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NEW YORK COURT OF APPEALS CASE COMPILATIONS: McCoY v. FEINMAN, ET.AL.

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MCCOY V. FEINMAN, ET.AL.[1]

(decided November 19, 2002)

I. SYNOPSIS

In a unanimous decision, the New York Court of Appeals upheld a decision by the appellate division[2] dismissing an attorney malpractice action as time barred.[3] The court found that the statute of limitations in the plaintiff's negligence action against her former divorce attorney for failure to secure a Qualified Domestic Relations Order (QDRO) began to run when the divorce stipulation or judgment was entered.[4] The negligence action was, therefore, barred by the three-year statute of limitations for attorney malpractice actions.[5]

II. BACKGROUND

In 1969, Susan McCoy married her former husband.[6] Under his employee benefit plan, a surviving spouse is eligible to receive either retirement benefits or survivorship benefits if the husband dies prior to retirement.[7] The McCoy's separated in 1985 and Susan McCoy hired defendant Kenneth Feinman to represent her in the divorce.[8] On June 23, 1987, the parties entered an oral stipulation of settlement, agreeing that Susan McCoy would receive a percentage of her former husband's pension plan, the details of which would be outlined in the QDRO that Feinman's office would prepare and submit either "simultaneously with or shortly after the judgment of divorce."[9] Although Feinman also agreed to submit the judgment of divorce, "he never prepared either the QDRO or

1. 99 N.Y.2d 295 (2002).
2. McCoy v. Feinman, 737 N.Y.S.2d 481 (App. Div. 2002).
3. *Id.* at 482.
4. *McCoy*, 99 N.Y.2d at 298.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 299.

the judgment".[10] On June 14, 1988, the husband's attorney submitted the final judgment of divorce, which incorporated the prior oral stipulation, with the county clerk's office.[11]

Feinman's final representation of McCoy took place when he represented her in a support action against her ex-husband in family court that was entered on July 24, 1991.[12] McCoy did not contact Feinman again until September 1994, when her ex-husband died prior to his retirement.[13] For the next year, Feinman and his law firm tried to secure pre-retirement death benefits for the plaintiff pursuant to her ex-husband's employee benefit plan; however, the efforts were unsuccessful.[14] During this time, the plaintiff was unaware that Feinman failed to secure the QDRO.[15] Ultimately, the plan administrator determined that the plaintiff was not entitled to pre-retirement death benefits under the Employee Retirement Income Security Act (ERISA) because there was no QDRO naming the plaintiff as surviving spouse under the benefit plan.[16]

On January 9, 1996, Feinman advised McCoy that he was unable to obtain the pre-retirement death benefits for her; therefore, the firm would be closing her file.[17] On June 12, 1996, the plaintiff instituted a legal malpractice action against Feinman and his law firm for failure to secure pre-retirement death benefits for her.[18] The plaintiff argued that Feinman negligently failed to submit the QDRO and that this negligent act resulted in her failure to obtain the pre-retirement death benefits.[19]

The supreme court order entered September 8, 2000 granted the defendant's motion for summary judgment, dismissing the malpractice action as time barred by expiration of the three-year statute of limitations.[20]

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10. *McCoy*, 99 N.Y.2d at 299.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *McCoy*, 99 N.Y.2d at 299.
17. *Id.* at 299-300.
18. *Id.* at 300.
19. *Id.*
20. *McCoy*, 737 N.Y.S.2d at 482.

In a 3-2 decision, the Appellate Division, Fourth Department, affirmed the supreme court order granting the defendant's motion for summary judgment.[21] The majority determined that the statute of limitations on the malpractice claim began on June 14, 1988, when the divorce judgment was entered without the QDRO. The court held that from that date the plaintiff was no longer considered a surviving spouse for purposes of receiving benefits under the plan.[22]

The plaintiff appealed as of right pursuant to N.Y.C.P.L.R. § 5601(a).[23] Adopting the reasoning of the dissenters in the appellate division, the plaintiff called for a reversal of the lower court's decision. The dissenters argued that the statute of limitations did not begin until the husband's death on September 1, 1994.[24] They contended that the plaintiff would be unable to assess any actual damages caused by defendant's negligence until this time.[25] In addition, the dissenters called for the application of the doctrine of continuous representation[26] and the reversal of the Supreme Court order on these grounds.[27]

III. DISCUSSION

The court of appeals first looked to the applicable time limitations for attorney malpractice claims, noting that this was the key issue on appeal. Although Feinman conceded that he was negligent in representing the plaintiff in her divorce, the parties disagreed as to which acts caused plaintiff to sustain injury and when the injury occurred.[28]

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21. *McCoy*, 737 N.Y.S.2d at 482.

22. *Id.*

23. N.Y.C.P.L.R. 5601(a) gives the appealing party a right to appeal to the court of appeals when at least two justices dissent on a question of law (McKinney 1995).

24. *McCoy*, 99 N.Y.2d at 300.

25. *Id.*

26. *See* Shumsky v. Eisenstein, 96 N.Y.2d 164, 167-68 (2001) (explaining that the continuous representation doctrine "'recognizes that a person seeking professional assistance has a right to repose confidence in the professional's ability and good faith, and realistically cannot be expected to question and assess techniques employed or the manner in which the services are rendered'") (citing Greene v. Greene, 56 N.Y.2d 86, 94 (1982)).

27. *McCoy*, 737 N.Y.S.2d at 486.

28. *McCoy*, 99 N.Y.2d at 302.

To resolve these disputes, the court looked to both the statutory and common law governing stipulations, domestic orders and employee benefit plans.[29] The court determined that the defendant's negligence occurred when he entered a defective stipulation and final divorce decree and therefore, the statute of limitation began on either June 23, 1987 or June 14, 1988. Thus, the malpractice claim was barred by the three-year statute of limitations.[30]

A. Statute of Limitations

As a general rule, N.Y.C.P.L.R. § 203(a) states that the time in which a plaintiff can commence an action is to be determined from "the time the cause of action accrued to the time the claim is interposed."[31] The legislature explicitly states that a court does not have the discretion to extend a statute of limitations period.[32]

Attorney malpractice claims must be commenced within three-years.[33] A legal malpractice claim accrues when "'all the facts necessary to the cause of action have occurred and the injured party can obtain relief in court.'"[34] Although the court of appeals recognized an exception to the tolling of the three-year statute of limitations under the doctrine of continuous representation,[35] there is no exception to measuring an attorney malpractice claim from the date the injury was caused by the malpractice.[36]

Feinman conceded that he was negligent in the representation of the plaintiff during her divorce action.[37] However, the parties disagreed as to which of Feinman's negligent acts caused the plaintiff's injuries and at which time those negligent acts became actionable.[38] The court looked to the law governing stipulations and employee benefit plans to determine these issues.[39] It is from this

29. *McCoy*, 99 N.Y.2d at 302.
30. *Id.* at 305-06.
31. N.Y.C.P.L.R. § 203(a)(2003).
32. *See id.* § 201.
33. *See id.* § 214 (6).
34. *McCoy*, 99 N.Y.2d at 301 (citing Ackerman v. Price Waterhouse, 84 N.Y.2d 535, 541 (1984)).
35. *See Shumsky* at 167-68.
36. *McCoy*, 99 N.Y.2d at 301.
37. *Id.* at 302.
38. *Id.*
39. *Id.*

analysis that the court then determined when the statute of limitations in this case began to accrue.[40]

B. Stipulations

The court noted that stipulations serve several purposes, including predictability and assurance that courts will honor such agreements.[41] They also promote judicial economy by narrowing the scope of issues for appeal.[42] The court also noted that binding stipulations are contracts and are to be governed by contract law.[43] Therefore, stipulations will be upheld unless they are the product of fraud, duress, misrepresentation, unconscionability or any other mechanism that renders a contract invalid.[44]

The court first looked to the oral stipulation entered by the defendant on June 23, 1987 while representing the plaintiff in her divorce settlement. The agreement stated that the plaintiff would receive a portion of *retirement benefits* vested in the plan prior to the divorce.[45] However, the stipulation was silent as to whether the plaintiff would receive pre-retirement death benefits.[46]

The court held that the stipulation was not ambiguous; it simply did not cover pre-retirement death benefits.[47] The court also found that the final judgment of divorce did not cover pre-retirement death benefits; it simply incorporated the oral stipulation into the judgment.[48] As a result, the court held that plaintiff was not entitled to pre-retirement death benefits under the oral stipulation.[49]

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40. *McCoy*, 99 N.Y.2d at 302.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 303 (emphasis in original). Plaintiff relies on Majauskas v. Majauskas, 61 N.Y.2d 481, 485 (1984) for formula to determine equitable distribution of benefits to ex-spouse pursuant to employee benefit plan.

46. *McCoy*, 99 N.Y.2d at 303.

47. *Id.*

48. *Id.*

49. *Id.*

C. *Domestic Relations Orders And Employee Benefit Plans*

The employee benefit plan in this case is subject to ERISA,[50] which states that a divorce judgment terminates a spouse's right to be deemed a surviving spouse under an ex-spouse's employee benefit plan.[51] Under ERISA, an administrator is prohibited from assigning plan benefits unless, pursuant to a QDRO, the ex-spouse is designated "surviving spouse" for purposes of inheriting from the plan.[52] A QDRO obtained pursuant to a settlement can only convey those rights already stipulated to by the parties as a basis for the judgment.[53]

The plaintiff asserted that she suffered an actionable injury due to Feinman's continuous failure to secure the QDRO.[54] However, the court determined that the stipulation did not confer pre-retirement death benefits to the plaintiff.[55] Since the QDRO cannot convey a right that was not previously stipulated to, the court held that the plaintiff suffered no actionable injury from defendant's failure to secure the QDRO.[56]

D. *Analysis*

Since both the plaintiff and defendant concede that Feinman was negligent in his representation of the plaintiff, the only issue for the court of appeals to determine was when the negligent action took place and when the plaintiff suffered actionable harm.[57]

The court concluded that it was the defendant's failure to secure pre-retirement death benefits in the stipulation and judgment that caused the plaintiff's actual injury.[58] It was from this point that the plaintiff was not entitled to receive pre-retirement death benefits.[59] Since the QDRO cannot assign a right that was not previously

50. *McCoy*, 99 N.Y.2d at 304 n.3 (explaining that ERISA is a federal statute designed to protect the interests of employees and their beneficiaries).
51. *Id.* at 304.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 303.
56. *McCoy*, 99 N.Y.2d at 305.
57. *Id.* at 302.
58. *Id.*
59. *Id.*

stipulated to, the plaintiff did not suffer actionable injury from the defendant's continuous failure to secure the QDRO.[60]

Instead, it was the defendant's failure to include pre-retirement death benefits in the stipulation and judgment that caused the plaintiff's actionable injury.[61] Therefore, the court held that the statute of limitations for the plaintiff's negligence action against defendant began to run on either June 23, 1987 (the date the stipulation was entered), or at the latest, June 14, 1988 (the date the judgment incorporating the stipulation was entered with the county clerk).[62] In either case, the three-year statute of limitations for attorney malpractice actions expired 5 or 6 years prior to the institution of the malpractice claim against the defendant.[63]

Finally, the plaintiff attempts to assert that under the continuous representation doctrine set forth in *Shumsky v. Eisenstein*,[64] the statute of limitations did not begin until the defendant closed the plaintiff's file on January 9, 1996.[65] In *Shumsky*, the court held that the continuous representation doctrine tolls the statute of limitations only in circumstances where there is a mutual understanding that additional representation may be needed on the specific subject matter at issue in the malpractice claim.[66]

The Court of Appeals dismissed this argument, holding that the malpractice occurred when the defendant failed to secure pre-retirement death benefits in the stipulation or divorce judgment.[67] The defendant did not represent the plaintiff in this specific subject matter; therefore, the continuous representation doctrine did not apply to this case.[68]

IV. CONCLUSION

In *McCoy v. Feinman*, the New York State Court of Appeals held that the expiration of the three-year statute of limitations in an at-

60. *McCoy*, 99 N.Y.2d at 302.
61. *Id.*
62. *Id.*
63. *Id.*
64. 96 N.Y.2d 164, 167-68 (2001).
65. *McCoy*, 99 N.Y.2d at 302.
66. *Id.* at 306.
67. *Id.*
68. *Id.*

torney malpractice action barred the plaintiff's negligence claim against the defendant attorney.[69] The court held that the underlying negligent act occurred 5 or 6 years prior to institution of the action when the defendant failed to include pre-retirement death benefits in the stipulation and judgment securing the plaintiff's divorce.[70] As such, the statute of limitations began to toll from that point and thus, expired 2 or 3 years prior to the institution of plaintiff's action.[71]

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69. *McCoy*, 99 N.Y.2d at 302.
70. *Id.* at 306.
71. *Id.*