IN THE COURT OF APPEALS OF IOWA

No. 8-831 / 08-0126
Filed December 31, 2008

BLANE STEFFES, LEONA FRAZIER, DIANA FISCHER, and LEONA FRAZIER and DIANA FISCHER as Executors of the Estate of Cordellia Steffes, Deceased,
Plaintiffs-Appellants,

vs.

BARRY T. BRUNER,
Defendant-Appellee.

Appeal from the Iowa District Court for Carroll County, Carl D. Baker, Judge.

The plaintiffs appeal from the district court's order granting summary judgment in favor of the defendant on the plaintiffs' legal malpractice suit. **AFFIRMED.**

Christopher P. Welsh of Welsh & Welsh, P.C., L.L.O., Omaha, Nebraska, for appellants.

Kevin J. Driscoll and Eric G. Hoch of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Blane Steffes, individually, and Leona Frazier and Diana Fischer, individually and as executors of the estate of Cordellia Steffes, (Plaintiffs) appeal from the district court's order granting summary judgment in favor of Barry Bruner. The Plaintiffs argue the district court erred in finding their legal malpractice claim barred under Iowa Code section 614.1(4) (2005). We affirm.

I. Background Facts and Proceedings.

This case arises from Barry Bruner's representation of Cordellia Steffes and his alleged simultaneous representation of her son, Alden Steffes. The Plaintiffs in this case are Cordellia's three other children. Cordellia was married to Frank Steffes, and Cordellia and Frank were parents to the four children.

In 1972 Frank and Cordellia gave Alden a 184-acre farm. From 1977 to 1982, Frank and Cordellia provided Alden with the money to purchase three farms, consisting of 160, 191, and 115 acres. The understanding was that Alden would hold title to the farms until Frank and Cordellia passed away, at which time he would sell the land and split the proceeds with his siblings. Frank passed away in 1982, and Cordellia inherited two more farms, consisting of the 180-acre "East Place" and the 160-acre "Home Place." Although Bruner did not draft Frank's will, he probated his estate.[1]

In 1984 Bruner represented Cordellia in a transfer to Alden of the "Home Place" for one dollar. Between 1984 and 1987 Bruner allegedly represented both Cordellia and Alden in several land transfers from Cordellia to Alden. In 1987 Blane questioned Bruner about the transfers between Cordellia and Alden.

[1] Cordellia and Bruner did not know each other before the probate of Frank's estate.

Bruner allegedly told Blane that he was looking out for Cordellia's best interests. In 1997 Alden filed for dissolution of his marriage from his wife, Sharon. Blane's attorney, Robert Kohorst, drafted a motion to intervene for Blane due to Blane's concerns that Sharon might receive land in the dissolution that was supposed to be held in trust for Blane and his siblings. The motion was denied.[2]

In 1997, following Alden and Sharon's dissolution proceedings, Blane spoke with Alden and Alden's attorney for the dissolution, Greg Siemann. Blane claimed Bruner represented both Cordellia and Alden during the land transfers and that Bruner's dual representation created a conflict of interest. In his deposition, Siemann stated he specifically remembered Blane using the term "conflict of interest" because he was surprised Blane used a legal term to describe the situation.

In 1998 Cordellia filed a lawsuit against Alden to get back the property she transferred to him. Robert Kohorst represented Cordellia in that action. Trial was set for December 1999. Alden's attorney became ill and had to withdraw from the case. Trial was reset for October 2000. At trial, Kohorst introduced into evidence Alden's deposition testimony from Alden's dissolution proceedings where he stated that Bruner represented him on the land transfers between

[2] Sharon did ultimately receive some of the property Frank and Cordellia conveyed to Alden. The district court later ordered Sharon to return property to Blane and his sisters because it had been held in a constructive trust. However, in *Levis v. Steffes*, No. 04-1117 (Iowa Ct. App. Jan. 19, 2006), this court determined Frank and Cordellia had not established a family trust for the benefit of their children and the children could not claim ownership in the property conveyed to Alden or property Sharon received in the dissolution of her marriage to Alden.

