

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Sue Ann Chambers, Individually,
and as Guardian for Jerry L. Chambers
and Dawn Chambers

Court of Appeals No. L-10-1178

Trial Court No. CI08-2279

Appellants

v.

Stephen E. Cottrell

Appellee

v.

Sue Ann Chambers, Individually,
and as Guardian for Jerry L. Chambers
and Murray & Murray Co., LPA

DECISION AND JUDGMENT

Counterclaim Defendants

Decided: January 14, 2011

* * * * *

W. Patrick Murray and William H. Bartle, for appellants.

Reginald S. Jackson, Jr., Timothy P. Nackowicz, and
Edwin A. Coy for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, Dawn Chambers, appeals from a judgment of the Lucas County Court of Common Pleas granting summary judgment to appellee, Stephen E. Cottrell. For the reasons that follow, we affirm.

{¶ 2} In 2003, appellee, an attorney, was hired to represent Sue Ann Chambers, individually and as guardian of the person and estate of Jerry L. Chambers ("Sue Ann Chambers") in a lawsuit against Jerry Chambers' employer. In 2004, appellant, daughter of Sue Ann and Jerry Chambers, hired appellee to represent her in a lawsuit against a negligent motorist.

{¶ 3} In 2004, appellee reached a settlement in appellant's case and charged her \$33,000. In June 2005, Sue Ann Chambers fired appellee and retained the services of Murray and Murray Co. L.P.A. The case against Jerry Chambers' employer was settled.

{¶ 4} On February 26, 2008, Sue Ann Chambers and appellant filed a complaint against appellee. Count one of the complaint alleged that appellee was guilty of legal malpractice in his representation of Sue Ann Chambers. Count two alleged that, in representing appellant, he breached his contractual obligation to her. Appellant claimed appellee charged an excessive fee and refused to represent her after her parents terminated their professional relationship with him.

{¶ 5} On December 23, 2008, appellee filed a motion for summary judgment arguing that Sue Ann Chambers' claim and appellant's claim were barred by the statute of limitations. On May 8, 2009, the trial court denied summary judgment as to Sue Ann Chambers but granted appellee's motion for summary judgment as to appellant. She now appeals setting forth the following assignment of error:

{¶ 6} "It was error for the trial court to rule that Dawn Chambers' contract claim against Cottrell was not viable because the statute of limitations expired on her legal

malpractice claim. Her contract claim does not seek compensation for legal services below the standard of care. She seeks recovery on the basis of an ordinary contract where the defendant failed to provide promised service."

{¶ 7} On review, appellate courts employ the same standard for summary judgment as trial courts. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App.3d 127, 129. The motion may be granted only when it is demonstrated:

{¶ 8} "* * * (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 67, Civ.R. 56(C).

{¶ 9} The issue in this case is whether the claims asserted in appellant's suit amounted to a legal malpractice action. Appellant contends that her cause of action was of a contractual nature. The distinction is important because legal malpractice claims are subject to the one-year statute of limitations set forth in R.C. 2305.11(A), whereas breach of contract actions are subject to a 15 year statute of limitations. R.C. 2305.06.

{¶ 10} The Supreme Court of Ohio has held that, "[t]he crucial consideration in determining the applicable statute of limitations in a given action is the actual nature or subject matter of the cause, rather than the form in which the complaint is styled or pleaded." *Hunter v. Shenango Furnace Co.* (1988) , 38 Ohio St .3d 235, 237. "A party

cannot transform one cause of action into another through clever pleading or an alternate theory of law in order to avail itself of a more satisfactory statute of limitations. *Love v. Port Clinton* (1988), 37 Ohio St.3d 98, 100." *Callaway v. Nu-Cor Auto. Corp.*, 166 Ohio App.3d 56, 2006-Ohio-1343, *White v. Stotts*, 3d Dist. No. 1-10-44, 2010-Ohio-4827.

{¶ 11} Consequently, courts have found that, even where a plaintiff's pleadings frame his arguments against an attorney not as malpractice, but as claims on theories such as breach of contract, misrepresentation, or promissory estoppel, if the gravamen of the complaint is legal malpractice, the one-year statute of limitations will apply. *Leski v. Ricotta*, 8th Dist. No. 83600, 2004-Ohio-2860, ¶ 10. See, also, *Muir v. Hadler Real Estate Management Co.* (1982), 4 Ohio App.3d 89, 90.

{¶ 12} Appellee represented appellant after she was injured in a drunken driving accident through no fault of her own. In addition to charging an excessive fee, appellant contends that appellee breached their contract by failing to investigate other avenues of recovery in addition to the drunk driver directly responsible for her injuries. Specifically, appellant contends that appellee was contractually obligated to investigate possible dram shop claims and that he failed to do so. In support, appellant cites the contract she entered into with appellee which states in pertinent part: "[I] hereby retain and employ the law firm of [appellee] as my attorney to represent me in our claim for damages against * * * or any person or company who may be liable on account of the automobile accident on or about the 17th day of July 2004."

{¶ 13} Claims arising out of an attorney's representation, regardless of their phrasing or framing, constitute legal malpractice claims. *Hillman v. Edwards*, 10th Dist. No. 08AP-1063, 2009-Ohio-5087, ¶ 19. Here, appellant clearly did not believe that appellee adequately represented her interests. She essentially accused him of doing minimal work while charging an excessive fee. Her professional relationship with appellee was terminated in 2005. She filed suit in 2008. We agree with the trial court that the allegations in appellant's complaint are based upon the manner in which appellee represented her. As such, the one year statute of limitations pursuant to R.C. 2305.11(A) applies. Appellant's assignment of error is found not well-taken.

{¶ 14} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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