

MARVIN ANTHONY MATHEWS, )  
 )  
 Plaintiff/Appellant, ) Appeal No.  
 ) 01-A-01-9603-CH-00132  
 v. )  
 ) Davidson Chancery  
 RUSSELL X. THOMPSON, ) No. 95-2083-II  
 )  
 Defendant/Appellee. )

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

**FILED**  
**June 26, 1996**  
**Cecil W. Crowson**  
**Appellate Court Clerk**

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE  
MEMORANDUM OPINION<sup>1</sup>

This is an appeal by plaintiff/appellant, Marvin Anthony Mathews, from the chancery court's order finding that the statute of limitations had run in Plaintiff's legal malpractice action.

In March 1980, Plaintiff was indicted on four criminal counts in Shelby County, Tennessee. Plaintiff retained defendant/appellee, Russell X. Thompson, for his defense. Ultimately, Plaintiff entered guilty pleas to all charges.

In 1988, Plaintiff filed a pro se petition for post-conviction relief. In his petition, Plaintiff contended that neither Defendant nor the trial court advised him of his Fifth Amendment right against self-incrimination prior to entering his guilty pleas. On 24 February 1993, the Tennessee Court of Criminal Appeals sustained one of Plaintiff's claims and vacated one of his convictions. **State v. Mathews**, No. 02-C-01-9204-CR-00091 (Tenn. Crim. App. 24 Feb. 1993).

On July 17, 1995, Plaintiff filed the instant complaint alleging legal malpractice on the part of Defendant. Defendant moved to dismiss the complaint as time barred by the applicable statute of limitations. On 23 October 1995, the chancery court entered its memorandum and order holding, in pertinent part, as follows:

This matter is before the Court on the defendant's motion to dismiss the complaint with prejudice on the grounds that the complaint is barred by the applicable statute of limitations, Tennessee Code Annotated section 28-3-104.

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<sup>1</sup>Court of Appeals Rule 10(b):  
The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

In this matter the plaintiff contends that the defendant committed legal malpractice in 1980. Specifically, the plaintiff asserts that he was indicted in March of 1980 for various criminal matters and that he employed the defendant to represent him in those matters. The plaintiff entered guilty pleas in each of the criminal matters. Thereafter, in 1988, the plaintiff filed several pro se petitions for post-conviction relief on the grounds that the defendant had failed to properly advise the plaintiff of his rights before entering the guilty pleas. On February 24, 1993, the Tennessee Court of Criminal Appeals sustained one of the plaintiff's claims and vacated one of the convictions to which the plaintiff had earlier entered a guilty plea. On July 17, 1995, the plaintiff filed his complaint for alleged legal malpractice.

Under Tennessee Code Annotated section 28-3-104 actions and suits against attorneys for malpractice are required to be commenced within one year after the cause of action accrues. Tennessee law does not follow the "tolling" theory which holds that legal malpractice must be irremediable before the statute of limitations accrues. Instead, Tennessee law requires that for a cause of action for legal malpractice to accrue two events must occur: the client must become aware of the alleged negligence by the lawyer and the client must suffer a "legal cognizable injury."

In the case at bar the plaintiff first became aware of the alleged negligence no later than 1988 when he filed his petition to vacate the criminal conviction on the grounds that the defendant had not properly advised the plaintiff of his rights. Additionally, the plaintiff suffered a "legally cognizable injury" when he was incarcerated after entering the guilty plea.

In that the plaintiff's legally cognizable injury occurred and the plaintiff became aware of the alleged negligence of the defendant more than a year prior to the filing of this complaint for malpractice on July 17, 1995, this cause of action is time barred.

It is therefore ORDERED that the above-captioned cause of action is DISMISSED with prejudice on the grounds that it is barred by the applicable statute of limitations.

In that the plaintiff has qualified as a pauper in this matter, only state litigation tax is assessed to the plaintiff.

Plaintiff filed a timely notice of appeal and insisted that his claim was not barred by the statute of limitations.

Plaintiff's complaint is based upon an act of legal malpractice which occurred in 1980. Actions against attorneys for malpractice are subject to the time limitation set forth in Tennessee Code Annotated section 28-3-104. This section provides, in pertinent part, as follows: "The following actions shall be commenced within one (1) year after the cause of action accrued: . . .(2) Actions and suits against attorneys . . . for malpractice, whether the actions are grounded or based in contract or tort." Tenn. Code Ann. § 28-3-104(a)(2)(Supp. 1995).

We must first determine when a legal malpractice action accrues. In order for legal malpractice to accrue, two events must occur: "1) the plaintiff must suffer . . . an 'irremediable injury' as a result of the defendant's negligence; and (2) the plaintiff must have known or in the exercise of reasonable diligence should have known that this injury was caused by defendant's negligence." **Carvell v. Bottoms**, 900 S.W.2d 23, 28 (Tenn. 1995).

Here, both events occurred more than one year before the commencement of this action. To explain, Plaintiff became aware of Defendant's alleged negligence on or before 1988. The fact that Plaintiff filed a post-conviction petition in 1988 based on Defendant's improper advice established Plaintiff's knowledge. It is beyond question that Plaintiff knew of Defendant's alleged negligence in 1988. Second, Plaintiff suffered a "legally, cognizable injury" in 1980 when he was incarcerated following the entry of his guilty pleas. Moreover, Plaintiff's post-conviction appeal concluded on 24 February 1993, seventeen months before Plaintiff commenced the instant action. Given this, the trial court correctly determined that the statute of limitations had run and properly dismissed Plaintiff's complaint.

Therefore, it results that the judgment of the chancellor is affirmed at the cost of plaintiff/appellant, Maravin Anthony Mathews, and the cause is remanded to the trial court for any further necessary proceedings.

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SAMUEL L. LEWIS, J.

CONCUR:

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BEN H. CANTRELL, J.

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WILLIAM C. KOCH, JR., J.