himself and Cordellia. Alden failed to appear at the trial, and the court granted a default judgment.[3]

Cordellia passed away in 2002. Following several unsuccessful lawsuits in an effort to recover the land transferred to Alden, the Plaintiffs, in their individual capacities, filed a legal malpractice action against Bruner in August 2005. The basis for the action was that Bruner simultaneously represented Alden's interest on various transactions and therefore breached his duty to Cordellia with regard to the transfer of certain real property.[4] Finding Blane had knowledge of the alleged conflict of interest in 1997, the district court determined the Plaintiffs' action was barred by the five-year statute of limitations and granted Bruner's motion for summary judgment.

The Plaintiffs requested that the court reconsider its ruling. The court confirmed its ruling and further found the Plaintiffs did not have standing to bring the claim as individuals. The court's second ruling prompted Leona and Diana,[5] as executors of Cordellia's estate, to bring a claim on behalf of the estate against Bruner. Determining Cordellia was on inquiry notice of the potential legal malpractice claim against Bruner in 1998 when she filed suit against Alden in an attempt to retrieve land she had transferred to him, the court again found the action barred by the five-year statute of limitations and granted Bruner's motion for summary judgment. The Plaintiffs now appeal.

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[3] Alden's whereabouts continue to be unknown.

[4] We note that nothing in the record actually establishes that Bruner breached his duty to Cordellia. Previous motions and rulings in this case have assumed, *arguendo*, a potential legal malpractice claim existed for Cordellia against Bruner in order to determine whether such claim would be viable under the statute of limitations. In order to review the district court's ruling, we continue to assume the existence of a potential legal malpractice claim.

[5] Blane passed away in early 2008.

II. Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Wallace v. Des Moines Indep. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008). Summary judgment is available only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008); *Rodda v. Vermeer Mfg*., 734 N.W.2d 480, 483 (Iowa 2007). An issue of material fact occurs when the dispute involves facts that might affect the outcome of the suit under the applicable law. *Wallace*, 754 N.W.2d at 857. Such issue is "genuine" when the evidence allows a reasonable jury to return a verdict for the nonmoving party. *Id*. The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.*; *Rodda*, 734 N.W.2d at 483.

III. Issues on Appeal.

A. Imputed Knowledge.

The statute of limitations for legal malpractice actions is five years. *See* Iowa Code § 614.1(4). The district court found Cordellia's claim accrued and the statute of limitations began to run in September 1998 (when her attorney at that time, Kohorst, filed a lawsuit on behalf of Cordellia in attempt to retrieve land she had transferred to Alden) and determined the Plaintiffs' claim filed in August 2005 was time-barred.[6] Prior to filing the lawsuit, Kohorst reviewed Alden's deposition

[6] After the court determined the statute of limitations on Cordellia's claim began to run in September 1998, the court found the statute expired in September 2003. The court

testimony from his dissolution proceeding in which Alden stated that Bruner represented him on the land transfers between himself and Cordellia. The court determined Kohorst's knowledge of Alden's statements was imputed to Cordellia. *See Robinson v. State*, 687 N.W.2d 591, 594 (Iowa 2004) ("Our courts have long recognized the general rule that notice to an attorney in respect to a matter in which he is then acting for a client is notice to the client." (quotations omitted)); *In re R.E.*, 462 N.W.2d 723, 728 (Iowa Ct. App. 1990).

There are four exceptions to the general rule that knowledge of an attorney is chargeable to the client:

> (1) the knowledge possessed by the attorney came from a privileged source and is therefore not legally or properly communicable to the client; (2) the attorney had a personal interest that was adverse to the client; (3) the attorney acted fraudulently; or (4) the particular facts of the case allow the general rule to be avoided.

R.E., 462 N.W.2d at 728. The supreme court has noted that the fourth exception is not well-defined or well-based. *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 888 (Iowa 1981). The district court did not find any of the exceptions to be present in this case.

The Plaintiffs argue the district court erred in imputing the knowledge of Cordellia's attorney to Cordellia and finding the statute of limitations on her claim began to run in September 1998. They contend there is a genuine issue of material fact as to when Kohorst reviewed the deposition of Alden, and the only

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noted, however, that Cordellia passed away in 2002. The statute of limitations can be extended when the potential claimant dies within one year of the expiration of the statute. Iowa Code § 614.9. In such a situation, the limitation shall not apply until one year after the claimant's death. *Id*. Therefore, the court concluded the statute of limitations expired on the first anniversary of Cordellia's death in 2003. The Plaintiffs filed the original petition in August 2005, after the statute of limitations had run.

definitive evidence that could be imputed to Cordellia is that Kohorst introduced the deposition at the trial on Cordellia's claim in October 2000.[7] Further, the Plaintiffs allege they did not individually have actual knowledge of Bruner's dual representation until Bruner testified in 2004 in the case brought against Alden's ex-wife, Sharon. The Plaintiffs filed the present claim against Bruner in August 2005. Therefore, the Plaintiffs contend that considering either situation, the present claim was filed within the five-year statute of limitations.

The Plaintiffs further allege the district court misapplied Iowa law in determining Kohorst's knowledge of Bruner's dual representation was imputable to Cordellia. The Plaintiffs argue that under *Farnsworth v. Hazelett*, 197 Iowa 1367, 199 N.W. 410, 412 (1924), the presumption of imputed knowledge applies only to the case the attorney was retained to litigate and not to everything the attorney may have knowledge of. The Plaintiffs contend (1) the court had no basis for imputing any knowledge of Kohorst regarding Bruner's dual representation of Alden and Cordellia because that knowledge was not relevant to Cordellia's claim against Alden and (2) there is nothing in the evidence to prove Kohorst communicated to Cordellia that he discovered Bruner had been involved in concurrent representation of Alden while he represented her and that she could bring a claim against Bruner for breach of fiduciary duty.

Bruner contends the Plaintiffs' claim against him is barred by the statute of limitations because Cordellia was on inquiry notice of the potential conflict of interest claim in 1998 when her attorney, Kohorst, reviewed Alden's deposition

[7] Kohorst originally filed the petition in September 1998, and trial was set for December 1999. Alden's attorney became ill, however, and had to withdraw from the case. Trial was therefore reset for October 2000.

testimony from Alden's dissolution proceedings where Alden stated that Bruner represented him on the land transfers from Cordellia to Alden. Bruner further argues that Blane was aware of a potential conflict of interest in 1997.[8]

We agree with the district court that Kohorst's knowledge, imputable to Cordellia, initiated the statute of limitations on Cordellia's legal malpractice claim against Bruner in September 1998. Kohorst not only represented Cordellia in her claim against Alden in 1998, he also drafted Blane's motion for intervention in Alden's dissolution proceedings in 1997. The record reveals that prior to filing the original petition in Cordellia's action in September 1998, Kohorst conducted an independent investigation to determine whether the petition was well grounded in fact. He reviewed two depositions of Alden in which Alden stated that Bruner represented him on the land transfers from Cordellia to Alden.[9] Kohorst also reviewed documents of real estate transfers and correspondence from Alden. Kohorst clearly had knowledge of this information and used it to make Cordellia's case against Alden.

We find the Plaintiffs' contention that Bruner's dual representation of Alden and Cordellia was not relevant to Cordellia's claim against Alden to be without merit. Cordellia brought her claim against Alden to get back the property she transferred to Alden. Any evidence of simultaneous representation by one attorney throughout these land transfers would be relevant to Cordellia's claim

[8] Bruner alleges the record shows Blane was aware of a potential conflict of interest in 1997, when Blane claimed Bruner represented both Cordellia and Alden during the land transfers and that Bruner's dual representation created a conflict of interest.

[9] In his deposition testimony, Alden stated Bruner was his attorney for all of Alden's farm purchases, with the possible exception of the very first farms. Specifically, Alden stated Bruner was his attorney when he purchased the "Home Place" and the "East Place" that Cordellia had inherited upon Frank's death in 1982.

against Alden. We therefore find Kohorst's knowledge in September 1998 put Cordellia on inquiry notice of a potential legal malpractice claim against Bruner. *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 450 (Iowa 2008) (discussing the rule that "the knowledge needed to start the statute of limitations only meant that the plaintiff needed that amount of information to allow a reasonably prudent person to discover the fraud or wrong by making inquiries"); *Christy v. Miulli*, 696 N.W.2d 694, 703 (Iowa 2005) ("Once a person has inquiry notice, he is held to have knowledge of all the facts that would have been disclosed by a reasonably diligent investigation." (quotations omitted)).

We further find none of the four exceptions to the general rule of imputed knowledge apply in this case. Kohorst's information did not come from a privileged source. Furthermore, the record does not contain any evidence that Kohorst had any interest adverse to Cordellia or that Kohorst acted fraudulently. Finally, we find the facts of this case did not compel the court to apply the rarely used fourth exception to the general rule.[10]

We decline to find error in the court's ruling that Cordellia's claim accrued and the statute of limitations began to run in September 1998 when Kohorst filed a lawsuit on behalf of Cordellia in attempt to retrieve land she had transferred to Alden. Kohorst's knowledge of Alden's deposition testimony was properly imputed to Cordellia. We find there is no genuine issue of material fact as to whether Cordellia was on inquiry notice of a potential legal malpractice claim

[10] The Plaintiffs allege the district court erred in failing to find the fourth exception applicable in this case. The Plaintiffs contend Bruner's fraudulent concealment of his actions is an example of the fourth exception allowing the general rule of imputed knowledge to be avoided. We will discuss the Plaintiffs' argument with regard to fraudulent concealment below.

against Bruner in 1998, and the statute of limitations on such claim began to run at that time. We therefore agree with the district court and affirm with regard to this issue.

B. Fraudulent Concealment.

Plaintiffs argue the court erred in failing to find Bruner's alleged fraudulent concealment of his actions tolled the statute of limitations in this case. The Plaintiffs contend the statute of limitations should be tolled until 2004, when Bruner admitted he represented Alden while he represented Cordellia.[11] The Plaintiffs allege that prior to 2004, Bruner fraudulently concealed his dual representation of Cordellia and Alden.

Under Iowa law, fraudulent concealment is a form of equitable estoppel. *Christy*, 696 N.W.2d at 701. Fraudulent concealment is a defense to the application of the statute of limitations. *Id*. at 700. "[F]raudulent concealment does not affect the running of the statutory limitations period; rather it estops a defendant from raising a statute-of-limitations defense." *Id*. at 701. As our supreme court has noted:

> This doctrine is intended to prevent a party from benefitting from the protection of a limitations statute when by his own fraud he has prevented the other party from seeking redress within the period of limitations. It should not matter what particular fact is concealed so long as the defendant's conduct prevents the timely filing of the claim and the other prerequisites for equitable estoppel are established.

Id. at 702 (citations omitted).

[11] In *Levis v. Steffes*, Bruner testified before the district court that he was both Cordellia and Alden's attorney. *Levis*, No. 04-1117 (Iowa Ct. App. Jan. 19, 2006). He denied, however, that their interests were adverse. *Id.*

To prove equitable estoppel, a plaintiff must prove the following elements by a clear and convincing preponderance of the evidence: (1) the defendant has made a false representation or has concealed material facts; (2) the plaintiff lacks knowledge of the true facts; (3) the defendant intended the plaintiff to act upon such representations; and (4) the plaintiff did in fact rely upon such representations to his prejudice. *Id*. As the supreme court has determined:

> With respect to the first element, a party relying on the doctrine of fraudulent concealment must prove the defendant did some affirmative act to conceal the plaintiff's cause of action independent of and subsequent to the liability-producing conduct. Furthermore, the plaintiff's reliance must be reasonable. The circumstances justifying an estoppel end when the plaintiff becomes aware of the fraud, or by the use of ordinary care and diligence should have discovered it. At that point the plaintiff must file suit within a period of time not exceeding the original statutory period applicable to the particular cause of action.

