STATE OF MICHIGAN

COURT OF APPEALS

SHALAAN D. FISHER,

Plaintiff-Appellant,

v

PATRICK CARRON,

Defendant-Appellee.

UNPUBLISHED
March 16, 2010

No. 289687
Wayne Circuit Court
LC No. 07-730538-CK

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting summary disposition to defendant and dismissing the case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a nonlawyer, filed suit seeking to recover amounts due from defendant, a licensed Michigan attorney, in connection with an alleged agreement to compensate plaintiff for a referral by way of a share of the resulting legal fees earned. According to the complaint, since 1995 defendant had assured plaintiff that Michigan law, including the Michigan Rules of Professional Conduct governing attorneys, permitted an attorney to share legal fees with a non-attorney for referral matters. Plaintiff alleged that she referred several clients to defendant under those terms, including the victim of a serious automobile accident. The complaint asserts that defendant subsequently informed plaintiff the latter's case was settled for a certain amount and tendered payment to plaintiff of an amount allegedly reflecting her share of his contingency fee. Plaintiff subsequently learned that the settlement and defendant's fee was actually much higher.

Plaintiff brought suit to recover the remainder of her share of the fee, under theories of breach of contract, misrepresentation, breach of fiduciary relationship, and unjust enrichment. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The trial court declared the contract unenforceable, stated "I cannot make a lawyer pay a non-lawyer legal fees," and granted the motion.

"We review a trial court's decision with regard to a motion for summary disposition de novo as a question of law." *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "When reviewing an order of summary disposition under MCR 2.116(C)(10), we examine all relevant documentary evidence in the light most favorable to the nonmoving party to

determine whether a genuine issue of material fact exists on which reasonable minds could differ." *Id.* "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). We accept as true all factual allegations in the claim "to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.*

MRPC 5.4(a) states that, but for exceptions not here at issue, "A lawyer or law firm shall not share legal fees with a nonlawyer . . . ."

Plaintiff argues that she should be able to enforce her contract for part of defendant's contingency fee because the Legislature has not prohibited such action. We disagree. Our legal system recognizes legislation as but one of several sources of law. Others include the common law, and regulation, which includes our Supreme Court's rules governing the practice of law. Accordingly, such regulatory and common-law rules against fee sharing of the sort that this case involves is properly applied in the absence of superior authority to the contrary.

A contract that calls for violating the Michigan Rules of Professional Conduct is an unethical one, and "unethical contracts violate our public policy and, therefore, are unenforceable." *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 189; 650 NW2d 364 (2002). This includes a contract to split fees between a lawyer and a lawyer rendered a nonlawyer for that purpose by inactive licensing status. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 51-52; 672 NW2d 884 (2003).

Plaintiff protests that MRPC 5.4(a) applies to lawyers, and that because she is a nonlawyer, it should not bar her claim for the share of defendant's fee to which she is entitled according to the terms of the parties' alleged agreement. However, to the extent that plaintiff elected to do business with a lawyer, plaintiff thereby exposed herself to the machinations of the rules that govern that profession. Because MRPC 5.4(a) prevents defendant from making payments in accord with an agreement to share a fee with a nonlawyer, that rule prevents plaintiff from collecting that share by way of an enforcement action.

Plaintiff invokes the doctrine of equitable estoppel to argue that, because defendant had earlier assured her that their fee sharing arrangements were legal, he should be estopped from changing positions now in defense of her claim for proceeds due from such an agreement. "Equitable estoppel arises where one party has knowingly concealed or falsely represented a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position." *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998). However, plaintiff identifies no prejudice from having been misled to believe that the fee-sharing agreement was enforceable, other than her assertion that she has been underpaid according to that agreement. However, not receiving the balance of a share of a lawyer's contingency fee where she was not legally entitled to receive anything in the first place hardly qualifies as prejudice. Further, the doctrine that an unethical contract is unenforceable would mean little if such a contract could be rendered enforceable upon a showing that one contract partner misled the other.

For these reasons, the trial court properly refused to enforce the alleged fee-sharing agreement.

Plaintiff alternatively argues that, even where a contract for a lawyer to share fees with a nonlawyer may not be enforced, the nonlawyer remains nonetheless entitled to collect in the matter under the theories of misrepresentation, breach of fiduciary relationship, and unjust enrichment. We need not reach that question, however, because plaintiff's pleadings and evidence fails to establish any basis for recovery under those alternative theories.

The facts as pleaded provide little basis for gleaning what injury or damages plaintiff might have incurred in the matter. She reports that she "took [defendant] to visit" the client, assisted him in the initial claim stages, and had numerous telephone conversations concerning the matter. However, plaintiff does not claim any damages as compensation for such industry or expenses, but instead asks for relief in the form of only the dollar amount she claimed as due from the referral agreement. Plaintiff's affidavit closely mirrors the factual allegations in the complaint, and thus likewise fails to support any claims for damages under plaintiff's alternative theories of recovery.

We note that plaintiff did not seek reconsideration of the decision below, or request an opportunity to amend her pleadings, or to conduct additional discovery, in connection with her alternative theories. Plaintiff's failure to plead damages, or request relief, other than in the form of frustrated expectations of payment pursuant to the unenforceable contract, left the trial court with no basis for considering whether relief might be appropriate under plaintiff's theories of misrepresentation, breach of fiduciary relationship, and unjust enrichment.

For these reasons, we reject these alternative theories of recovery as well.

Affirmed.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood