Cite as 2012 Ark. App. 120

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-640

MARY RICHARDSON and MICHAEL RICHARDSON APPELLANTS	**Opinion Delivered** FEBRUARY 8, 2012
V.	APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT, [NO. CV 2010-928]
JEAN MADDEN d/b/a MADDEN LAW FIRM APPELLEE	HONORABLE SANDY HUCKABEE, JUDGE AFFIRMED

ROBERT J. GLADWIN, Judge

This pro se appeal follows the March 8, 2011 order of the Lonoke County Circuit Court granting the motion to dismiss filed by appellee Jean Madden d/b/a Madden Law Firm ("Madden"). Appellants Mary and Michael Richardson ("Richardsons") argue that the circuit court erred in (1) finding that a five-year statute of limitations, pursuant to Arkansas Code Annotated section 16-56-111 (Repl. 2005), did not apply; (2) finding that fraudulent concealment had not occurred, thus tolling the statute-of-limitations period; and (3) failing to apply the "discovery rule" in this case. We find no error; accordingly, we affirm.

The Richardsons filed a complaint against Madden on December 8, 2010, stemming from Madden's representation of the Richardsons in their bankruptcy case, beginning in 2003. The conduct alleged in the Richardsons' complaint is as follows:

(1) Madden filed a fraudulent motion to add a creditor on November 18, 2003;

(2) Madden failed to protect the Richardsons' interests by not filing a response to a motion for relief from automatic stay filed by one of their creditors, Wells Fargo;

(3) Madden failed to contest an order filed by the circuit court on April 20, 2006, that placed the Richardsons' home in jeopardy and established additional hardships and restrictions upon them; and

(4) Madden filed a motion to be relieved as the Richardsons' attorney without just cause on July 14, 2006.

The Richardsons claim they had to take matters into their own hands during the pendency of their bankruptcy, including filing a motion to dismiss the motion for relief from automatic stay on March 15, 2006, and filing a motion to dismiss Madden's motion to be relieved as attorney on July 17, 2006. The Richardsons also allege that they lost a refinance loan on April 20, 2009, due to a fraudulent motion filed by Madden on November 18, 2003.

The Richardsons attempted to perfect service on December 14, 2010. The summons in this case, however, did not indicate that it was issued in the name of the State of Arkansas to Madden, but only lists her name under the heading "Defendant(s)." The Richardsons further served the complaint and summons on Madden by certified mail, return-receipt requested, but did not restrict delivery to her. Madden timely answered the complaint and affirmatively pled that the applicable statute of limitations was a bar to recovery for the Richardsons' claims. Madden also raised insufficiency of process and insufficiency of service of process as a defense. Madden then filed a motion to dismiss based on the applicable statute of limitations and service issues.

The circuit court held a hearing on Madden's motion to dismiss on February 14, 2011. At the hearing, the circuit court found that the Richardsons' claims were subject to the

three-year statute of limitations applicable to a legal malpractice claim and that all of their allegations against Madden occurred outside of the three-year time period. Accordingly, the circuit court granted Madden's motion to dismiss, pursuant to an order filed on March 8, 2011. The Richardsons filed a timely notice of appeal on March 29, 2011.

On appeal, this court treats this case as a review of a motion to dismiss and reviews only the sufficiency of the complaint. This court's standard of review for the granting of a motion to dismiss is whether the circuit court abused its discretion. *Dockery v. Morgan*, 2011 Ark. 94, 380 S.W.3d 377. When reviewing a circuit court's order granting a motion to dismiss, this court treats the facts alleged in the complaint as true and views them in the light most favorable to the plaintiff. *Id.* This court must look to the complaint itself in making a determination on the applicable statute of limitations. *Goldsby v. Fairley*, 309 Ark. 380, 831 S.W.2d 142 (1992). In addition, the complaint should be drafted in such a manner as to give a party fair notice of the claims and the grounds upon which it is based. *Id.*

When determining which statute of limitations to apply in a case, the court must look to the facts alleged in the complaint itself to ascertain the area of law in which they sound. *Sturgis v. Skokos*, 335 Ark. 41, 977 S.W.2d 217 (1998). If two or more statutes of limitations apply to a cause of action, generally the statute with the longest limitation period will be applied. *Kassees v. Satterfield*, 2009 Ark. 91, 303 S.W.3d 42. However, this court must look to the "gist" of the action to determine which statute of limitations to apply. *Id.* Although they attempt to categorize them differently, the claims the Richardsons use to frame their complaint—the "gist" of their claim—is legal malpractice. Accordingly, the three-year statute

of limitations that applies to legal-malpractice actions controls. Ark. Code Ann. § 16-56-105 (Repl. 2005); *Kassees*, *supra*. In claims for legal malpractice, ancillary contracts for representation do not extend the three-year statute of limitations. *Kassees*, *supra*; *see also Sturgis*, *supra* (holding that a contractual promise to act diligently did not transform the "gist" of plaintiffs' action from one for negligence into one for breach of the written agreement). Accordingly, we hold that the circuit court did not err in finding that (1) the three-year statute of limitations for legal malpractice applied and barred the Richardsons' claim, and (2) that the Richardsons failed to plead a viable cause of action regarding a breach of a separate and distinct written contract.

The Richardsons also attempt to argue that fraudulent concealment by Madden tolled the statute of limitations, but they failed to obtain a ruling from the circuit court on the issue of fraudulent concealment. This court will not address an argument on appeal if a party fails to obtain a ruling from the circuit court. *Reed v. Guard*, 374 Ark. 1, 285 S.W.3d 662 (2008).

Finally, the Richardsons claim that the circuit court erred in failing to apply the "discovery rule." Their argument on this issue, as with most of the Richardsons' brief, is extremely difficult to decipher, but they likewise failed to obtain a ruling from the circuit court on this issue. *See Reed*, *supra*. We note, however, that Arkansas has adhered to the traditional occurrence rule in legal malpractice cases since 1877. *Moix-McNutt v. Brown*, 348 Ark. 518, 74 S.W.3d 612 (2002). The occurrence rule provides that the statute of limitations begins to run, in the absence of concealment of the wrong, when the negligence occurs, and not when it is discovered. *Id.* The last negligent act alleged in the complaint occurred on

July 14, 2006. To timely commence an action, the Richardsons should have brought suit by July 14, 2009. They did not bring their action, however, until December 8, 2010. Applying Arkansas's occurrence rule, we affirm the circuit court's ruling that the Richardsons' action is time barred.

Affirmed.

HART and WYNNE, JJ., agree.

Mary Richardson and *Michael Richardson*, pro se appellants.

Friday, Eldgredge & Clark, LLP, by: *James M. Simpson*, *Martin A. Kasten*, and *Phillip M. Brick*, for appellee.