Id. (citations omitted). The doctrine of fraudulent concealment and the plaintiff's duty to exercise diligence to discover the defendant's alleged concealment are therefore separate and distinct from the discovery rule and inquiry notice.

A fiduciary relationship may excuse the plaintiff's failure to investigate the alleged concealment when the plaintiff, in the "use of ordinary care and diligence should have discovered it," because of the plaintiff's trust or confidence in the fiduciary. *See id*. at 702-03. However, the plaintiff's "knowledge of pertinent facts and circumstances may affect the reasonableness of his continued reliance on the tortfeasor's representations." *Id*.

Upon our review of the record, taken in a light most favorable to the Plaintiffs and considering every legitimate inference it bears, we agree with the district court that there is no genuine issue of material fact as to the application of

the fraudulent concealment doctrine. The Plaintiffs have not established that a conflict of interest existed, nor have they established that Bruner concealed his alleged negligence by actions independent and temporally distinct from such alleged negligence. We have already found the statute of limitations began to run in 1998. The Plaintiffs contend, however, they did not have knowledge of Bruner's alleged negligence until 2004 and the statute of limitations should be tolled until that time.

The Plaintiffs rely on *Pride v. Peterson*, 173 N.W.2d 549, 555 (Iowa 1970), to support their contention that Bruner's fiduciary duty to Cordellia required him to disclose that he was also representing Alden, and Bruner's failure to do so constituted fraudulent concealment which tolled the statute of limitations until Bruner disclosed his actions to Cordellia. We find this argument to be without merit. The facts of *Pride* are not comparable to the facts in this case. In *Pride*, the court found the statute of limitations may be tolled because the plaintiff did not have knowledge of the transaction at issue which involved the alleged legal malpractice. *Pride*, 173 N.W.2d at 555. Here, Cordellia was on inquiry notice in 1998 of the potential legal malpractice claim against Bruner when her attorney at that time, Kohorst, filed a lawsuit on behalf of Cordellia in attempt to retrieve land she had transferred to Alden.

Furthermore, our supreme court has more recently expressly declared that fraudulent concealment is not a form of the discovery rule. *Christy*, 696 N.W.2d at 701. As the supreme court stated:

> That is because equitable estoppel has nothing to do with the running of the limitations period or the discovery rule; it simply

> precludes a defendant from asserting the statute as a defense when it would be inequitable to permit the defendant to do so.

Id. The Plaintiffs, however, continue to rely on *Pride*, which refers to fraudulent concealment as a form of the discovery rule. *See Pride*, 173 N.W.2d at 555; *Kurtz v. Trepp*, 375 N.W.2d 280, 282-83 (Iowa Ct. App. 1985).

We decline to find error in the court's ruling that the Plaintiffs cannot prove the elements of fraudulent concealment and equitable estoppel. We conclude there is no genuine issue of material fact as to the court's application of the fraudulent concealment doctrine and hold as a matter of law that the defense does not apply in this case. We affirm with regard to this issue.

C. Lack of Standing.

The Plaintiffs also argue the district court erred in finding the Plaintiffs lacked standing to file a legal malpractice claim against Bruner. The Plaintiffs contend the court erred in failing to find they were third-party intended beneficiaries of Cordellia's land transfer agreements with Alden in which Alden was to hold the property in trust and divide it equally among the four children upon the death of Frank and Cordellia. With regard to this issue, the district court noted:

> The plaintiffs in the present case do not contest the fact that they were not clients of Mr. Bruner, nor do they argue that they were involved in the land sale transactions. There is nothing in the evidence to suggest the plaintiffs were intended beneficiaries of the land sale transactions between Alden and Cordellia. No testimony or documents have been offered to show that the plaintiffs were to receive the land under inheritance had Alden not purchased it. The plaintiffs were clearly not a part of the sales, nor were they even contemplated as parties to the transactions.

The court further stated, "Without evidence that Blane, Leona, and Diana were contemplated, intended, specifically identified beneficiaries to the land sale transactions, they do not have standing to bring a claim against Mr. Bruner on the basis of legal malpractice."

The Plaintiffs contend the court's finding was in error because the court failed to consider Cordellia's will as evidence of the Plaintiffs' contention that they were intended beneficiaries of the land transfers. Article IV of Cordellia's will states as follows:

> Over the years, my late husband, Frank Steffes, and I transferred to my son, Alden Steffes, and his former spouse, Sharon Steffes, certain real property. This property was transferred without consideration and the intent of my husband and me in transferring this property was that, after our deaths, this property would be divided equally between the children, Leona Frazier, Blane Steffes, Diana Fischer, and Alden Steffes. Because this property was transferred without consideration, I consider this property to be mine to dispose of in accordance with my wishes and that Alden Steffes and Sharon Steffes were merely fiduciaries. Consequently, I hereby devise and bequeath to my children Leona Frazier, Blane Steffes, Diana Fischer, and Alden Steffes such real property previously transferred to Alden Steffes and/or Sharon Steffes, including any houses purchased after my husband's death, share and share alike, to be theirs absolutely.

As further evidence of the Plaintiffs' contention that they had standing to bring a claim against Bruner, the Plaintiffs point out Alden's statements that his parents' intent in providing financing for him was for him to hold the properties he acquired in trust to later divide among the four children. The Plaintiffs argue this evidence provides, at the very least, a fact question as to whether the Plaintiffs were intended beneficiaries of the land transfers between Cordellia and Alden.

Generally, an attorney is liable for malpractice only to a client. *Estate of Leonard v. Swift*, 656 N.W.2d 132, 144 (Iowa 2003); *Ruden v. Jenk*, 543 N.W.2d

605, 610 (Iowa 1996). However, a third-party claim may be allowed "under severely limited circumstances." *Estate of Leonard*, 656 N.W.2d at 145. Such circumstances exist where the third party is a direct and intended beneficiary of the lawyer's services. *Id*.

For example, Iowa law will recognize third-party claims by intended beneficiaries of a testamentary instrument. *Schreiner v. Scoville*, 410 N.W.2d 679, 682 (Iowa 1987) ("[A] lawyer owes a duty of care to the direct, intended, and specifically identifiable beneficiaries of the testator as expressed in the testator's testamentary instruments."). Iowa law will also recognize third-party claims by the intended beneficiaries of a nontestamentary instrument where the third parties can prove (1) they were specifically identified, by the donor, as an object of the grantor's intent and (2) the expectancy was lost or diminished as a result of professional negligence. *Estate of Leonard*, 656 N.W.2d at 145.

Upon our review of the record, we agree with the district court that the Plaintiffs lacked standing as intended beneficiaries to bring a claim for legal malpractice against Bruner. The evidence upon which the Plaintiffs rely occurred *after* the land transfers at issue. Cordellia's will is dated April 7, 1998. Robert Kohorst represented her in the creation of her will. The will was drafted after the land transactions between Cordellia and Alden occurred and in the same year Cordellia filed a claim against Alden in attempt to retrieve the land she had transferred to him.

Furthermore, the Plaintiffs have not offered evidence to establish a genuine material fact as to whether Bruner acted negligently to the detriment of Blane, Leona, and Diana as intended beneficiaries of the land transactions.

Although Alden testified at his dissolution that it was his parents' intent to keep the land within the family by having him hold it in trust, there is no evidence Bruner acted negligently and not in accordance with this intent. To the contrary, the record shows that Bruner's representation sufficiently accommodated Cordellia's wishes to sell and transfer land to Alden in furtherance of Frank and Cordellia's wishes.

We conclude there is no genuine issue of material fact as to whether the Plaintiffs had standing to file a legal malpractice claim against Bruner. We therefore agree with the district court and affirm with regard to this issue.

IV. Conclusion.

Having considered all issues raised on appeal, we affirm the grant of summary judgment in favor of Bruner.

AFFIRMED.