UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2253

September Term, 2014

ARNOLD HARRISON

v.

EDWARD CHRISTMAN, JR., *et al.*

Leahy,
Reed,
Raker, Irma, S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: January 7, 2016

*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.

Appellant Arnold Harrison was injured at work and submitted a workers' compensation claim in 2003. He retained Edward Christman, Esq., to represent him in the matter before the Workers' Compensation Commission ("WCC").

Mr. Harrison was awarded temporary total disability benefits, and had five years from the date he received his last disability benefit payment in May 2004, to request a modification of his award under Maryland Code (1991, 2008 Repl. Vol.), Labor and Employment Article ("LE"), § 9-736(b)(3). Mr. Christman missed the filing deadline, and on, February 20, 2010, informed his client of his error. Mr. Christman continued to represent Mr. Harrison, notwithstanding, before the WCC until May 10, 2010, when the WCC found that the claim was barred by the statute of limitations.

More than three years after learning of his attorney's unfortunate lapse, on May 7, 2013, Mr. Harrison filed malpractice claims against Mr. Christman and his law firm in the Circuit Court for Baltimore City. The court found that the applicable three-year statute of limitations began to run on February 20, 2010—the date that Mr. Christman informed Mr. Harrison of the mistake—and rejected Mr. Harrison's argument that continued representation tolled the limitations period until May 10, 2010. The court granted summary judgment for Mr. Christman. In his timely appeal, Mr. Harrison asks this Court to consider whether the Circuit Court for Baltimore City commit error by granting summary judgment in favor of appellants. [1]

[1] Mr. Harrison's question, as originally presented, was as follows: "Did the Circuit Court commit error by granting Defendants' Motion to Dismiss?"

As discussed more fully below, the circuit court granted summary judgment in favor of Mr. Christman because the circuit court relied on facts outside the pleadings in its grant.

We affirm. We hold that the statute of limitations began running when Mr. Christman informed Mr. Harrison of the existence of his claim on February 20, 2010. We further conclude, under the facts of this case, that the continuation of events principle has no application in a situation in which the claimant has actual knowledge of his claim during the representation.

BACKGROUND

Arnold Harrison was employed as a steamfitter for T.A. Gorman, Inc. On February 26, 2003, he slipped and fell on ice, injuring his back, neck, and wrist, while walking to his jobsite at the Brandon Shores Power Plant in Curtis Bay, Maryland.

Mr. Harrison submitted a workers' compensation claim for this injury with the WCC on April 22, 2003. In December he retained Edward Christman as his attorney, who on December 5, 2003, filed issues with the WCC requesting authorization for medical treatment and temporary total disability benefits for Mr. Harrison from May 9, 2003 "to present and continuing."

On April 23, 2004, Mr. Harrison filed a petition for voluntary bankruptcy. He did not disclose his pending workers' compensation claim in the petition.[2]

Following a hearing, the WCC issued an order on May 26, 2004, granting temporary total disability benefits to Mr. Harrison for the period May 9 through August 5, 2003, and

[2] Mr. Harrison did note a "[d]isability" benefit, but this does not appear to be the workers' compensation claim.

It does not appear that Mr. Christman represented Mr. Harrison in regard to the bankruptcy petition because Mr. Christman's name does not appear anywhere in the petition for bankruptcy in the record.

denying benefits after that date. At some point during the remaining week of May 2004,[3] Mr. Harrison received his "last compensation payment" for this award.

The date of Mr. Harrison's "last compensation payment" is significant because it marked one of three different events, the latter of which commenced the five-year period of time during which he could request modification of the WCC award. More specifically, the time to modify the May 2004 award and request partial permanent disability benefits expired in May 2009 pursuant to LE" § 9-736(b)(3), which reads:

> (3) Except as provided in subsection (c) of this section, the Commission may not modify an award unless the modification is applied for within 5 years after the latter of:
>
> (i) the date of the accident;
> (ii) the date of disablement; or
> (iii) the last compensation payment.

Neither Mr. Christman nor Mr. Harrison took action to modify the award between May 2004 and May 2009. On December 3, 2009, Mr. Christman filed issues with the WCC, concerning the "[n]ature and extent of [Mr. Harrison's] permanent disability." In response to Mr. Christman's December 3, 2009 filing, Mr. Harrison's former employer filed issues maintaining that the claim was barred by limitations. Mr. Christman then investigated the matter and realized his error.

In a letter Mr. Harrison later wrote to the Attorney Grievance Commission on August 20, 2010, he recounted the details of a February 20, 2010 meeting he had with Mr. Christman. During the meeting, which took place in his law office, Mr. Christman

[3] The precise date on which Mr. Harrison received his last compensation payment is not reflected in the record, but the parties agree that this it occurred in May 2004.

informed Mr. Harrison that he missed the filing deadline,[4] and explained that the case was no longer viable because he did not file for a modification in time. Mr. Christman expressed an interest in settling any potential claim that Mr. Harrison had against him, but the parties did not come to any agreement.

As Mr. Harrison further recounted in his letter to the Attorney Grievance Commission, that upon learning of his attorney's error, he sought legal representation:

> In response to your letter dated July 26th 2010 from Mr. Ed Christman, stating that I came into his office on February 20th 2010 is the truth. On that date he told me that the case was thrown out due to the statu[t]e of limitation[s] because his office made an error in filing on time. He said that he would like me to be compensated for the error and how much would I be interest[ed] in, I said the same percentage of disability which the doctor said after [he] examine[d] me.
>
> * * *
>
> After leaving his office I opened the phone diary and called many attorneys, but no one would help, one was recommended highly and when I called his office he told me that no attorney will go against another attorney.
>
> * * *
>
> The case was thrown out and on that day his attorney gave to me all of my medical forms plus others. I then wrote letters to all of the representatives in Baltimore seeking for help and they all referred me to the attorney grievance commission. Mr. E D Christman was my attorney until May 10 when the case was thrown out he never told me to get another attorney two years ago . . . .

On May 7, 2010, the WCC held a hearing on Mr. Harrison's claim, and, on May 10, 2010, the WCC issued an order stating that the claim was barred due to the statute of

[4] At some point before July 26, 2010, Mr. Harrison filed a grievance concerning Mr. Christman with the Attorney Grievance Commission, but the exact date on which this occurred is not reflected in the record.

limitations. Neither Mr. Christman nor Mr. Harrison filed a timely appeal from that order.[5] *See* LE § 9-737 (providing for 30 days to appeal from a WCC order).

On May 7, 2013, Mr. Harrison filed a malpractice complaint and request for a jury trial in the Circuit Court for Baltimore City against Mr. Christman and Christman & Fascetta, LLC.[6] Christman filed a motion to dismiss, or, in the alternative, a motion for summary judgment, on August 29, 2014. In the motion, Christman argued that Mr. Harrison was informed of his claim during the February 20, 2010, meeting, and that this was confirmed by Mr. Harrison's August 20, 2010 correspondence with the Attorney Grievance Commission. Thus, according to Christman, the statute of limitations expired on February 20, 2013. Christman also argued that Mr. Harrison's suit was barred by judicial estoppel because the workers' compensation claim was bound to be fruitless since Mr. Harrison did not report the workers' compensation claim in his bankruptcy proceeding.

Mr. Harrison filed an opposition on September 15, 2014, in which he argued that the statute of limitations accrued on June 10, 2010—the last date on which the May 10, 2010 WCC order could have been appealed—which, according to Mr. Harrison, represents "the date in which the error committed by [Christman] became static and Mr. Harrison's

[5] Neither party seriously contends that it would have been fruitful to appeal the WCC's order concerning the statute of limitations, *i.e.*, the alleged malpractice is not the failure to appeal the 2010 WCC order. Mr. Harrison, in his brief, refers to the "Defendants[']failure to file a timely appeal by June 10, 2010," but he does not seem to argue that it was malpractice.

[6] For the sake of convenience, we will refer to the Appellants, Mr. Christman and his firm, collectively, as "Christman."

rights could not be restored." Mr. Harrison argued that a June 10, 2010 accrual date is the result of Christman's failure to inform Mr. Harrison in writing of the potential claim, along with his continuing to represent Mr. Harrison until the WCC issued the order on May 10, 2010. Alternatively, Mr. Harrison argued that the fact question relating to the accrual of the claim was a question of fact for the jury. Finally, Mr. Harrison argued that judicial estoppel did not bar the malpractice claim, that Christman was barred from making arguments by estoppel and waiver, and that summary judgment should have been denied or deferred until discovery had occurred. Christman filed a reply on September 29, 2014.

The circuit court, the Honorable Stephen J. Sfekas presiding, held a hearing on the motions on October 6, 2014. The parties presented their arguments contained in the motions concerning the statute of limitations and the propriety of summary judgment. The court ruled in favor of Christman, stating that the statute of limitations accrued on February 20, 2010, the date that Mr. Harrison was informed of the error. The judge explained his ruling:

> So it does seem to me that the [] injury, the tort is complete at that point where the person has lost his ability to bring the claim.
>
> * * *
>
> So the question then becomes at what point [] did the claimant discover that this issue had occurred. I think the evidence is clear that there was a conversation on February 20, 2010, at which this issue was discussed.
>
> The letter here, I think quite clearly indicates that [] Mr. Harrison was aware as of February 20th, that something had gone badly wrong and that he was likely to be non-suited, which in fact is the truth.
>
> And so at that date he knew or should have known – I think in this case he did know – that attorney error had cost him his right to pursue his claim for additional Workers' Comp benefits.

> The letter here was something that is unforced. It . . . was a voluntary submission. And it may very well be that he didn't understand the implications of what he was saying or that he may have confused things. I can't tell.
>
> But what I can say is that the defendant's position is that he was fully informed as of February 20th, and that the plaintiff here appears to be agreeing that on February 20th, he was given notice that [] there was a problem.
>
> Additionally . . . it indicates here that he sought legal assistance in filing suit. And he was unable to get a lawyer and that he was advised then to take an action to the Attorney Grievance Commission, which apparently he did do.
>
> But for all these reasons, I think that the . . . injury is complete . . . as of May, 2009 and that discovery did take place on February 20th, 2010. So the limitations period, in my opinion, dates from February 20th, 2010. That being the case, it seems to me that the case was brought outside of the limitations period, and I will be granting the summary judgment.

The court's October 8, 2014, order granting summary judgment in favor of Christman was entered on October 16, 2014.

Mr. Harrison filed a motion for reconsideration on October 20, 2014, which the circuit court denied on December 4, 2014, and, on December 23, 2014, this timely appeal followed.

DISCUSSION

"Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law." *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152 (2008) (citing Md. Rule 2-501). "The function of the trial court at the summary judgment stage is to determine whether there is a dispute as to a material fact sufficient to require an issue to be tried." *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 93 (2000) (citations omitted). An appellate court's function in reviewing a grant of summary judgment is to

determine "whether a dispute of material fact exists," *id.* (citing *Gross v. Sussex, Inc.*, 332 Md. 247, 255 (1993); *Beatty v. Trailmaster Products,* 330 Md. 726, 737 (1993)), and to review a grant of summary judgment for legal correctness. *Laing*, 180 Md. App. at 152 (citing *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 516 (2000)). "The parameter for appellate review is determining 'whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial . . . .'" *Id.* at 153 (citing *Wood*, 134 Md. App. at 516). "[I]f the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Id.* (citing *Wood*, 134 Md. App. at 516).

The accrual of a claim for statute of limitations purposes is a question "ordinarily 'left to judicial determination.'" *Litz v. Maryland Dept. of Environment*, 434 Md. 623, 641 (2013) (quoting *Frederick Rd.*, 360 Md. at 95). The determination of when the claim accrues "may be solely one of law, solely one of fact or one of law and fact." *Poffenberger v. Risser*, 290 Md. 631, 634 (1981). "When it is necessary to make a factual determination to identify the date of accrual, however, those factual determinations are generally made by the trier of fact, and not decided by the court as a matter of law." *Litz*, 434 Md. at 641 (citing *O'Hara v. Kovens*, 305 Md. 280, 301 (1986)). "When there is no genuine issue as to a material fact relative to the accrual of a cause of action, the date of accrual may be determined as a matter of law." *Edwards v. Demedis*, 118 Md. App. 541, 553 (1997) (citing *Bennett v. Baskin & Sears,* 77 Md. App. 56, 67-68 (1988)).

