[J-82-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

DAVID CLARK, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF MONICA CLARK, DECEASED,	:	No. 2 MAP 2020
Appellant	:	Appeal from the Order of the Superior Court at No. 1474 MDA 2018 dated 8/1/19 affirming the order of the Huntingdon County Court of Common Pleas, Civil Division, at No. CP-31-CV-1380-2015 dated 8/10/18
v.	:	
	:	ARGUED: October 20, 2020
JEFFREY STOVER, ESQUIRE, D/B/A STOVER MCGLAUGHLIN D/B/A STOVER, MCGLAUGHLIN, GERACE, WEYANDT & MCCORMICK, P.C., AND STOVER MCGLAUGHLIN D/B/A STOVER, MCGLAUGHLIN, GERACE, WEYANDT & MCCORMICK, P.C. AND STOVER, MCGLAUGHLIN GERACE, WEYANDT & MCCORMICK, P.C.,	:	
Appellees	:	

OPINION

CHIEF JUSTICE SAYLOR **DECIDED: December 22, 2020**

In this professional liability action grounded on alleged attorney malpractice, the Court is asked to adopt the continuous representation rule, as applicable in a number of other jurisdictions, to toll pertinent statutes of limitations.

The underlying controversy entails will-, estate-, and insurance-contest litigation commenced in 2008 by Appellee Jeffrey Stover in his capacity as the attorney for Appellant, David Clark, who is the testator's brother. In 2010, Appellee Stover also

lodged a second complaint on behalf of Monica Clark, the testator's mother, now deceased. After the claims in both actions failed, Appellant and Mrs. Clark commenced the present legal malpractice action in 2015, advancing claims of professional negligence and breach of contract against Appellee Stover and his law firm.

Upon Appellees' motion, the common pleas court awarded summary judgment in their favor, finding, as relevant here, that Appellant and Mrs. Clark were aware of the alleged negligence and the asserted breach more than four years before they lodged the malpractice action. Since the applicable statutes of limitations provided for commencement of a negligence action within two years after accrual, *see* 42 Pa.C.S. §5524(7), and a contractual action within four years after breach, *see id.* §5525, the county court found the claims to be untimely.

On appeal, the Superior Court affirmed. *See Clark v. Stover*, No. 1474 MDA 2018, *slip op.*, 2019 WL 3502434 (Pa. Super. Aug. 1, 2019). The intermediate court enforced the "occurrence rule," per which the statutory period commences upon the happening of the alleged breach of duty (either a duty of care, for purposes of negligence doctrine, or one arising from an agreement, for purposes of contract law). The panel recognized that the discovery rule and the doctrine of fraudulent concealment serve to mitigate potentially harsh effects of the occurrence rule but found that both were inapplicable. *See* id. at 15-22, 2019 WL 3502434, at *7-10. *See generally Nicolaou v. Martin*, 649 Pa. 227, 247-50, 195 A.3d 880, 892-94 (2018) (discussing the discovery rule); *Fine v. Checchio*, 582 Pa. 253, 270-72, 870 A.2d 850, 860-61 (2005) (discussing fraudulent concealment).

Of particular relevance here, the Superior Court also responded to Appellant's request for adoption of the continuous representation rule, under which the applicable statutes of limitations wouldn't begin to run until the date on which Appellees'

representation was terminated. In this regard, the panel explained that it was bound by the Superior Court's previous rejection of this positon. *See Clark*, No. 1474 MDA 2018, *slip op.* at 22 n.15, 2019 WL 3502434, at *10 n.15 (citing *Glenbrook Leasing Co. v. Beausang*, 839 A.2d 437, 442 (Pa. Super. 2003), *aff'd per curiam*, 584 Pa. 129, 881 A.2d 1266 (2005)).

As noted, a discretionary appeal was allowed by this Court so that we may now consider whether to adopt the continuous representation rule.

Presently, Appellant maintains that this rule should be adopted in Pennsylvania to permit statutes of limitations for causes of action sounding in legal malpractice to be "tolled until the attorney's ongoing representation is complete." Brief for Appellant at 26. According to Appellant, a large majority of other jurisdictions favor this approach. *See* Brief for Appellant at 25-31. *See generally* George L. Blum, *Attorney Malpractice -- Tolling or Other Exceptions to Running of Statutes of Limitations*, 87 A.L.R.5th 473 §4(a) (2001 & Supp.) (collecting cases). It is Appellant's position that strong policy justifications support the rule's implementation, including: vindication of clients' entitlement to repose confidence in lawyers' abilities and good faith; recognition of clients' lack of expertise to support ongoing assessments of professional performance; avoidance of disruption of attorney-client relationships and provision of the opportunity for lawyers to cure mistakes before being sued; as well as the discouragement of perverse consequences, such as the perpetuation of representations strategically, as a delay tactic to render potential malpractice claims stale. *See* Brief for Appellant at 32.

Appellees and their *amicus*, the Pennsylvania Bar Association, strongly disfavor adoption of the continuous representation rule. It is their position that the approach is in irreconcilable tension with the salutary purposes underlying statutes of limitations, namely, "to expedite litigation and thus discourage delay and the presentation of stale

claims which may greatly prejudice the defense of such claims." Brief for Appellees at 13 (quoting *Ins. Co. of N. Am. v. Carnahan*, 446 Pa. 48, 51, 284 A.2d 728, 729 (1971)); Brief for *Amicus* Pa. Bar Ass'n at 3 ("Tolling the statute of limitations for the length of a professional relationship runs counter to the public policy of prompt claim resolution and allows the perpetuation of stale claims against lawyers.").

