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DISTRICT IV

March 20, 2025

To:

Hon. Rhonda L. Lanford
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Jeremiah W. Meyer-O'Day
Electronic Notice

Marcus O. Singleton
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1326 Marcus O. Singleton v. Jessa Nicholson Goetz
(L.C. # 2022CV1986)

Before Kloppenburg, P.J., Blanchard, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Marcus Singleton, pro se, appeals a circuit court order dismissing his complaint claiming legal malpractice against the respondent, Jessa Nicholson Goetz. The issue before this court is whether the cause of action is time-barred under the applicable statute of limitations. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

Background

On August 5, 2022, Singleton filed the complaint against Attorney Nicholson Goetz, who had represented him in Dane County Circuit Court case No. 2013CF586. Singleton alleged that Nicholson Goetz improperly disposed of a phone that Singleton claimed belonged to him. Singleton alleged that the phone contained "evidence that would have proven [his] innocence" in case No. 2013CF586. The complaint filed by Singleton contains only sparse factual allegations. The malpractice claim appears to rest on inferences that Singleton did not prevail in an appeal of his conviction because Nicholson Goetz failed to transfer the phone to Singleton's postconviction counsel, who could have used the phone's contents to raise one or more meritorious arguments on appeal.[2]

Nicholson Goetz filed an Answer, Affirmative Defenses, and Counterclaims. Included within that responsive pleading was a motion to dismiss the complaint on grounds that Singleton's malpractice claim is time-barred by the statute of limitations. *See* WIS. STAT. §§ 802.02(3), 802.06(2)(a)9. Nicholson Goetz asserted in a pleading that "the telephone she was provided in connection with Mr. Singleton's case was returned to either Mr. Singleton's wife, Caitlin, or to another girlfriend of his, on his request, at some point in 2016." Nicholson Goetz also raised a counterclaim for defamation, alleging that Singleton made knowingly false statements in online reviews of her legal practice in which he used fake names to present fictitious accounts of substandard legal work.

[2] It is undisputed that Nicholson Goetz did not represent Singleton in the appeal of his conviction in Dane County Circuit Court case No. 2013CF586.

Singleton then filed a response to Nicholson Goetz's Answer, Affirmative Defenses, and Counterclaims, in addition to a motion to dismiss Nicholson Goetz's counterclaims. Along with his response, Singleton filed several exhibits, including an affidavit sworn by his wife, Caitlin Singleton, in which she averred in part as follows:

> On April 7-9, 2014, I dropped off a phone containing evidence in the case of Marcus Singleton to his attorney, Jessa Nicholson and her staff. This phone contained important evidence and the text and calling records were to be used in the case. I was never made aware of what was done with the phone and its records. The phone was owned by me and used by Marcus Singleton. The phone was never returned to me.

The circuit court scheduled a hearing on the parties' motions to dismiss. The motion hearing occurred on February 21, 2023, via Zoom. Singleton, who was in prison at the time, was sent notice of the hearing but did not appear. In an oral ruling, the court dismissed Singleton's complaint on statute of limitations grounds. Nicholson Goetz, through her counsel, said that she no longer wished to pursue the counterclaim for defamation against Singleton. The court later entered a written order dismissing the complaint and the counterclaim with prejudice. Singleton filed a notice of appeal as to the dismissal order.

Discussion

This appeal requires us to apply the applicable statute of limitations for legal malpractice to a set of facts. We will accept the facts found by the circuit court unless they are clearly erroneous. WIS. STAT. § 805.17(2). Whether the circuit court properly dismissed the complaint under the applicable statute of limitations presents an issue of law that we review de novo. ***Winzer v. Hartmann***, 2021 WI App 68, ¶6, 399 Wis. 2d 555, 966 N.W.2d 101. At the time Nicholson Goetz was representing Singleton, the statute of limitations for legal malpractice was six years. *See* WIS. STAT. § 893.53 (2013-14). *See also* ***Acharya v. Carroll***, 152 Wis. 2d 330,

337, 448 N.W.2d 275 (Ct. App. 1989) ("Because no other statute of limitations covers a tort action for legal malpractice, the six-year limitation in [§] 893.53 … applies.").

