding attorney fees. On this same date, Christophersen sent a letter by facsimile to Franklin regarding the outcome of the dissolution proceeding. She wrote: "To say the least I feel less than satisfied with the outcome of the settlement. From the 'trial by stipulation' to Judge Radovich's [*sic*] final ruling [*sic*] I feel that I was kept out of the loop. If I had known what to expect, I would have requested a trial with witnesses." Christophersen also noted "the fact that [opposing counsel] did her homework and knew full well that determining that [her former husband's] pension would always be classed a 'disability,' [her former husband] is assured a lifelong guaranteed income with no expenses." Christophersen further wrote: "I in fact received 60% of nothing and [her former husband] received 40% of everything." Christophersen concluded in the January 19, 2005, facsimile: "I do not know what recourse I have

against such injustice and years of my life I will never get back, but I would like to have an honest conversation about my options, and an estimation of the legal costs."

In January and February 2005, Christophersen looked for an attorney to replace Franklin. On February 7, 2005, Christophersen met with and retained attorney Mark Smith to represent her in the postdissolution proceeding. Smith filed a substitute appearance on February 14, 2005.

In a January 2006, e-mail from Christophersen to the attorney who represented her in unrelated automobile accident cases, Christophersen wrote: " 'I am still bogged down by the divorce process. Mark Smith advised me last year when he took the case that he saw cause for a malpractice case against my former attorney, Randy W. Franklin. At the very least, I would report him to the Bar Association.' "

The trial court granted defendant's summary judgment motion. The trial court's written order provides that "summary judgment is entered in favor of defendant Franklin and against plaintiff Christophersen." The words "for the reasons stated on the record" conclude the order, but the words are crossed out.

Christophersen filed a reconsideration motion. She argued that the trial court erroneously agreed with Franklin that the "brightline rule" is that the statute of limitations for legal malpractice claims is triggered when the client meets with successor counsel. Christophersen argued that both she and successor counsel Smith disputed that they knew of a malpractice action at the time of their initial February 7, 2005, meeting. Following oral argument, the trial court denied Christophersen's reconsideration motion "for the reasons stated on the record." The transcript of the oral argument and ruling reflect that the trial court found:

> "In this particular case [Christophersen] didn't just consult with the attorney, but the testimony that I reviewed [*sic*] she knew or should have known about the negligence of the defendant long before. And when I couple that with her consulting an attorney, I agree with defense counsel that for all three reasons she was on notice and her filing of this case is too late. So motion to reconsider is denied."

Christophersen timely appealed.

ANALYSIS

Christophersen argues that: (1) the trial court erroneously applied a "brightline" rule that the statute of limitations for legal malpractice actions begins to run on the date the client consults with successor counsel and (2) there was a genuine issue of material fact with respect to the timing of her discovery of a malpractice claim.

Summary judgment is proper when the pleadings, depositions, and admissions on file, together with the affidavits, demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2—1005(c) (2008); *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). We review an order granting summary judgment *de novo*. *Williams*, 228 Ill. 2d at 417.

Section 13—214.3(b) of the Illinois Code of Civil Procedure (735 ILCS 5/13—214.3(b)) (West 2008)) provides:

> "[A]n action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services 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).

Under the discovery rule set forth in section 13—214.3(b), a limitations period begins to run only when the plaintiff knows or reasonably should know of his injury and also knows or reasonably should know that the injury was wrongfully caused. *Morris v. Margulis*, 197 Ill. 2d 28, 35-36 (2001). The discovery date is generally a question of fact; the issue may be determined as a matter of law only where it is apparent from the undisputed facts that only one conclusion may be drawn. *Morris*, 197 Ill. 2d at 36; see also *Racquet v. Grant*, 318 Ill. App. 3d 831, 836 (2000) ("Judgment [as to the discovery date] should be entered as a matter of law only when the undisputed facts allow for only one conclusion.").

Christophersen argues that the trial court erred in granting Franklin summary judgment on the basis that Christophersen filed her legal malpractice complaint more than two years after she met with successor counsel Smith. According to Christophersen, the "trial court, at the time of hearing on the Motion for Summary Judgment, based on [Franklin's] statements, agreed that *Barratt v. Goldberg*, 296 Ill. App. 3d 252 (1998) [additional citation omitted], was 'brightline' law and the Court felt that it had no choice but to follow *Barratt*." She represents: "At the hearing on summary judgment, [the trial court] found of the three different dates [Franklin] argued as triggering the statute of limitations in the legal malpractice claim, two of the dates presented factual questions. However, *Barratt* mandated a finding and order of summary judgment based on [Franklin's] claim that *Barratt* announced a rule of law that said the statute of limitations was triggered simply because a client consulted with a successor attorney." Christophersen argues that the trial court erroneously granted

Franklin summary judgment on the basis of a "brightline" rule that the statute of limitations began to run when she consulted Smith.

However, we are unable to determine whether the trial court applied such a brightline rule. Christophersen fails to include in the record the transcript of the hearing and ruling on Franklin's summary judgment motion. The record merely contains the trial court's written order that Franklin's summary judgment motion is granted. Our supreme court has stated:

> "[A]n appellant has the burden to present a sufficiently complete record of proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

Accordingly, we presume that the trial court acted correctly. See *Foutch*, 99 Ill. 2d at 391-92.

Christophersen nevertheless also argues that there were genuine issues of material fact with respect to when she discovered her malpractice claim. In response, Franklin contends (as he did in the trial court) that the undisputed facts established that Christophersen was on notice of a malpractice claim: (1) on June 25, 2004, when the dissolution of marriage judgment was entered; (2) on November 10, 16, and 19, 2004, when the trial court made postdecree rulings regarding the distribution of marital assets; and (3) on February 7, 2005, when Christophersen retained successor counsel in the dissolution case.

In her opening brief, Christophersen confines her argument to whether there were disputed facts regarding notice of the claim at the time she met with successor counsel on February 7, 2005. She argues for the first time in her reply brief that disputed facts likewise existed with respect to her

notice of a malpractice claim at the time of the June 25, 2004, dissolution judgment and the November 2004, postdecree proceedings. Franklin argues that Christophersen waived any challenge to the trial court's reliance on the earlier accrual dates by failing to raise the issue in her opening brief. See Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006) ("Points not argued [in the appellant's opening brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Although Franklin does not raise the issue, we also note Christophersen's failure to comply with Rule 341(h)(7)'s requirement that an appellant provide in its argument section citation to the pages of the record upon which she relies. However, forfeiture is a limitation on the parties, not the court. *Gay v. Frey*, 388 Ill. App. 3d 827, 832 (2009). Moreover, the argument that there were disputed facts regarding Christophersen's notice of a malpractice claim in June and November, 2004 (the argument that Christophersen did *not* raise explicitly in her opening brief) appears to be inherent in the argument that there were disputed facts regarding her notice at the time of the *subsequent* February 7, 2005, meeting with successor counsel (the argument that Christophersen *did* raise in her opening brief). With respect to the lack of record citation, we are nonetheless able to discern Christophersen's record support from her general reference to her affidavit and the deposition transcripts in the record.

Accordingly, we will determine whether there were genuine issues of material fact as to whether Christophersen knew or reasonably should have known at the time of the June 25, 2004, dissolution judgment, the November 2004, postdecree proceedings, or the February 7, 2005, meeting with successor counsel, of her injury and that the injury was wrongfully caused. Franklin's position is that Christophersen's malpractice claim accrued as early as the June 25, 2004, dissolution judgment because it was undisputed that the judgment did not provide for spousal maintenance.

Franklin also argues that the claim accrued during the November 10, 16, and 19, 2004, postdecree hearings because it was undisputed that Christophersen learned at that time which debts would be considered marital debts and that she would not receive a portion of her former husband's disability pension.

Franklin also points out that Christophersen testified at her deposition that she was "distressed and unhappy" at the November 10, 2004, hearing because "suddenly 60 percent of a pension became no pension to me." She also testified, "I believe that this is when I first learned that [her former husband's] pension was being classified as a permanent disability or some—something like that." Christophersen testified that she told Franklin at the November 19, 2004, hearing to correct the matter, but he failed to do so. Her November 10, 2004, facsimile to Franklin complained about the debt-allocation and pension issues and questioned, "If you cannot help me—who can? Obviously I cannot go to the Judge myself."

We cannot say that this evidence established as a matter of law that Christophersen knew or reasonably should have known at this time of her injury and that the injury was wrongfully caused. The evidence suggests that Christophersen knew that she was injured, but not necessarily that the injury was wrongfully caused. An adverse judgment alone does not always signal to a client that legal malpractice occurred. *Racquet*, 318 Ill. App. 3d at 837. "Any judgment in a contested case produces at least one dissatisfied party. Thus, common sense dictates that a bad result itself does not give fair warning that the attorney is to blame. The merits of the case are generally a more obvious suspect." *Racquet*, 318 Ill. App. 3d at 837.

The record does not demonstrate as a matter of law that Christophersen knew that Franklin "was to blame." To the contrary, Christophersen attested that Franklin continually assured her

during his course of representation that she received everything to which she was legally entitled and that "the law required the judge to enter the decision and orders that he entered and nothing could be done to correct it." As a lay person, Christophersen was "presumptively unable to discern on [her] own any misapplication of legal expertise." *Racquet*, 318 Ill. App. 3d at 837. Moreover, Christophersen paid Franklin's outstanding attorney fees on January 19, 2005, further evidencing the lack of her knowledge of a malpractice claim at that time. Christophersen's mere dissatisfaction with Franklin and the results of her case simply did not amount to notice of a malpractice claim as a matter of law.

Franklin nevertheless argues that it was undisputed that Christophersen was on notice of her malpractice claim by the time she met with successor counsel Smith on February 7, 2005. Franklin relies on Christophersen's deposition testimony that she retained Smith on February 7, 2005, to "rectify what had taken place in November," to correct the mistakes that occurred during the November 2004, postdecree hearings, and to put her divorce judgment in a favorable order. Franklin also relies on Christophersen's January 2006, e-mail to her personal injury attorney that "Mark Smith advised me last year when he took the case that he saw cause for a malpractice case against my former attorney, Randy W. Franklin." However, Smith testified that he did *not* in fact talk about a malpractice case in his initial February 2005, meeting with Christophersen. Rather, Smith testified:

> "I saw this, the pension issue as a simple postdecree kind of as you phrased it 'clean up' issue where the language of the QDRO did not—was not specific enough to divide the parties' interests in that pension and it needed to be made more specific.
>
> So the first thing I did coming out of the shoot was to file a motion to amend the QDRO. And I really thought that this was all it was going to be was a short simple

> proceeding to clean up the language in the—of the QDRO to reflect the intention of the court as expressed in the original judgment.
>
> And I never thought sitting there that day that there would be multiple efforts to do that followed by a 2—1401 motion to vacate based upon fraud, a mistake of fact, newly discovered evidence, motions for summary judgment, trials and appeals. Never in my wildest dream did I think that that case—this case at that time would get to this point."

Smith further explained, "It was a simple one-word issue or a few words issue cleaning up the QDRO to allow it to be accepted by the plan administrator. That's what I saw this case as, cleaning up the refinance and the credits that [Christophersen] was entitled to." Both Smith and Christophersen testified that, at some later point after their initial meeting, Smith advised Christophersen that she may have a malpractice case. In light of this testimony, we cannot say Christophersen was on notice of her malpractice claim at the time of her February 7, 2005, meeting with Smith. In sum, there were genuine issues of material fact with respect to when Christophersen discovered her legal malpractice claim.

For the foregoing reasons, we reverse the trial court's order granting summary judgment in Franklin's favor and remand for further proceedings.

Reversed and remanded.