

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GLENN E. SLUCTER

Plaintiff-Appellant,

v

RONALD S. GRIFFITH and WILLINGHAM &  
COTE, P.C.,

Defendant-Appellee.

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UNPUBLISHED

July 26, 1996

No. 180920

LC No. 93-075079

Before: Doctoroff, C.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

This case arises out of an estate plan prepared for plaintiff and his wife by defendants. After the estate plan was prepared in 1985, plaintiff's assets grew substantially, but the estate plan was not updated. Following the death of his wife, plaintiff sued defendants, claiming that they committed legal malpractice in failing to periodically assess and amend the estate plan to take advantage of a tax break for which plaintiff and his wife had become eligible after the estate was planned. The trial court granted summary disposition in favor of defendants, stating that no appreciable or actual harm had yet accrued. As an alternative ground for summary disposition, the trial court also found that defendants had no continuing duty to update plaintiff's estate plan. Plaintiff now appeals, claiming that he set forth a valid cause of action and that an actual and appreciable loss was properly set forth in his first amended complaint. We affirm.

At the time defendants planned plaintiff's estate in 1985, the monetary value was less than \$600,000, thus, plaintiff and his wife were not eligible to avoid federal tax obligations under the \$600,000 unified credit. However, by the time plaintiff's wife died in 1992, plaintiff's estate was worth approximately \$1,000,000. Because plaintiff did not avail himself of the \$600,000 unified credit while his wife was alive, his estate was no longer eligible for the program. He filed this lawsuit alleging that defendants committed malpractice in failing to notify him that he was eligible for the \$600,000 unified credit before his wife died and the estate became ineligible.

The elements of a legal malpractice claim are:

- (1) the existence of an attorney-client relationship;
- (2) negligence in the legal representation of the plaintiff;
- (3) that the negligence was a proximate cause of an injury; and
- (4) the fact and extent of the injury alleged. [*Charles Rinehart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994).]

A legal malpractice claim requires a showing of actual injury caused by the malpractice, not merely a potential for injury. *Keliin v Petrucelli*, 198 Mich App 426, 430; 499 NW2d 360 (1993). Speculative harm or the threat of future harm not yet realized does not suffice to create a cause of action for negligence. *Luick v Rademacher*, 129 Mich App 803, 807 (1983). In his first amended complaint, plaintiff's claimed damages were that, at his death, his estate will have to pay federal taxes that would have been avoided if the unified credit could have been applied. Thus, on its face, the amended complaint refers to damages that will be experienced at plaintiff's death -- an event which has yet to occur. As pointed out by the trial court:

[Plaintiff] may undertake an alternative estate tax strategy which would reduce or eliminate his estate tax obligation. [Plaintiff's] estate may decrease in value to the point where no estate tax would be incurred. The estate tax codes might be altered to eliminate any future estate taxes [plaintiff] would face. It is apparent that the nature of this loss is the threat of a future harm which has yet to occur, as opposed to an appreciable or actual harm.

We agree with the trial court. Because plaintiff's allegations of damage only involve a potential for injury which has not yet produced any actual harm, summary disposition was properly granted to defendants pursuant to MCR 2.116(C)(8). *Keliin, supra*; *Luick, supra*.

We further agree with the trial court that summary disposition was proper because defendants did not have a continuing duty to plaintiff after the trust was executed. As with the trial court, we could find no Michigan cases which address the specific issue of whether an attorney has a continuing duty to a settlor after executing a trust. However, we find the foreign cases relied upon by the trial court persuasive. In each case, the courts found that an attorney had no continuing duty to carry out the intent of the testator once the will was executed. *Pizel v Zuspahn*, 803 P 2d 205 (Kan 1990); *Stangland v Brock*, 747 P 2d 464 (Wash 1987). The *Stangland* court noted the overwhelming burden on the attorney's practice which would result from imposition of such a continuing duty. *Id.* at 469. We agree and hold that Michigan law does not require an attorney to continually assess the appropriateness of a testator's estate plan. Accordingly, this was an appropriate alternative ground on which to base dismissal of plaintiff's claim.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald