Circuit Court for Prince George's County
Case No. CAL18-43966

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 548

September Term, 2019

BRANDON THOMAS

v.

PAT CRESTA SAVAGE

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 6, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Brandon Thomas, appellant, appeals from an order issued by the Circuit Court for Prince George's County dismissing his complaint against Pat Savage, Esq., appellee, on the grounds that it was barred by the statute of limitations. He raises a single issue on appeal: whether the court erred in dismissing his complaint. For the reasons that follow, we shall affirm.[1]

Ms. Savage represented Mr. Thomas in a civil action in federal court. The case went to trial and, on September 24, 2015, the jury found in favor of Mr. Thomas and awarded him $45,000 in damages. Dissatisfied with Ms. Savage's services, Mr. Thomas filed a complaint against her on November 27, 2018, claiming that she had committed legal malpractice in failing to name certain parties as defendants; failing to meet with him prior to the trial to discuss strategy; failing to timely serve subpoenas on certain witnesses; being unfamiliar with the Federal Rules of Civil Procedure; making improper objections during the jury instructions conference; failing to impeach the defendant with a police report that contradicted his trial testimony; failing to articulate his damages to the judge and jury; and failing to introduce certain other evidence that he believed would have helped his case. Mr. Thomas asserted that, but for this alleged malpractice, the jury would likely have awarded him more damages.[2]

[1] Mr. Thomas has also filed a motion requesting oral argument. Because oral argument would not be of assistance in resolving this appeal, we shall deny that motion.

[2] Specifically, Mr. Thomas contends that he should have been awarded $850,000 in damages.

Ms. Savage filed a motion to dismiss the complaint, claiming that it was barred by the statute of limitations. Specifically, she asserted that Mr. Thomas either knew or should have known that he had been injured by her alleged malpractice on September 24, 2015, the date the jury entered its verdict. However, he failed to file his complaint until November 2018, more than three years later. In response, Mr. Thomas claimed that the statute of limitations did not begin to run until January 2016, when he had received an invoice from Ms. Savage detailing the amount of attorney's fees that she would be receiving, "which was more than double the amount of the award summary issued to [him] by the jury."[3] He contended that the "issuance of a low award summary and a high attorney fee prompted [him] to believe [appellee] was not acting in [his] best interest" and caused him to begin "investigating any breaches of fiduciary duty or trust." He further asserted that, before that point, he had believed Ms. Savage "was acting in [his] best interest [] and [he] had no suspicion or evidence of legal malpractice." On April 19, 2019, the court entered an order granting the motion to dismiss. This appeal followed.

"In Maryland, a three-year statute of limitations applies to legal malpractice actions pursuant to" Md. Code (1973, 2013 Repl. Vol.), § 5-101, of the Courts and Judicial Proceedings Article ("CJ"). *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 712 (2003) (citations omitted). Therefore, Mr. Thomas had three years from the date his cause of action accrued to file his complaint. In legal malpractice cases, the Court of Appeals has "established the 'discovery rule' – the rule that the cause of action accrues

[3] Because Mr. Thomas had prevailed on a 42 U.S.C. § 1983 claim, the court awarded him costs and attorney's fees in the amount of $86,126.54.

when the claimant discovers or reasonably should have discovered that he has been wronged." *Watson v. Dorsey*, 265 Md. 509, 512 (1972). Ordinarily, the dispositive issue is "when [ ] the [claimant was] put on notice that he may have been injured." *Russo v. Ascher*, 76 Md. App. 465, 470 (1988). "[B]eing on notice means having knowledge of circumstances which would cause a reasonable person in the position of the plaintiff to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [wrong]." *Id.* (internal citation and quotations omitted).

The relevant question in this appeal is when the statute of limitations accrued. Viewing Mr. Thomas's complaint in a light most favorable to him, he was clearly aware of all the alleged errors and omissions committed by Ms. Savage by the time his trial concluded. And by his own admission, he was on notice that he might have been injured because of those actions when the jury announced its verdict and awarded him less damages than he believed he should have recovered. Therefore, we hold that his cause of action for legal malpractice accrued on September 24, 2015.

Mr. Thomas nevertheless contends that, despite being aware of all the relevant facts in September 2015, he trusted Ms. Savage because she was his attorney and did not become suspicious of her until he received the January 2016 invoice detailing the amount of attorney's fees that she would receive. Although not calling it by name, Mr. Thomas is invoking the "continuation of events principle," which tolls the statue of limitations in limited circumstances where the parties have a continuous relationship for services. However, for his rule to apply, the confiding party must not have acquired actual knowledge that the confidential relationship had been abused or have been put on inquiry

notice of facts, which, if pursued, would have disclosed the abuse. In other words, "[n]otwithstanding the confidential relationship, if the confiding party knows, or reasonably should know, about a past injury, accrual for statute of limitations purposes will begin on the date of inquiry notice, and not the completion of services." *See Supik*, 152 Md. App. at 714-15.

Mr. Thomas's contention that he had trusted Ms. Savage prior to January 2016, which was not raised until she filed her motion to dismiss, flies in the face of the allegations that he made in his complaint. Specifically, his complaint alleged that he and Ms. Savage "had regular arguments . . . pertaining to the . . . utilization of evidence and general procedure concerning his case"; that Ms. Savage had ignored him when "he inquired about the status of witness's subpoenas" three months before trial; that a "cold chill ran down his spine" when he realized that Ms. Savage had to ask opposing counsel about relevant Federal Rules of Civil Procedure; that he "had an argument" with Ms. Savage on the second day of trial about the evidence that he believed she had failed to present; that he had been "upset and discouraged" when Ms. Savage refused to "elaborate or give depth" to his damages when arguing to the jury "even when requested by [him]"; that "after a few days of observation [he] was certain that [she] had made minimal preparations before trial"; and that, in the "days following trial [he] contacted [appellee] again to explain his dissatisfaction" with her and requested her to file a motion for a retrial on the issue of damages based on her having withheld "all the pertinent evidence" that he had gathered prior to trial. In short, his complaint demonstrated that he was on inquiry notice, if not actual notice, that his confidential relationship with Ms. Savage had been abused by the

conclusion of his trial. Consequently, we are not persuaded that the continuation of events principle applies in this case.

Finally, Mr. Thomas briefly asserts that the statute of limitations should have tolled because Ms. Savage committed fraud that prevented him from discovering the cause of action. However, the only "fraud" identified by Mr. Thomas is that Ms. Savage never informed him that she could recover attorney's fees in addition to their agreed upon contingency fee. And even if we assume that Ms. Savage failed to disclose this fact to Mr. Thomas, and that the lack of disclosure constituted fraud, Mr. Thomas does not sufficiently explain, nor can we discern, how this prevented him from discovering his injury until January 2016.

Because Mr. Thomas's legal malpractice claim accrued, on September 24, 2015, his complaint, filed on November 27, 2018, was barred by the statute of limitations. Consequently, the circuit court did not err in granting Ms. Savage's motion to dismiss.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.