MISSOURI COURT OF APPEALS
WESTERN DISTRICT

D. LYNN DUVALL and CONNIE S. DUVALL,

Appellants,

v.

JOSEPH J. YUNGWIRTH,,

Respondent.

DOCKET NUMBER WD83645

Date: November 10, 2020

Appeal from:
Boone County Circuit Court
The Honorable Jodie C. Asel, Judge

Appellate Judges:
Division Three: Edward R. Ardini, Jr., Presiding Judge, and Alok Ahuja and Gary D. Witt, Judges.

Attorneys:
Danieal H. Miller, Columbia, for appellant
Wade H. Ford, Jr., Columbia, for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

D. LYNN DUVALL and CONNIE S. DUVALL, Appellants,
v.
JOSEPH J. YUNGWIRTH, Respondent.

WD83645 Boone County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, and Alok Ahuja and Gary D. Witt, Judges.

Lynn and Connie Duvall filed suit against attorney Joseph Yungwirth in the Circuit Court of Boone County, alleging claims for legal malpractice, breach of fiduciary duty, and negligent misrepresentation. Their claims arise from estate-planning legal services which Yungwirth provided to Lynn Duvall's aunt Mildred Ruth Duvall, and to the Duvalls, in 2002.

Ruth Duvall died in 2005. As a result of Yungwirth's legal services, the Duvalls alleged that they became involved in litigation in 2003 concerning the appointment of a guardian and conservator for Ruth, and further litigation in 2006, when a claim was asserted against them in the probate proceeding involving Ruth's estate. Lynn Duvall also claimed that he suffered business losses, beginning in 2005, as a result of Yungwirth's actions. Prior to August 2008, the Duvalls consulted with two different attorneys concerning possible malpractice claims against Yungwirth, and made demand upon him twice to pay their legal fees and discharge their liabilities allegedly caused by his malpractice.

The Duvalls ultimately settled the claims asserted against them in the probate proceeding in August 2013. A few days later they filed this suit. Yungwirth moved for summary judgment, asserting that the Duvalls' claims were time-barred under the five year statute of limitations in § 516.120(4), RSMo. The circuit court granted the motion, and the Duvalls appeal.

AFFIRMED.

Division Three holds:

The Duvalls do not dispute that, prior to August 2008, they were aware of potential wrongdoing by Yungwirth, and were on notice that they might have

legally cognizable claims against him. The Duvalls acknowledge that all of their claims against Yungwirth relate to legal services he provided in 2002 – well outside the five-year limitations period. They also admit that they incurred damages caused by Yungwirth's alleged malpractice outside the five-year limitations period in the form of attorney's fees and alleged business losses. They argue, however, that accrual of their causes of action was delayed because they suffered a final item of damage – the settlement of the probate proceeding – in August 2013, just days before they filed this lawsuit.

It is well established in Missouri law that a cause of action can accrue even though the full extent of the plaintiff's damages only becomes known at a later time. In particular, Missouri courts have repeatedly held that claims for attorney negligence can accrue prior to the final resolution of collateral litigation which is triggered by an attorney's malpractice, where the malpractice plaintiff incurred damages in defending the collateral litigation prior to its conclusion. Under these decisions, the Duvalls' claims clearly accrued when they suffered damages in the form of attorney's fees and business losses outside the limitations period, even though the full extent of their damages may only have become known at a later time.

Opinion by: Alok Ahuja, Judge November 10, 2020

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