I.

Statute of Limitations

Mr. Harrison posits that he did not suffer any injury before June 10, 2010—the date on which he could no longer file an appeal of the May 10, 2010 WCC order disallowing benefits. In turn, he contends that the statute of limitations accrued on June 10, 2010, because this was the date that the error "became static." His argument is supported, he contends, by the fact that Christman continued to represent Mr. Harrison until May 10, 2010, and because Christman did not inform Mr. Harrison of the error in writing. In any case, Mr. Harrison maintains that the time of accrual was a genuine issue of material fact for the jury that was not proper for resolution by summary judgment.[7]

Whether Mr. Harrison's malpractice claim against Christman was barred by the statute of limitations is governed by Maryland's general three-year statute of limitations, Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-101. *Berringer v. Steele*, 133 Md. App. 442, 492 (2000). There are two distinct concepts at work in determining the date on which the statute of limitations begins to run:

[7] Mr. Harrison also maintains, in what seems akin to an alternative argument, that the court erred in granting the motion to dismiss because his complaint does not contain the allegation that he knew of his malpractice claim in February 2010. This contention fails because the record is clear that upon considering Christman's "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment," the circuit court granted summary judgment for Christman. *See* Md. Rule 2-322(c) ("If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501 . . . ."). Thus, the allegation that Mr. Harrison had knowledge of the claim on February 20, 2010 need not be within the four corners of his complaint.

(1) when the claim arises and (2) when the claim accrues. *See Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 716 (2003). As a general principle, a claim "accrues when (1) it comes into existence, *i.e.*, when there is a negligent act, causation, and damage sufficient to constitute a tort, and (2) the claimant acquires knowledge sufficient to make inquiry, and a reasonable inquiry would have disclosed the existence of the allegedly negligent act and harm." *Edwards*, 118 Md. App. at 566. However, whether a legal claim exists "turns on the objective presence of all elements, not the subjective perception of an individual." *Supik*, 152 Md. App. at 720 n.16. Statutes of limitations serve many purposes, including allowing "an adequate time for a person of ordinary diligence to bring an action," "promot[ing] fairness and judicial economy," and preventing a pursuit of stale claims. *Frederick Rd.*, 360 Md. at 94-95 (citations omitted).

Maryland courts have strictly construed statutes of limitations. *Decker v. Fink*, 47 Md. App. 202, 206 (1980) (citing *McMahan v. Dorchester Fertilizer Co.*, 184 Md. 155, 159-60 (1944)). Historically, the courts of Maryland have held the accrual date for limitation purposes to be the date that the harm occurred. *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 176-77 (1977) (citing *Hahn v. Claybrook*, 130 Md. 179, 182 (1917)). The Court of Appeals has, however, tempered this over time and now generally applies the discovery rule in civil cases, including malpractice claims. *Id.* at 177 (citing *Doe v. Maskell*, 342 Md. 684, 690 (1996)) ("Recognizing the harshness of this rule, however, the Court of Appeals replaced the 'date of wrong' rule with the 'discovery rule' in civil cases . . . ."); *see also Frederick Rd.*, 360 Md. at 95-96 (applying the discovery rule in a legal malpractice context).

The discovery rule provides that a claim "accrues when the claimant in fact knew or reasonably should have known of the wrong." *Poffenberger*, 290 Md. at 636. The statute of limitations thus begins running when the claimant knew or reasonably should have known of the wrong. *Id.* The discovery rule requires either actual knowledge or "awareness implied from knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation, would in all probability have disclosed if it had been properly pursued." *Id.* (internal quotation omitted).

Christman maintains that the alleged harm occurred in May, 2009, when the time to request to modify disability benefits expired, and that that the claim accrued on February 20, 2010, when he informed Mr. Harrison that his claim was no longer viable. He maintains that Mr. Harrison's letter confirms that Mr. Harrison had actual knowledge of the alleged legal error and his cause of action at this date. Christman further contends that Mr. Harrison's admission that he sought the advice of independent counsel to bring a claim against Christman is further evidence of this. Christman further argues that an adverse ruling by a court is not necessary for a malpractice claim to accrue.

Several cases are instructive in determining the accrual of claims in the context of legal malpractice actions. In *Edwards v. Demedis*, 118 Md. App. 541 (1997), the State encouraged appellants, former state employees and members of a state retirement system, to transfer to a new State retirement plan by offering to refund money that the employees had contributed to the previous plan, plus interest. *Id.* at 545. In 1990, appellee Pandelis Demedis, a financial planner, hired an attorney, appellee Edward Blanton, who issued a

series of legal opinions between February and November, 1990, advising appellants that the interest would be eligible for a tax-free rollover. *Id.* However, by July 23, 1990, the Internal Revenue Service had issued a revenue ruling stating that the refund would not be tax-free. *Id.* at 546. Several appellants admitted that they received notice of this ruling in the summer of 1990. *Id.* In the fall of 1990 and several times thereafter, those same appellants received letters from state and federal legislators advising that they had received inaccurate advice regarding the tax issue. *Id.*

Despite this bad news, the appellees repeated their advice that the refunds would be tax-free because the ruling was not applicable to them, would be overturned in court, and, that, nonetheless, their investment was sound. *Id.* at 547. At different times in 1992 and 1993, the IRS District Director issued reports to the appellants showing deficiencies and balances due because of their receipts of the transfer refunds. *Id.*

The appellants each retained attorney Blanton to represent them in the subsequent IRS proceedings. *Id.* In February 1995, the IRS made a settlement proposal to the former state employees, and Blanton and Demedis counseled against accepting the offer. *Id.* at 548-49. Appellees followed Demedis and Blanton's advice. *Id.* The refund suits were unsuccessful, and appellants filed suit against Blanton and Demedis on October 17, 1995. *Id.* at 549. The trial court granted summary judgment on limitations grounds. *Id.* at 550.

On appeal, this Court held that the injury occurred at the time of the negligent tax advice in 1990 and that the claim arguably accrued in 1991 when the appellants received correspondence from the state Retirement System, but certainly no later than the summer of 1992 when they received notices from the IRS. By that time, the appellants had

"knowledge of the harm." *Id.* at 556, 566; *see also Bank of New York v. Sheff*, 382 Md. 235, 247 (2004) (stating that limitations began to run when the plaintiff was on inquiry notice . . ., triggering a duty on its part to make an investigation that, if diligently pursued, would have revealed the [claim]."). Maryland does not follow the maturation of harm rule[8] and, for a claim to accrue, "[a] legal wrong must be sustained, but a precise amount of damages need not be known." *Id.* at 553 (citing *American Home Assurance Co. v. Osbourn,* 47 Md. App. 73, 86-87 (1980)). This Court also stated that a final judgment by the United States District Court and resolution of an appeal is not a necessary precondition for a claim for negligent tax advice. *Id.* at 557 (citing *Watson v. Dorsey*, 265 Md. 509, 512-13 (1972)) ("Under the facts of this case, this would mean that a cause of action did not accrue until after the final judgment by [a court] and the resolution of any subsequent appeal. This point in time for accrual is clearly not consistent with Maryland law.").

In *Supik*, *supra,* this Court addressed similar circumstances as presented in *Edwards*, but held that summary judgment was not appropriate because material facts remained in dispute concerning the date on which the applicable statute of limitations accrued. 152 Md. App. at 721. Jeffrey and Shirley Supik filed a legal malpractice action against their former attorneys, who had represented them in a toxic tort action against several pest control companies and in an action against their homeowners' insurer over the

[8] "Under the maturation of harm rule, a cause of action does not accrue until all damages or harm arising out of a single wrong are fully ascertainable." Eileen Lunga & Rosamond S. Mandell, *Survey of Developments in Maryland Law, 1983-84*, 44 Md. L. Rev. 665, 682 (1985) (citing *Pierce v. Johns-Manville Sales Corp.*, 296 Md. 656, 663 (1983)).

extent of coverage for damage from the toxic tort. *Id.* at 703. After the Supiks retained the appellee lawyers and law firm in 1993, the Supiks became dissatisfied at various points from 1995 to 1997 with appellees' services, which continued through 1997. *Id.* at 704-08. Chief among the Supiks' concerns were the attorneys' attempts to settle the case without informing the Supiks, providing the Supiks with misinformation, and waiving their right to trial by jury without their consent and over their objection. *Id.* at 704-5. The Supiks were also aggrieved by the fact that they settled with the insurer on March 7, 1997, but felt "under duress" to do so. *Id.* at 707.

The Supiks, represented by appellees, settled with the pest control companies on April 1, 1997. *Id.* at 708. In May 1997, the Supiks spoke with their trial expert, who told them that the case had a much higher value than that for which it settled. *Id*. On March 31, 2000, the Supiks filed a malpractice complaint, alleging that due to appellees' negligent representation, the settlement with the pest control companies was smaller than it should have been. *Id.* at 708-09. The trial court granted appellees' motion for summary judgment asserting that the Supiks' suit was barred by the statute of limitations. *Id.* at 709. Because of the Supiks' prior dissatisfaction with appellees' services, and because they claimed that they were "under duress" when they settled their suit against the insurer on March 7, 1997, the court reasoned that the Supiks were put on inquiry notice before their settlement with the pest control companies on April 1, 1997. *Id.* at 709.

We reversed and held that the court erred in granting summary judgment on limitations grounds, noting that it is impossible for a party to have notice of a claim, *i.e.*, for a claim to accrue, before the actual injury had occurred. *Id.* at 715-16. We stated that

a claim arises only when there are facts that support each individual element of the claim. *Id.* at 717-18. We "emphasize[d] that the mere possibility of an injury in a negligence action does not give rise to a cause of action." *Id.* at 719 (citing *Morris v. Osmose Wood Preserving*, 340 Md. 519, 536 (1995)). We noted that, while Maryland does not follow the maturation of harm rule, there must at least be some injury before the claim arises. *Id.* at 720-21.

We explained that summary judgment was improper because:

> A trier of fact could find that no legally cognizable injury existed sooner than April 1, 1997 when the toxic tort case was settled and, hence, that a cause of action did not exist against [the appellees] until that time. Before that time their claim remained viable, their entitlement was not fixed, and damages remained unliquidated. Further negotiation was possible. They continued to possess the right to present their case and their claim for damages to the court. With the execution of the settlement agreement their potential dissolved into a certainty-there could be no greater recovery than that agreed to. Because it appears that there were a number of allegedly negligent acts prior to that date, a jury could find no injury to the [appellants] caused by those acts until the settlement actually occurred on April 1, 1997, and that there was no loss or detriment to them, as they could have at any point prior to the settlement decided not to settle.

Id. at 721. A reasonable trier of fact could have found that there was no injury until the second settlement because the toxic tort claim remained viable until that settlement. *Id.* at 721. Thus, in *Supik*, we held that the trial court erred in granting summary judgment. *Id.* at 722.

In contrast to *Supik*, the case at bar does not present complicated facts involving multiple allegations of attorney error obfuscating the date on which the injury was complete. In *Supik*, before the settlement date, there was only a "mere possibility of an injury." *Id.* at 719. Here, the facts are simple: an attorney missed a filing deadline. After

Christman missed that filing deadline, there was no opportunity for the error to be corrected, and Mr. Harrison was injured. Thus, it is clear that the claim arose in May 2009.

Mr. Harrison was no longer able to receive permanent partial disability benefits after May 2009. Clearly he was legally injured in May 2009. It is of no import that there was no judgment stating this to be the case until May 10, 2010. In *Edwards*, we stated that a final judgment was not a necessary precondition for a malpractice claim. 118 Md. App. at 557 (citations omitted) ("It is clear that a final adjudication is not required for a cause of action to accrue . . . ."). Mr. Harrison could have initiated a malpractice claim against Christman at any point after the benefits limitations period expired in May 2009.

It is also clear that Mr. Harrison's claim accrued on February 20, 2010. According to Mr. Harrison's own statement, Christman informed him of the late filing in a meeting on February 20, 2010. After this meeting, Mr. Harrison began searching for attorneys to represent him against Christman. Mr. Harrison does not dispute these facts; he only disputes the import of these facts.

On February 20, 2010, Mr. Harrison "knew or reasonably should have known of the wrong," due to Mr. Christman's statement regarding the late filing and the statute of limitations. *See Poffenberger*, *supra*, 290 Md. at 636. The fact that Christman did not inform Mr. Harrison in writing of the potential claim does not bear on the date the malpractice claim arose or accrued; neither does the fact that he continued to represent Mr. Harrison and did not withdraw the workers' compensation claim. Indeed, Mr. Harrison's own written admission reveals the precise date that Mr. Harrison was informed of his claim against Christman. Therefore, we hold that Mr. Harrison's claim against Christman

accrued on the day that Mr. Christman informed him of his malpractice claim on February 20, 2010.

II.

Continuation of Events

Maryland recognizes the "continuation of events" principle—a corollary to the general accrual rule—which tolls the statute of limitations in limited circumstances where the parties have a continuous relationship for services. *Frederick Rd.*, 360 Md. at 97. In such a relationship, "[t]he confiding party . . . is under no duty to make inquiries about the quality or bona fides of the services received, **unless and until something occurs to make him or her suspicious**." *Id.* at 98 (emphasis supplied). The doctrine holds that,

> where a confidential relationship exists between the parties, failure to discover the facts constituting fraud may toll the statute of limitations, if: (1) the relationship continues unrepudiated, (2) **there is nothing to put the injured party on inquiry**, and (3) the injured party cannot be said to have failed to use due diligence in detecting the fraud.

Id. at 99 (emphasis supplied) (citing *Herring v. Offutt*, 266 Md. 593, 600-01 (1972)). So long as the relationship exists, the confiding party generally has the right to rely on the good faith of the fiduciary and relax his or her guard. *Dual, Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 173 (2004) (citing *Frederick Rd.*, 360 Md. at 97-98). In *Frederick Rd.*, the Court of Appeals laid out this general principle, but stated that

> [t]he result is different . . . **if the confiding party acquires actual knowledge during the existence of the confidential relationship that the confidential relationship has been abused, or comes into possession of facts which put him or her upon inquiry notice**, which, if pursued, would have disclosed the abuse. In that event, **the applicable statute of limitations runs from the time the confiding party receives actual knowledge or the facts which placed him or her upon inquiry notice.**

360 Md. at 99-100 (emphasis supplied) (citing *Herring*, 266 Md. at 600-01). "Notwithstanding 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." *Supik*, 152 Md. App. at 714-15.

Mr. Harrison argues that, pursuant to the continuation of events principle, he had the right to relax his guard and rely on the good faith of Christman during their attorney-client relationship.[9] He urges that the evidence that Christman never put the potential claim in writing and that Christman continued to represent him after February 20, 2010, support his claim that the statute of limitations did not accrue until the attorney-client relationship ceased. We find Mr. Harrison's arguments unavailing.

In *Frederick Rd.*, the Court of Appeals stated that, even in situations involving an attorney-client relationship where the continuation of events theory is implicated, "the applicable statute of limitations runs from the time the confiding party receives actual knowledge or the facts which placed him or her upon inquiry notice." 360 Md. at 99-100. *Supik*, on which Mr. Harrison relies for this argument, states that, if the confiding party knows, or reasonably should know, of the injury, that the accrual date is the date of inquiry

[9] It is unclear whether Mr. Harrison argues a May 10, 2010, or a June 10, 2010, accrual date according to this theory because in his briefing he refers to both dates as the date of accrual. Generally, Mr. Harrison appears to rely on a June 10, 2010, accrual date, however, the continuation of events theory could only support a May 10, 2010, accrual date, at the latest, because there is no evidence that Christman represented Mr. Harrison after May 10, 2010.

notice, not the date of the completion of services. 152 Md. App. at 714-15. This Court stated a similar proposition in *Edwards*, *supra*, when we said that "[o]nce sufficient knowledge of a cause of action existed, continuous representation was irrelevant." 118 Md. App. at 562.

In the present case, Mr. Harrison had actual knowledge of his potential claim on February 20, 2010. Thus, as per *Frederick Rd.* and *Edwards*, Christman's "continuous representation [is] irrelevant", *id.*, because Christman informed Mr. Harrison of his potential claim during the representation. We hold that the continuation of events principle does not apply to the case at bar, and that the statute of limitation, which began running on February 20, 2010, was not tolled.

III.

Equitable Estoppel and Waiver

Estoppel

Mr. Harrison claims Christman is equitably estopped from making the statute of limitations and judicial estoppel arguments. In his brief, Mr. Harrison asks

> if Defendants believed that they committed malpractice in February 2010, then why did they continue to file paperwork on behalf of Plaintiff for months after that moment as well as represent him at a hearing in May 2010[?] Defendants[] could have withdrawn his claim or that hearing request at any time prior to that.

Equitable estoppel has three elements: "(1) voluntary conduct or a representation by the party to be estopped, even if there is no intent to mislead; (2) reliance by the estopping party; and (3) detriment to the estopping party." *Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 631 (1999) (citations omitted).

Mr. Harrison has not averred sufficient facts to satisfy these elements. It is clear that Mr. Harrison has pointed to no representation or instance of conduct by Christman that would estop him from arguing the statute of limitations, especially when Christman told Mr. Harrison on February 20, 2010, that he had failed to timely file the request for permanent partial disability benefits. Mr. Harrison has not demonstrated any reliance; in fact, he stated that, on February 20, 2010, "[a]fter leaving [Christman's] office[,] [he] opened the phone diary and called many attorneys . . . ." Mr. Harrison also claims that proceeding with his workers' compensation claim after February 2010 and not amending his bankruptcy schedules in 2004 both demonstrate detrimental reliance on those actions, but it is not clear to us how those actions demonstrate detrimental reliance.

The parties have cited to no Maryland cases, and our independent research has found none, in which continued representation, after a client's actual knowledge of an error constituting malpractice, estopped an attorney from making a statute of limitations argument. If accepted, Mr. Harrison's arguments would incentivize an attorney who committed malpractice to stop representing a client immediately after he discovered his error. Christman's subsequent efforts to remedy his error do not estop him from later asserting the statute of limitations in his defense.

Waiver

Mr. Harrison also contends that because Christman continued to represent Mr. Harrison after discovering his error, his continued representation constituted a waiver of Christman's statute of limitations and judicial estoppel arguments.

Waiver is sometimes defined as "the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right . . . ." *Gould v. Transamerican Associates*, 224 Md. 285, 294 (1961) (citations omitted). The terms "estoppel" and "waiver" are often used interchangeably, but when persons distinguish between them, the distinction made is that waiver must be intentional, whereas estoppel need not be. *Id.* at 295.

Although estoppel is not an element of waiver, *Eastover Stores, Inc. v. Minnix*, 219 Md. 658, 672 (1959) (citations omitted), it is difficult to see how the conduct in this case could constitute waiver if it does not constitute estoppel when the distinction between the two theories, in the present case, is Christman's intent. Mr. Harrison has pointed to no conduct demonstrating that Christman intentionally waived a known right. As with estoppel, the parties cited no Maryland case in which continued representation, alone, after an error constituting malpractice, constituted a waiver of a limitation argument, nor did we find any such cases. Therefore, Christman has not waived his arguments here.

In summary, despite the continuing attorney-client relationship, we hold that Mr. Harrison's injury occurred in May 2009 when he lost the ability to modify his workers' compensation benefits, and Mr. Harrison's claim accrued on February 20, 2010, when Christman informed him of his failure to file a claim before the May 2009 deadline. We also conclude that Christman is not estopped from arguing that the claim is barred by the statute of limitations, nor has he waived this argument.

Because we affirm the circuit court's decision to grant summary judgment on the statute of limitations grounds, it is not necessary for us to reach Christman's judicial estoppel argument.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.