

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

ANTHONY W. THOMAS,	:	CASE NO. CA2026-01-012
Appellant,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
MICHAEL J. DAVIS., ESQ.,	:	8/24/2026
Appellee.	:	
	:	

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT
Case No. CVI 2500552

Anthony W. Thomas, pro se.

Michael J. Davis, Esq., pro se.

OPINION

M. POWELL, J.

{¶ 1} Anthony W. Thomas appeals the decision of the Mason Municipal Court dismissing his complaint against attorney Michael J. Davis, the appellee, as barred by the statute of limitations for legal malpractice. Finding no error, we affirm.

I. Factual and Procedural Background

{¶ 2} In the spring of 2023, Thomas was a respondent in a civil-stalking-protection-order proceeding in the Warren County Court of Common Pleas, captioned *Ehlers v. Thomas*. Following a hearing at which Thomas appeared pro se, a magistrate recommended a five-year protection order against Thomas and a co-respondent, William Petrey, whose separate case proceeded on the same record. On April 12, 2023, Thomas retained Davis for the task of preparing and filing objections to the magistrate's decision. Davis filed objections that same day, enumerating 28 asserted errors, and filed supplemental objections on May 16, 2023, adding five more.

{¶ 3} The parties' accounts of the representation diverge. Thomas alleges, and testified at trial, that Davis never met with him, never telephoned him, never answered his attempts at contact, and never consulted him about the content of the objections or the strategy behind them. Davis, by affidavit, maintains that his representation satisfied the applicable standard of care and that the objections he filed were proper and preserved Thomas's rights on appeal.

{¶ 4} On June 6, 2023, the trial court overruled all the objections, adopted the magistrate's decision, and left the five-year protection order in place. The clerk mailed notice of the final appealable order to Davis at his office. According to Thomas, Davis never informed him that judgment had been entered or that the matter had concluded, and Thomas learned of the adverse ruling through other means.

{¶ 5} Thomas then retained new counsel, Matt Miller-Novak, to pursue an appeal. On July 5, 2023, Miller-Novak filed a notice of appeal on behalf of both Thomas and Petrey. We consolidated the appeals, and Miller-Novak filed the appellate brief on August 8, 2023.

{¶ 6} On July 1, 2024, we decided that appeal. *Ehlers v. Thomas*, 2024-Ohio-

2531 (12th Dist.). We sustained the sole assignment of error, reversed, and remanded. In doing so, we rejected the contention that the appellants had forfeited their constitutional arguments by failing to object with particularity below, holding instead that "Appellants sufficiently objected below to the magistrate's decision on the constitutional grounds they are raising in this appeal." *Id.* at ¶ 13.

{¶ 7} On May 14, 2025, Thomas filed a small claims complaint against Davis in the Mason Municipal Court, alleging legal malpractice and breach of contract. His action was consolidated for trial with a separate action Petrey had brought against Davis. The matter proceeded to a trial before a magistrate, at which both parties appeared pro se and the court received documentary exhibits and testimony from each side. That testimony included Petrey's account that appellate counsel had told the co-appellants the objections could not be used in full "because they weren't done properly," and that the appellate court had characterized the objections as a "laundry list."

{¶ 8} On July 24, 2025, the magistrate entered a decision dismissing the complaint as barred by the one-year statute of limitations for legal malpractice in R.C. 2305.11(A). The magistrate found that the attorney-client relationship terminated, and that Thomas "knew or should have known that he may have claims against" Davis, on or before July 5, 2023, when Thomas retained new counsel to file the appeal. Thomas filed objections. On October 1, 2025, the trial court overruled the objections, adopted the magistrate's decision, and dismissed the complaint with prejudice.

{¶ 9} Thomas appealed.

II. Analysis

{¶ 10} Thomas, in his pro se brief, presents three assignments of error. Each challenges, from a different angle, the trial court's determination that his legal-malpractice claim was barred by the one-year statute of limitations in R.C. 2305.11(A). The first

asserts that the trial court misapplied the accrual test of *Zimmie v. Calfee, Halter & Griswold*, 43 Ohio St.3d 54 (1989), by allowing a single event to satisfy both of its prongs. The second asserts that the retention of new appellate counsel cannot, as a matter of law, constitute a cognizable event. The third asserts that no cognizable event occurred until we decided *Ehlers* on July 1, 2024.

A. Standard of Review

{¶ 11} We ordinarily review a trial court's decision to adopt a magistrate's decision for an abuse of discretion. *Miami Valley Constr. Group LLC v. Thompson*, 2021-Ohio-4358, ¶ 11 (12th Dist.). But whether a claim is time-barred on a given set of facts is a question of law, which we review de novo. See *Flowers v. Walker*, 63 Ohio St.3d 546, 550-551 (1992) (where the material facts are undisputed, when the cognizable event occurred presents no issue of fact for a jury but a question of law for the court).

{¶ 12} The material dates here are not in dispute. Thomas retained Davis on April 12, 2023. On June 6, 2023, the common pleas court overruled the objections Davis filed. New counsel filed a notice of appeal on July 5, 2023, and an appellate brief on August 8, 2023. We decided *Ehlers* on July 1, 2024. Thomas filed his malpractice complaint on May 14, 2025. On these undisputed facts, when Thomas's cause of action accrued is a legal question we decide without deference to the trial court.

B. The Governing Accrual Rule

{¶ 13} Under R.C. 2305.11(A), "an action for legal malpractice against an attorney . . . shall be commenced within one year after the cause of action accrued." The Ohio Supreme Court has held that such an action

accrues and the statute of limitations begins to run when there is a cognizable event whereby the client discovers or should have discovered that his injury was related to his attorney's act or non-act and the client is put on notice of a need to pursue his possible remedies against the attorney or when the

attorney-client relationship for that particular transaction or undertaking terminates, whichever occurs later.

Zimmie, 43 Ohio St.3d at syllabus, applying *Omni-Food & Fashion, Inc. v. Smith*, 38 Ohio St.3d 385 (1988). Claims sounding in legal malpractice are governed by the one-year statute regardless of label. *Wilkerson v. O'Shea*, 2009-Ohio-6550, ¶ 17-18 (12th Dist.) (claims that sound in legal malpractice despite a plaintiff's attempt to label them otherwise are subject to R.C. 2305.11[A]).

{¶ 14} The test thus requires "two factual determinations: (1) When should the client have known that he or she may have an injury caused by his or her attorney? and (2) When did the attorney-client relationship terminate? The latter of these two dates is the date that starts the running of the statute of limitations." *Smith v. Conley*, 2006-Ohio-2035, ¶ 4, citing *Zimmie* at syllabus, and *Omni-Food* at paragraph one of the syllabus.

{¶ 15} Three principles govern the first inquiry, the cognizable event. First, the inquiry is objective. A cognizable event is one "sufficient to alert a reasonable person that his or her attorney may have committed an improper act and that further investigation is needed." *Dottore v. Vorys, Sater, Seymour & Pease, L.L.P.*, 2014-Ohio-25, ¶ 58 (8th Dist.), quoting *Trustees of Ohio Carpenters' Pension Fund v. U.S. Bank Natl. Assn.*, 2010-Ohio-911, ¶ 10 (8th Dist.). Second, the client need not appreciate the full extent of the injury or grasp its legal significance. *Zimmie* at 58. "[C]onstructive knowledge of facts, rather than *actual* knowledge of their legal significance, is enough to start the statute of limitations running under the discovery rule." (Emphasis sic.) *Flowers*, 63 Ohio St.3d at 549. Third, the cognizable event carries with it a duty of diligence. The event "itself puts the plaintiff on notice to investigate the facts and circumstances relevant to her claim in order to pursue her remedies." *Id.* It is enough that "some noteworthy event . . . has occurred" that "does or should alert a reasonable person" to the possibility that "a

questionable legal practice may have occurred." *Zimmie* at 58.

C. The Two-Prong Analysis

{¶ 16} The first assignment of error states:

THE TRIAL COURT ERRED IN APPLYING THE *ZIMMIE* ACCRUAL TEST BY FAILING TO CONDUCT INDEPENDENT ANALYSIS OF EACH PRONG AND INSTEAD TREATING A SINGLE EVENT AS SIMULTANEOUSLY SATISFYING BOTH THE TERMINATION AND COGNIZABLE EVENT REQUIREMENTS.

{¶ 17} Thomas first argues that the trial court committed legal error by treating a single occurrence, the July 5, 2023 appeal filing by new appellate counsel, as simultaneously satisfying both the termination prong and the cognizable-event prong of the statute-of-limitations-commencement test. The argument fails for two reasons.

{¶ 18} The first reason is that the premise is mistaken as a matter of law. The law requires that both questions be answered; it does not require that they be answered with different dates. The two prongs are independent inquiries, and each must rest on facts sufficient in itself, but nothing forbids the two dates from coinciding. What matters is that the cognizable event rest on facts that independently gave notice, not that those facts arrive on a different day than the termination. Here, as we explain under the second assignment of error, the facts supplying notice had all occurred by early July 2023. Judgment had been entered against Thomas in the matter Davis was retained to handle, Davis had been silent, and Thomas had learned of the judgment from a third party. That they were all true by the same date the attorney-client relationship ended is a coincidence of timing. The magistrate identified each prong and applied the later date. Whether the notice finding was correct is the subject of the remaining assignments of error, but fixing both prongs on one date is not itself error.

{¶ 19} The second reason Thomas's argument fails is that the premise is

immaterial. Even if the trial court had fixed the cognizable event at some later, independently derived date, no date supported by any evidence falls after May 14, 2024, the date one year before Thomas filed his complaint. As we will explain, the latest event to which Thomas can plausibly point, apart from our *Ehlers* decision, is the August 8, 2023 filing of his appellate brief. A complaint filed May 14, 2025, would remain untimely by many months under any such date.

{¶ 20} The first assignment of error is overruled.

D. The Cognizable Event

{¶ 21} The second assignment of error states:

THE TRIAL COURT ERRED IN HOLDING THAT APPELLANT'S RETENTION OF NEW APPELLATE COUNSEL ON JULY 5, 2023 CONSTITUTED A COGNIZABLE EVENT ESTABLISHING DISCOVERY OF MALPRACTICE, WHERE RETENTION OF NEW COUNSEL DOES NOT, AS A MATTER OF LAW, PLACE A CLIENT ON NOTICE THAT PRIOR COUNSEL'S WORK WAS LEGALLY DEFICIENT.

{¶ 22} Thomas next contends that the retention of new appellate counsel cannot, as a matter of law, constitute a cognizable event, because clients change lawyers for many reasons that imply no belief that prior counsel erred. As an abstract proposition, Thomas is on solid ground. A rule that every litigant who loses in the trial court and hires appellate counsel is thereby charged with knowledge of malpractice would collapse the distinction between losing and malpractice. And we acknowledge that the magistrate's decision, read strictly, ties the notice finding to the retention itself, fixing the date "when Plaintiff retained another attorney" as the moment Thomas knew or should have known of his claims. To the extent that phrasing suggests the mere act of hiring new counsel supplied the notice, we do not adopt it. But our review of the time-bar question is de novo, and on de novo review we affirm a correct judgment even where our reasoning differs

from the trial court's. See *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990). On the undisputed facts of this record, the judgment is correct, because the cognizable event rests on far more than the retention.

{¶ 23} The cognizable event rests on the totality of what Thomas knew by early July 2023. By that time, Thomas knew that he had retained Davis for one discrete undertaking, the objections to the magistrate's protection-order decision, and that the trial court had overruled the objections. He knew that judgment had been entered against him and that a five-year protection order stood in place. He knew, by his own account, that Davis had never met with him, never called him, never responded to his attempts at contact, and never told him the case was over. Indeed, Thomas alleges he learned of the June 6, 2023 judgment through means other than his own attorney. A reasonable person who learns that final judgment has entered against him in the very matter his attorney was hired to handle, and learns it from someone other than that attorney, has encountered precisely the sort of "noteworthy event" that "should have alerted a reasonable person that a questionable legal practice may have occurred." *Zimmie*, 43 Ohio St.3d at 58.

{¶ 24} The Ohio Supreme Court's decisions confirm that an adverse ruling in the underlying matter can itself be the cognizable event when the alleged negligence pertains to counsel's handling of that matter. In *Zimmie*, the cognizable event was the trial court's invalidation of the antenuptial agreement the defendant attorney had drafted, notwithstanding a pending appeal and damages not yet fully ascertainable. *Id.* In *Conley*, where the client alleged that trial counsel's errors resulted in his conviction, the Court held that "the date of the conviction is the date that [the defendant] should have known that he had an injury caused by [counsel]." *Conley*, 2006-Ohio-2035, at ¶ 5. Thomas's grievance is similar. He alleges that Davis's objections were so deficient that they failed, and that Davis abandoned all communication throughout. The failure of the objections was

announced by the June 6, 2023 entry, and the abandonment was known to Thomas as it occurred. One cannot be unaware of one's own attorney's silence.

{¶ 25} Thomas responds that "an adverse result does not, of itself, give rise to a presumption of malpractice," a proposition he supports with a general citation to *Flowers*. We can find no language in the opinion supporting that proposition. Also, the underlying idea is weak. The cognizable-event standard does not ask whether the client could presume malpractice. It asks whether the facts known to the client would put a reasonable person on notice of the need to investigate. *Flowers*, 63 Ohio St.3d at 549. Knowledge that malpractice in fact occurred is exactly what the law does not require; constructive knowledge of the facts suffices, even without appreciation of their legal significance. *Id.* Here, the known facts, taken together, imposed on Thomas the duty to investigate. The objections Davis filed were a matter of public record, available to Thomas or his new counsel to evaluate at any time. Indeed, at the trial there was testimony that new appellate counsel told his clients, in connection with the appellate brief filed on August 8, 2023, that the objections could not be fully used "because they weren't done properly." Thomas dismisses that testimony as speculation unsupported by an affidavit from appellate counsel, but it was credible testimony given at the trial. And even setting aside the testimony, the objective facts known to Thomas by July 5, 2023, sufficed.

{¶ 26} The accrual question we resolve here is not one for a factfinder. The Ohio Supreme Court rejected a similar argument in *Flowers*, where the plaintiff contended that reasonable minds could differ on when the cognizable event occurred, and the Court answered that on undisputed facts the question is one of law. *Flowers*, 63 Ohio St.3d at 550-551. *Accord Kinasz v. Dickson*, 2018-Ohio-1754, ¶ 30 (8th Dist.) (resolving both prongs as a matter of law). The material dates here are undisputed, and on this record no reasonable person, attorney or layperson, learning of the judgment as Thomas did

could fail to be on notice of the need to investigate. The standard demands inquiry, and the duty to inquire is what the cognizable event triggers.

{¶ 27} The second assignment of error is overruled.

E. Nondisclosure and the *Ehlers* Decision

{¶ 28} The third assignment of error states:

THE TRIAL COURT ERRED IN CHARGING APPELLANT WITH CONSTRUCTIVE KNOWLEDGE OF DEFENDANT'S MALPRACTICE WHERE: (A) DEFENDANT'S TOTAL FAILURE TO COMMUNICATE DEPRIVED APPELLANT OF ALL INFORMATION NECESSARY TO EVALUATE THE ADEQUACY OF HIS REPRESENTATION; (B) DEFENDANT FAILED TO INFORM APPELLANT THAT THE FINAL APPEALABLE ORDER HAD ENTERED; AND (C) THE COGNIZABLE EVENT—THIS COURT'S EXPRESS IDENTIFICATION OF DEFENDANT'S WORK PRODUCT AS LEGALLY DEFICIENT IN *EHLERS V. THOMAS*—DID NOT OCCUR UNTIL AFTER MAY 14, 2024.

{¶ 29} Thomas contends in his third assignment of error that Davis's complete failure to communicate deprived him of the information needed to evaluate the representation, that Davis concealed the entry of the final appealable order, and that the true cognizable event was therefore our July 1, 2024 decision in *Ehlers*, which Thomas reads as expressly identifying Davis's objections as legally deficient. A cognizable event that occurred after May 14, 2024, would mean that his May 14, 2025 complaint was timely. But each step of Thomas's argument fails.

{¶ 30} Beginning with the failure to communicate, the noncommunication Thomas invokes is not a hidden fact that delayed his discovery of the malpractice. It is the malpractice, or a substantial part of it, as Thomas himself frames the claim. An attorney's silence is experienced by the client in real time. Every fact constituting that alleged breach, the unreturned calls, the absence of any meeting or consultation, the filing of objections without input, was fully known to Thomas while the representation was ongoing

and certainly by its termination. A client cannot maintain that his attorney's known conduct prevented him from discovering that very conduct. And it gets Thomas no further to argue that the noncommunication prevented him from assessing the quality of Davis's work product. The cognizable event triggers a duty to investigate, and the objections were a matter of public record, available to Thomas and to the appellate counsel whom he had retained by July 5, 2023, and who reviewed the record to brief the appeal by August 8, 2023. Subsequent discoveries of the full extent of an attorney's improper conduct do not postpone accrual once the client is on notice of a potential problem. See *Kinasz*, 2018-Ohio-1754 at ¶ 19 (8th Dist.).

{¶ 31} The silence as to the June 6, 2023 judgment entry fares no better. An attorney's affirmative concealment of material facts is one thing. See *Flowers*, 63 Ohio St.3d at 550 ("Fraudulent concealment . . . is, of course, another matter"). But concealment can delay accrual only for so long as it succeeds. By Thomas's own account, he learned of the June 6 judgment, through other means, in time to retain new counsel and file a notice of appeal on July 5, 2023, within the 30-day appeal period. Whatever brief interval Davis's silence produced, it ended nearly two years before Thomas filed this action.

{¶ 32} That leaves Thomas's primary contention that our *Ehlers* decision was the first objective, authoritative identification of Davis's deficient work and hence the cognizable event. The contention has several problems.

{¶ 33} First, it is foreclosed by *Zimmie* itself. The plaintiff there argued that he was not aware of the malpractice until the appellate court finally confirmed that the antenuptial agreement was invalid. The Ohio Supreme Court rejected the argument, holding that "[a]dopting a rule of law that a client is entitled to exhaust all appellate remedies before the statute of limitations commences . . . would be counter to our holdings in *Hershberger*

and its progeny." *Zimmie*, 43 Ohio St.3d at 58. Thomas's position is a variation of the same idea, that the clock could not start until an appellate court reviewed the quality of his former attorney's work. But Ohio law places the trigger earlier, at the point when known facts call for investigation, and it manages any resulting uncertainty about the underlying case through a stay of the malpractice action, not through postponed accrual. *Id.* at 59.

{¶ 34} Also found in Thomas's reliance on *Ehlers* is the related suggestion that because we ultimately reversed the protection order, he suffered no injury until the underlying dispute was resolved, and no cause of action could accrue before an injury existed. The majority in *Zimmie* rejected this argument too. Accrual does not await fully ascertainable damages. "Although [the plaintiff]'s damages were not completely ascertainable after the trial court invalidated the antenuptial agreement, [the plaintiff] was appreciably and actually damaged by the trial court decision." *Id.* at 58. So too here. The June 6, 2023 judgment subjected Thomas to a five-year protection order that restrained him for more than a year, and he incurred the expense of appellate counsel to undo it. Moreover, the limitations analysis assumes that a potential claim existed and asks only when Thomas was on notice to pursue it. Whether he could ultimately have proven damages proximately caused by Davis's conduct is a merits question the time bar makes it unnecessary to reach.

{¶ 35} Second, Thomas's contention rests on a misreading of *Ehlers*. Thomas asserts that we "expressly criticized" Davis's objections as "a laundry list of complaints lacking legal authority." That is not what we said. The "laundry list" phrase appears in *Ehlers* only as our recital of an argument made by the opposing party. We noted "Ehlers' comment in her brief that Appellants' objections to the magistrate's decision were merely a "'laundry list' of potential objections,'" observed that the comment appeared to invoke Civ.R. 53(D)(3)(b)(ii)'s particularity requirement, and then rejected the point. *Ehlers*, 2024-

Ohio-2531, at ¶ 11-13 (12th Dist.). Our conclusion was the opposite of a finding of deficiency: "the plain error doctrine doesn't apply because we find that Appellants sufficiently objected below to the magistrate's decision on the constitutional grounds they are raising in this appeal." *Id.* at ¶ 13. Far from revealing that Davis's objections were legally inadequate, the *Ehlers* decision determined that the objections were sufficient to preserve the constitutional arguments on which Thomas prevailed. It is true that *Ehlers* offered an alternative ground, observing that even if the objections had been insufficient, the firearm restriction would have constituted plain error in any event. *Id.* But that alternative does not help Thomas here. It addressed only the weapon restriction, and it merely explained why the merits would be reached regardless. Also, like the primary holding, it identified no deficiency in Davis's work while delivering Thomas complete success on the assignment of error presented. An opinion holding that counsel's filing preserved the client's winning arguments cannot serve as the event that first alerted a reasonable person to counsel's malpractice.

{¶ 36} Finally, even stretching matters, Thomas's malpractice claim remains untimely. The latest accrual date that any evidence in this record could support, apart from the *Ehlers* decision we have just rejected, is August 8, 2023, when appellate counsel filed the brief after reviewing Davis's objections and, per the trial testimony, advising his clients that the objections had not been done properly. Measured from that date, the limitations period expired August 8, 2024. The complaint filed May 14, 2025, came more than nine months too late. Measured from July 5, 2023, the date the magistrate fixed, it came more than ten months too late. Comparing the termination date, at the latest July 5, 2023, with every supportable discovery date, we determine that the later of the two falls no later than August 8, 2023, and the action is barred under any view of the record.

{¶ 37} The third assignment of error is overruled.

III. Conclusion

{¶ 38} We have overruled all three assignments of error. By the summer of 2023, Thomas knew that judgment had entered against him in the matter Davis was retained to handle, knew that Davis had never communicated with him and had not told him of the judgment, and had retained new counsel who reviewed and worked around Davis's objections. Those facts placed a reasonable person on notice of the need to investigate a potential claim, and the attorney-client relationship had by then terminated. Thomas's cause of action accrued no later than August 8, 2023, and his complaint filed May 14, 2025, was untimely under R.C. 2305.11(A). The trial court did not err in overruling Thomas's objections and adopting the magistrate's decision dismissing the complaint.

{¶ 39} The trial court's judgment is affirmed.

PIPER, P.J., and SIEBERT, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Mason Municipal Court for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge