

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

FILED

May 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

RONALD WAYNE MEYER,

Plaintiff/Appellant

v.

JAY KU,

Defendant/Appellee

HAMILTON CIRCUIT

No. 03A01-9601-CV-00003

AFFIRMED AND REMANDED

Russell L. Leonard, Winchester, For the Appellant

E. Blake Moore, Chattanooga, For the Appellee

OPINION

INMAN, Senior Judge

At the outset, we are constrained to observe that the briefs are not particularly helpful to a clear understanding of the procedural history of this litigation. Both parties seemingly assume that we attended the various hearings in the General Sessions and Circuit Courts and are therefore so cognizant of the issues that further elucidation is unnecessary.

As we may glean from the record, this litigation is an aftermath of a divorce case in which Ms. Ku represented the plaintiff Ronald W. Meyer. The judgment was unsatisfactory to him, and he declined to pay the balance of Ms. Ku's fee, for which she sued Mr. Meyer in the General Sessions Court on January 25, 1994. He responded by attempting to file a counter-claim for an amount in excess of the jurisdiction. The clerk declined to file the asserted counter-claim; thereupon, the plaintiff filed a "full-bodied complaint" in the Circuit Court on March 19, 1994.

The plaintiff filed a motion to amend "his counter-claim" in the General

Sessions Court on August 15, 1994.¹ Notwithstanding that, on July 19, 1994, he had filed another civil warrant seeking damages for alleged malpractice. Various motions were filed to amend, none of which is significant to our consideration of the issue, that being whether the trial judge correctly dismissed the suits as being barred by the one-year statute of limitations.

We do not believe it necessary to enter upon a detailed analysis of the various time frames for the purpose of determining the date of the accrual of the plaintiff's cause of action for the alleged malpractice of the defendant because the plaintiff, in clear effect, selected the accrual date of May 4, 1992, when he filed a *pro se* brief in this Court vividly describing the various acts of alleged malpractice committed by Ms. Ku.

It is provided by statute, TENN. CODE ANN. § 28-3-104, that actions against attorneys should be commenced within one year after the cause of action accrues. In the recent case of *Carvell v. Bottoms*, 900 S.W.2d 23 (Tenn. 1995), our Supreme Court clarified the "irremedial injury" rule that was frequently consterning and held that the action accrues when the actual injury is or should have been discovered. Applying this clear standard, the plaintiff admits that on May 4, 1992, he was aware of his lawyer's alleged acts of malpractice. His action is therefore time-barred; the fact that he continued to prosecute his divorce case through the appellate process is of no consequence to the issue. *Carvell*, 900 S.W.2d at 29-30.

Plaintiff argues that TENN. CODE ANN. § 28-1-114 saves the day for him. This statute, as pertinent here, provides that a counter-claim is not barred if it was not barred at the time the claims asserted in the complaint were interposed.

In the first place, we do not believe, as the appellee argues, that a counter-claim was properly filed. But, even so, the pleading denominated a counter-claim was filed too late.

¹ Apparently the "counter-claim" thereafter was treated as having been filed. It is difficult to say, one way or the other.

This enquiry involves a question of law with no presumption of correctness, *Carvell*, 900 S.W.2d at 26, and we think the defendant was entitled to a judgment as a matter of law.

The judgment is affirmed with costs assessed to the appellant. We find the appeal is frivolous and remand the case for an assessment of damages pursuant to TENN. CODE ANN. § 27-1-122.

William H. Inman, Senior Judge

Concur:

Houston M. Goddard, Presiding Judge

Don T. McMurray, Judge