Appellees further observe that this Court rejected a continuous representation approach in *Moore v. Juvenal*, 92 Pa. 484, 491 (1880) ("There was nothing to prevent [the clients] from discharging [the attorney] at any time, if necessary, and commencing their action within [the period allowed under the applicable statute of limitations]."). In addition, they highlight the more recent decision of the Superior Court in *Glenbrook Leasing* as being consistent.[1] Appellees also take issue with Appellant's portrayal of the weight of the authorities in other jurisdictions, highlighting that the rejection or refusal to adopt the continuous representation doctrine is in keeping with the approach of many other jurisdictions. Brief for Appellees at 17 (citations omitted). *See generally* Blum, *Attorney Malpractice*, 87 A.L.R.5th 473, §4(b). Importantly, in Appellees' view, of the jurisdictions that apply a continuous representation approach, several limit the application to instances in which the plaintiff/client lacks knowledge of the alleged malpractice prior to the termination of the attorney-client relationship. *See id.* at 23

[1] Both Appellees and their *amicus* cite this Court's *per curiam* affirmance of the Superior Court's order in *Glenbrook Leasing* as controlling authority. *See* Brief for Appellees at 15-16 (citing *Commonwealth v. Tilghman*, 543 Pa. 578, 589, 673 A.2d 898, 904 (1996)); Brief for *Amicus* Pa. Bar Ass'n at 6 (also citing *Tilghman*). With respect to *Glenbrook Leasing*, however -- where the Court didn't signal any approval of the reasoning of the intermediate court -- the order "is not to be interpreted as adopting the rationale employed by the lower tribunal in reaching its final disposition." *Tilghman*, 543 Pa. at 589, 673 A.2d at 904. In any event, the Court has subsequently clarified that *per curiam* orders do not carry precedential effect. *See Commonwealth v. Thompson*, 604 Pa. 198, 213, 985 A.2d 928, 937-38 (2009).

(citing, *inter alia*, *Skadburg v. Gately*, 911 N.W.2d 786, 796 (Iowa 2018) ("Knowledge on the part of the plaintiff overrides the rationale undergirding the continuous-representation rule.")). *See generally* Blum, *Attorney Malpractice*, 87 A.L.R.5th 473, §4(c).

In terms of policy, Appellees explain that the four-year statute of limitations which may be invoked in most professional liability actions against attorneys already provides substantial protections to plaintiffs, as does the availability, in appropriate cases, of recourse to the discovery rule and the fraudulent concealment doctrine. *See* Brief for *Amicus* Pa. Bar Ass'n at 3-4 ("The discovery rule and fraudulent concealment doctrine exceptions effectively protect against attorneys who are not forthright in [providing] information to their clients [regarding adverse decisions and developments] . . . that is not otherwise discoverable."); Brief for Appellees at 22 ("[Appellant] has not demonstrated, or even argued, that the current rules governing the commencement and tolling of statutes of limitations are somehow deficient when either generally applied to legal malpractice cases or when specifically applied to the facts of this case."). According to Appellees and their *amicus*, application of the continuous representation rule would also serve as a disincentive for lawyers to remain involved in matters to attempt to remediate difficulties which may arise during the course of legal representation.

Upon review, we agree with the position of Appellees and their *amicus*. Significantly, statutes of limitations are legislative in character. Indeed, the Pennsylvania Constitution specifically recognizes the historical and central role of the General Assembly in establishing limitations periods by forbidding this Court from suspending or altering any statute of limitations or of repose via rulemaking. *See* PA. CONST. art. V, §10(c). As such, consideration of tolling doctrines, such as the

continuous representation approach, is most appropriately viewed as an exercise in statutory construction. *Accord Wilson v. El-Daief*, 600 Pa. 161, 176-77, 964 A.2d 354, 363 (2009) (explaining that, although the discovery rule evolved out of the common law, "it is now appropriately regarded as an application of statutory construction arising out of the interpretation of the concept of the 'accrual' of causes of action" (citing, *inter alia*, *Pastierik v. Duquesne Light Co.*, 514 Pa. 517, 520, 526 A.2d 323, 325 (1987))).

Appellant, however, points to nothing in the relevant statutes that would militate in favor of application of a continuous representation approach. Rather, his argument is entirely policy-driven. While we recognize that there are mixed policy considerations involved, as relating to statutes of limitations relegated to the legislative province, we conclude that the appropriate balance should be determined by the General Assembly. *Accord Epstein v. Brown*, 610 S.E.2d 816, 820 (S.C. 2005) (finding that the continuous representation rule was inconsistent with a statute of limitations embodying the discovery rule).[2]

The order of the Superior Court is affirmed.

Justices Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.

Justice Baer concurs in the result.

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[2] In his reply brief, Appellant cites to *Beyers v. Richmond*, 594 Pa. 654, 937 A.2d 1082 (2007), for the proposition that "attorneys are to be treated differently." Reply Brief for Appellant at 4. Taken to its extreme, the attorneys-are-different logic would exempt lawyers entirely from exposure to liability for their professional negligence and otherwise. This, of course, is not the law.

Moreover, the decision in *Beyers* was premised on the authorization, in Article V, Section 10(c) of the Pennsylvania Constitution, for this Court to regulate the practice of law. *See id.* at 665 & n.14, 937 A.2d at 1089 & n.14. And, as noted -- per the express terms of the Constitution -- such powers explicitly do not extend to permit the suspension or alteration of statutes of limitations and repose. *See* PA. CONST. art. V, §10(c).