

**IN THE COURT OF APPEALS OF IOWA**

No. 6-657 / 04-1852  
Filed October 11, 2006

**NAPOLEON HARTSFIELD,**  
Plaintiff-Appellant,

**vs.**

**PATRICIA ZAMORA,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Plaintiff appeals the district court's order granting summary judgment in a  
legal malpractice case for failure to designate an expert witness pursuant to Iowa  
Rules Civil Procedure 668.11 (2005). **AFFIRMED.**

Napoleon Hartsfield, Anamosa, pro se.

Patrick M. Roby and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar  
Rapids, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J. and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**PER CURIAM**

Plaintiff Napoleon Hartsfield appeals from an order granting summary judgment in his legal malpractice action against defendant Patricia Zamora. The district court dismissed the action because Hartsfield had not designated an expert within the required time. Hartsfield contends he was not required to designate an expert because Zamora's negligence was so clear that it could be recognized or inferred by a person who is not an attorney. He further contends the district court should have granted his motion to appoint an expert for him. We affirm.

Hartsfield sued Zamora contending she had committed malpractice in representing him in several criminal actions. More than 180 days after Zamora had filed an answer to Hartsfield's petition she filed a motion for summary judgment. In the motion she contended Hartsfield had failed to designate a legal expert as provided for in Iowa Code section 688.11 (2003)<sup>1</sup> and that Hartsfield's action should be dismissed. The district court agreed and dismissed the action.

We review a grant or denial of summary judgment for correction of errors at law. *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). Summary judgment will be affirmed when the moving party shows no

---

<sup>1</sup> Iowa Code section 668.11 provides in relevant part:

1. A party in a professional liability case brought against a licensed professional pursuant to this chapter who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:

a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of the disclosure.

2. If a party fails to disclose an expert pursuant to subsection 1 or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown.

genuine issue of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3) (2005).

Hartsfield was arrested for and convicted of possession of controlled substances. He contends the trial information was not filed within the required time and that Zamora should have filed a motion to dismiss on this basis.

Iowa's speedy indictment rule provides:

When an adult is arrested for the commission of a public offense . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives the defendant's right thereto.

Iowa R. Crim. P. 2.33(2)(a) (2005).<sup>2</sup>

Hartsfield contends in his appellate brief that he was arrested for the charge on August 22, 2001 and the trial information was not filed until October 16, 2001, making the filing nine days past the required forty-five days. The record is unclear as to whether these facts are true, but even if they are, they do not negate his need to designate a legal expert.

In order to prevail on a legal malpractice claim the plaintiff must prove through substantial evidence that (1) there is an attorney-client relationship giving rise to a duty; (2) the attorney, either by an act or failure to act, violated or breached that duty; (3) the attorney's breach of duty proximately caused injury to the client; and (4) the client sustained actual injury, loss, or damage. *Kubik v. Burk*, 540 N.W.2d 60, 64 (Iowa Ct. App. 1995) (citing *Schmitz v. Crotty*, 528 N.W.2d 112, 115 (Iowa 1995)).

---

<sup>2</sup> Renumbered from rule 27 on November 9, 2001; effective February 15, 2002.

Hartsfield contends he was not required to designate an expert because exceptions to the expert testimony rule apply. See *Kubik*, 540 N.W.2d at 64 (“Expert testimony that an attorney’s conduct is negligent is necessary unless proof is so clear a trial court can rule as a matter of law that the professional failed to meet an applicable standard or the conduct is so clear it can be recognized or inferred by a person who is not an attorney.”).

As Zamora correctly argues, in addition to whether the forty-five day period had lapsed, Hartsfield was required to show other issues requiring a legal opinion including whether there was “good cause” or “waiver of the rule.” Most importantly, Hartsfield would have to show whether there were tactical reasons not to invoke the rule and whether he was prejudiced and suffered an injury. The district court was correct in entering summary judgment for the defendant.

Hartsfield also contends that the district court should have granted his request to obtain an expert for him because he did not have the resources to hire an expert himself, he had been granted indigent status and his filing fees were waived. When ruling on issues concerning experts the review generally is for an abuse of discretion. See *State v. Schutz*, 579 N.W.2d 317, 320 (Iowa 1998).

Hartsfield cites no authority to support his proposition that he is entitled to have the court obtain an expert for him under these circumstances. There is no basis to require the district court to obtain an expert for Hartsfield. Even if there were, the district court did not abuse its discretion in not granting the motion.

**AFFIRMED.**