Nicholson Goetz asserts that her representation of Singleton in case No. 2013CF586 terminated on April 7, 2014, when she filed a notice of intent to seek postconviction relief on Singleton's behalf. This is consistent with the circuit court's determination that Nicholson Goetz's last representation of Singleton was in 2014. Singleton has not demonstrated that the court's determination was clearly erroneous; therefore, we will not disturb on appeal the circuit court's determination that Nicholson Goetz's representation of Singleton ended in 2014. *See* ***Old Republic Surety Co. v. Erlien***, 190 Wis. 2d 400, 414, 527 N.W.2d 389 (Ct. App. 1994) ("we are bound by the trial court's determination of historical facts unless they are clearly erroneous").

Singleton filed the complaint in August 2022—more than eight years after Nicholson Goetz's legal representation of him in case No. 2013CF586 ended. We conclude, as did the circuit court, that the six-year statute of limitations for legal malpractice bars Singleton's action. *See* WIS. STAT. § 893.53 (2013-14). As we explain in further detail below, we reject Singleton's arguments that the statute of limitations for his malpractice action was tolled by application of the discovery rule. *See* ***Pritzlaff v. Archdiocese of Milwaukee***, 194 Wis. 2d 302, 315, 533 N.W.2d 780 (1995) ("[T]he discovery rule is so named because it tolls the statute of limitations until the plaintiff discovers or with reasonable diligence should have discovered that he or she has suffered actual damage due to wrongs committed by a particular, identified person.").

Singleton concedes that Nicholson Goetz ended "some of her representation" of him in 2014, but asserts that he "was not injured" in 2014. Rather, Singleton makes multiple assertions, alleging alternative dates for his alleged injury as part of his discovery rule argument. He asserts in part that his injury occurred in 2016, when Nicholson Goetz allegedly improperly disposed of

the phone that Singleton's wife had dropped off. Based on this assertion, Singleton argues in one part of his brief that the statute of limitations for his malpractice action was tolled between 2014 and 2016. In a separate part of his brief, Singleton argues that the statute of limitations was tolled until February 2020, because that is when he allegedly first learned that Nicholson Goetz no longer had possession of the phone.

"Our review on a motion to dismiss requires us to accept the facts alleged in the pleadings as true." ***Doe 56 v. Mayo Clinic Health Sys.-Eau Claire Clinic, Inc.***, 2016 WI 48, ¶5, 369 Wis. 2d 351, 880 N.W.2d 681. Thus, we assume for purposes of this analysis that all of the reasonable inferences that could arise from the allegations in the complaint are true, including: that Nicholson Goetz disposed of the phone in a manner that injured Singleton and that Singleton did not discover until February 2020 that Nicholson Goetz no longer possessed the phone.

For the following reasons, we conclude that Singleton's discovery rule argument is without merit, because the circuit court had a strong basis in the record to find that Singleton was aware, no later than 2014, that the phone contained allegedly potentially exculpatory information. The record also demonstrates that, no later than July 2014, Singleton believed that he had received ineffective assistance of counsel from Nicholson Goetz in Case No. 2013CF586, due to her failure to make use of the information contained in the phone or its records. In his reply brief on appeal, Singleton states that he gave his wife permission to give the phone to Nicholson Goetz. The timing and purpose of that delivery, according to Singleton's own evidence, was the following. In her affidavit, Singleton's wife, Caitlin Singleton, avers that she gave "a phone containing evidence in the case of Marcus Singleton" to Nicholson Goetz in April 2014 and that Caitlin Singleton did so because the phone "contained important evidence and the text and calling records were to be used in the case." Further, attached as an exhibit to

Singleton's response to the Answer, Affirmative Defenses, and Counterclaims in this case is a copy of an email exchange from March 2021 between Nicholson Goetz and Singleton's mother-in-law. In one email, Nicholson Goetz stated: "I do specifically recall referencing the cell records at sentencing, so I know they were provided to the state and the court, but I no longer have copies." Singleton was present for his sentencing hearing, which occurred in April 2014—the same month that Caitlin Singleton dropped off the phone with Nicholson Goetz. In addition, attached as another exhibit to Singleton's response to the Answer, Affirmative Defenses, and Counterclaims is a copy of a letter from Singleton to the circuit court in Case No. 2013CF586 in July 2014. Singleton stated in the letter that he wished to withdraw his guilty plea because he believed that he received ineffective assistance of counsel from Nicholson Goetz. In his letter to Judge Ehlke, Singleton also referenced the phone that his wife turned over to Nicholson Goetz, and he asserted that Nicholson Goetz overlooked evidence contained in the phone or in phone-related records that Singleton believes could have helped his case.

These references provided an ample record for the circuit court to find that Singleton was aware in 2014 that the phone that had been provided to Nicholson Goetz contained information that Singleton believed to be helpful to his case. If Singleton wished to make a claim that Nicholson Goetz committed malpractice by failing to retrieve the information from the phone or make adequate use of it, by failing to transfer the phone to Singleton's postconviction counsel or by some other action or inaction related to the phone, it was incumbent on him to raise such a claim within the six-year statute of limitations. *See* WIS. STAT. § 893.53 (2013-14). He did not do so.

Singleton raises several other issues in his appellate briefing. We address those issues in turn, as best we understand them.

Singleton argues that his complaint alleges that Nicholson Goetz committed theft when she allegedly failed to return the phone to him, and that this is not time barred under WIS. STAT. § 895.53 because the theft allegedly occurred sometime in 2016. As support for this argument, Singleton relies on the affidavit of Caitlin Singleton, in which she averred that "[t]he phone was never returned to [her]" by Nicholson Goetz. The problem with Singleton's reliance on this affidavit is that, in the same affidavit, Caitlin Singleton also averred that the phone was "owned" by her and only "used" by Marcus Singleton. Caitlin Singleton's affidavit defeats Singleton's claim that Nicholson Goetz stole "his" phone. It was not his phone but, rather, belonged to his wife.[3] Because the phone did not belong to Singleton, Singleton's claim that Nicholson Goetz stole the phone from him fails to state a claim.

Separately, Singleton argues that Nicholson Goetz's attorney in this case acted in "bad faith" and lied to the circuit court about the attorney's attempts to have Singleton served in a timely manner at Green Bay Correctional Institution with a copy of the Answer, Affirmative Defenses, and Counterclaims. Singleton references the transcript of a hearing held on November 17, 2022, which reflects that Nicholson Goetz's counsel said, "I then attempted to have the Green Bay Sheriff's Department serve it personally on the Warden. They have to date failed to do so." Singleton asserts that this statement was a lie and that, therefore, a default judgment should be entered in Singleton's favor.

[3] Singleton attempts in his reply brief on appeal to raise an issue about Caitlin Singleton's averment that she owned the phone. Singleton asserts that, although she "paid for the phone for him," Singleton used the phone and all the contact information in the phone was his. Whatever the potential significance could be of these assertions, they are factual assertions that are not only raised for the first time on appeal, but also are raised for the first time in the reply brief and, therefore, we decline to consider them. *See* ***State v. Marquardt***, 2001 WI App 219, ¶14 n.3, 247 Wis. 2d 765, 635 N.W.2d 188.

The only support that Singleton provides for his assertion that Nicholson Goetz's counsel lied and acted in bad faith is a document that purports to be a letter addressed to Singleton from the Brown County Sheriff's Office, a copy of which is included in the appendix to his appellant's brief. Singleton argues that this document shows that Nicholson Goetz's attorney lied about his attempts to serve Singleton within the twenty-day time frame required under WIS. STAT § 802.06(1)(a). The document, which purports to be dated October 11, 2023, is not properly before this court. The document is not a part of the record on appeal and, even by its own purported terms, did not exist at the time the circuit court issued the dismissal order that is the subject of this appeal. For all of these reasons, this court will not consider the document. "An appellate court can only review matters of record in the trial court and cannot consider new matter[s] attached to an appellate brief outside that record." ***South Carolina Equip., Inc. v. Sheedy***, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984).

This leaves no support for Singleton's assertion that Nicholson Goetz's counsel lied and acted in bad faith. Accordingly, we do not consider Singleton's unsupported argument. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (we need not consider arguments that are unsupported by citations to the record), *abrogated on other grounds by* ***Wiley v. M.M.N. Laufer Family Ltd. P'ship***, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236.

In sum, Singleton's legal malpractice action against Nicholson Goetz is barred by the statute of limitations.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.83(2).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals