

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 2013-0378

DISCRETIONARY APPEAL FROM THE SUMMIT COUNTY COURT OF APPEALS,
NINTH APPELLATE DISTRICT, CASE NO. CA 26297

TERRI L. RUF
Plaintiff-Appellant

vs.

KATHRYN A. BELFANCE, et al.
Defendants-Appellees

**DEFENDANTS-APPELLEES KATHRYN A. BELFANCE, MELISSA CAREY DEAN,
KATHRYN A. BELFANCE & ASSOCIATES, LLC AND RODERICK LINTON &
BELFANCE, LLP'S MEMORANDUM OPPOSING JURISDICTION**

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I. EXPLANATION OF WHY THERE IS NO PUBLIC OR GREAT GENERAL INTEREST IN ANY ISSUE RAISED BY THE APPEAL IN THIS CASE

S.Ct.Prac.R. 3.1(B)(2) requires every memorandum supporting jurisdiction to provide a “thorough explanation” as to why the case is of public or great general interest or involves a substantial constitutional question. Only cases presenting such serious questions are eligible for review by the Court. More routine cases, where the controlling law is settled and the outcome is of importance only to the parties, are not generally accepted for review. *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960).

This appeal is routine. No unsettled principal of law is presented for resolution by the Court. No new rule of law was established by the Court of Appeals; the statute of limitations analysis employed by the Court of Appeals is consistent with and that required by precedent. The case is important to the parties, to be sure, but that fact alone does not make it one of great general interest. Jurisdiction should be denied.

The memorandum in support of jurisdiction is built upon a false premise and a strained interpretation of the opinion issued by the Court of Appeals. Contrary to Appellant’s shrill argument, the opinion does not create a “new” rule of law. It does not endorse or adopt a “hard and fast” rule that an attorney-client relationship “automatically” terminates for statute of limitations purposes when and only when a client retains new counsel. Rather, the opinion analyzes the undisputed conduct of the Appellant – much of which is ignored in Appellant’s memorandum – in light of existing Ohio law, including the leading decisions of this Court. The Court of Appeals concluded, as did the trial court, that the *totality* of the undisputed conduct leads to the conclusion, as a matter of law, that the attorney-client relationship terminated for purposes of the statute of limitations no later than August 18, 2008. As the complaint for legal malpractice was not filed until September 2, 2009, the claims asserted are barred by the statute of

limitations. The Court of Appeals neither created new law nor flouted legal precedent. The decision presents no conflict with precedent of this Court or other Courts of Appeals.

The fact of the matter is that the parties to this dispute have always been in general agreement as to the controlling law. The application of the controlling law to the undisputed facts has been the point of contention throughout, and cases of this nature are not the stuff of which appeals to the Supreme Court are made. The appeal should be denied. See e.g. *Baughman v. State Farm Mut. Auto. Ins.*, 88 Ohio St.3d 480, 492, 2000-Ohio-397, 727 N.E.2d 1265 (Cook, J., concur).

II. STATEMENT OF THE CASE AND FACTS

Appellant Terri Ruf retained Appellee Kathryn Belfance, an experienced domestic relations practitioner, for representation in obtaining a divorce. Appellee Lisa Carey Dean joined Ms. Belfance's firm a short time later and also began working on Ms. Ruf's divorce.

Ms. Belfance and Ms. Dean worked to ensure that Ms. Ruf received the most favorable award possible. Their task proved difficult, however, because many of the assets that Ms. Ruf wanted to share or retain as her own were, or likely were, her husband's pre-marital separate property. Dr. Ruf was considerably older than Ms. Ruf, had been married before, and brought significant assets to the marriage as his separate property.

Ms. Belfance and Ms. Dean made nuanced arguments in an attempt to have assets deemed marital that were likely Dr. Ruf's separate property. The case went to trial, and Ms. Belfance and Ms. Dean were successful in part, as the trial court accepted arguments that certain assets were marital in nature. For example, the Court awarded Ms. Ruf the marital residence even though Dr. Ruf had acquired the residence before the marriage. Other arguments with

respect to other assets were not as successful, but all in all Ms. Ruf received considerable property, considerable spousal support, and an equitable division of property.

Even so, Ms. Ruf was unhappy with the outcome. She insisted upon an appeal, in which Ms. Belfance and Ms. Dean participated along with another law firm. The Court of Appeals affirmed, in some measure because exhibits from the divorce trial had not been timely filed with the Court of Appeals. The Supreme Court of Ohio declined jurisdiction over the divorce appeal.

Immediately after the Ohio Supreme Court declined to accept the case, if not earlier, Ms. Ruf began her planning for a legal malpractice claim. She retained her malpractice counsel, Richard Koblentz, no later than early August, 2008. Mr. Koblentz referred Ms. Ruf to Richard Rabb, an experienced domestic relations attorney in Cleveland, for the purpose of replacing Ms. Belfance. Ms. Ruf conceded in deposition testimony she had lost confidence in Ms. Belfance and Ms. Dean, and she therefore called Mr. Rabb in early August with the intention that he would take their place. Mr. Rabb and Ms. Ruf discussed the divorce and the planned change in counsel on August 12 and again on August 18, 2008. Mr. Rabb also discussed the divorce and the potential malpractice claim with Mr. Koblentz that same week. On August 18, 2008, Ms. Ruf expressly requested Mr. Rabb to assume her representation in the divorce proceedings. Mr. Rabb agreed to become her attorney in the divorce and sent Ms. Ruf a confirming retention letter dated August 19, 2008, which Ms. Ruf signed. Ms. Ruf also paid to Mr. Rabb the \$8,000 retainer that his letter of engagement required. On August 21, 2008, Ms. Ruf conferred yet again with Mr. Rabb regarding both the divorce decree and the malpractice claims against Defendants.

Ordinarily, someone who had taken all the steps that Ms. Ruf took in August would have promptly notified Ms. Belfance of the change. But Ms. Ruf did not notify Ms. Belfance and Ms. Dean that they had been replaced. Nor did Mr. Rabb give notice that he was Ms. Ruf's new

counsel. Ms. Ruf kept the new retention hidden for strategic reasons, as she was hoping Ms. Belfance would agree to file an affidavit of prejudice – never a pleasant task – against the trial judge. Several weeks after retaining new counsel, Ms. Ruf and Carl Patrick, her boyfriend and an attorney licensed in Florida, met with Ms. Belfance. They raised with Ms. Belfance their interest in an affidavit of prejudice to be filed with the Chief Justice of the Supreme Court. Ms. Ruf raised no other issues at the meeting. Ms. Ruf did not inform Ms. Belfance that she had already retained replacement counsel. To the contrary, she affirmatively misrepresented in response to a direct question from Ms. Belfance at the meeting that she had *not* retained other counsel.

Ms. Belfance advised Ms. Ruf and Mr. Patrick that she would agree to file a motion asking the trial judge to recuse himself, but she made clear she would not sign an affidavit of prejudice for filing with the Chief Justice. Ms. Ruf was unhappy and questioned and impugned Mr. Belfance's motives. Ms. Belfance concluded Ms. Ruf should obtain new counsel and so advised Ms. Ruf, still not aware that new counsel had already been retained. Ms. Belfance wrote a confirming letter dated September 18, 2008, and enclosed a copy of a formal Notice of Withdrawal prepared for the court. The court approved the withdrawal on September 22, 2008, more than a month after the decision to terminate the attorney-client relationship had been made, more than a month after Mr. Rabb had been engaged, and more than a month after Ms. Ruf began her strategy of deception.

Ms. Ruf filed her Complaint for legal malpractice against Belfance on September 2, 2009. Defendants filed an answer and counterclaim for unpaid fees. After extensive discovery, including expert depositions, Defendants filed a Motion for Summary. The motion was comprehensive, arguing that no genuine issue of material fact existed with respect to the merits

the attorney has lost the client's trust and confidence. *Brown v. Johnstone*, 5 Ohio App.3d 165, 166-67, 450 N.E.2d 693 (9th Dist. 1982); *McGlothin v. Schad*, 12th Dist. No. CA2010-12-128, 2011-Ohio-3011 at ¶14 (stating that the "termination of the attorney-client relationship is determined by the actions of the parties"); *Mastran v. Marks*, 9th Dist. No. 14270, 1990 Ohio App. LEXIS 1219, at *9 (Mar. 28, 1990); *Asente v. Gargano*, 10th Dist. No. 04AP-278, 2004-Ohio-5069 at ¶13 (Sept. 23, 2004); *Burzynski v. Bradley & Farris Co., L.P.A.*, 10th Dist. No. 01AP-782, 2001-Ohio-8846, at *4. Abundant authority confirms that no termination letter or other formal communication is required to end an attorney-client relationship. *Erickson v. Misny*, 8th Dist. No. 69213, 1996 Ohio App. LEXIS 1878, at *15 (May 9, 1996) (citing *Brown*, 5 Ohio App.3d at 166-67).

The date of termination in any particular case requires analysis of all pertinent facts. No single fact controls in every case, as the Court of Appeals plainly recognized in its opinion here. That said, however, the affirmative act of retaining replacement counsel is often important in the inquiry, as retaining a new lawyer as a replacement generally reflects a lack of confidence in prior counsel and a desire to disassociate. *McGlothin*, 2011-Ohio-3011 at ¶15; *Asente v. Gargano*, 2004-Ohio-5069 at ¶13 (Sept. 23, 2004); *Burzynski*, 2001-Ohio-8846 at *4; *Zimmie*, 43 Ohio St.3d 54 at syllabus. Acts of repudiation confirm a lack of trust and confidence and are inconsistent with an ongoing attorney-client relationship.

A principal shortcoming of Appellant's memorandum in support of jurisdiction is its insistence that the Court of Appeals adopted a "new, absolute, hard-and-fast rule" that an attorney-client relationship "automatically ends" upon the retention of a new attorney. (Plaintiff's memorandum at p.1.) The Court of Appeals opinion does nothing of the sort; the analysis it employed is not new, and its rule of decision is neither absolute nor hard and fast.

The Court of Appeals did not hold that any attorney-client relationship terminates “automatically” upon occurrence of any particular event.

Rather, the Court of Appeals, as well as the trial court, did what courts have done for years in statute of limitations cases: it looked at the evidence in its *totality*, analyzed whether the totality of Ms. Ruf’s conduct was patently inconsistent with a continuing attorney-client relationship with Ms. Belfance, and concluded that her retention of new counsel, her secrecy, her deception when asked about new counsel, her earlier retention of malpractice counsel, and her efforts to pressure Ms. Belfance to undertake the unpleasant task of filing an affidavit of prejudice after having decided to replace her together demonstrated a clear termination of the attorney-client relationship no later than August 18, 2008.

Appellant’s memorandum in support of jurisdiction also attempts to pretend that the damning facts of the case do not exist. The memorandum ignores that well before August 18 Ms. Ruf had admittedly lost confidence in Ms. Belfance and had retained malpractice counsel to pursue claims against Ms. Belfance, that replacement counsel for the divorce was obtained through the efforts of malpractice counsel, and that the two new attorneys were conferring. Appellant’s memorandum also attempts to brush under the rug the deception and manipulation that followed the retention of replacement counsel. The undisputed facts cannot be wished away; Ms. Ruf’s conduct as a matter of law was sufficient to terminate the attorney-client relationship. It is of no moment that Ms. Belfance was unaware of the conduct; it was Ms. Ruf’s strategic concealment alone that kept Ms. Belfance in the dark, and the Court of Appeals correctly concluded that Ms. Ruf should not obtain a benefit on account of her deception. Precedent does not require that both the client and lawyer know all pertinent facts before a relationship can terminate. See *Woodrow v. Heintschel*, 194 Ohio App.3d 391, 2011-Ohio-1840,

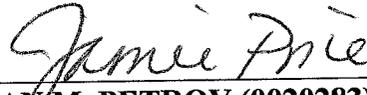
956 N.E.2d 855 (6th Dist.). Conduct terminates the relationship, not disclosure or awareness of the conduct.

In claiming that the analysis of the Court of Appeals was novel and radical, Ms. Ruf is attempting to force a square peg into a round hole. The cases cited by Ms. Ruf in her memorandum stand for the same legal proposition as those relied upon by the Court of Appeals: affirmative action by a client often terminates the attorney-client relationship for purposes of the statute of limitations before the lawyer formally withdraws as counsel. Sometimes the retention of replacement counsel is the determinative act; sometimes a communication signals the end, and sometimes a client ends the relationship by taking matters into his own hands. The answer in any particular case depends upon the facts, of course, but the question is always the same: by what date did the attorney-client relationship end for purposes of the accrual date of a cause of action? The Court of Appeals did not adopt a new rule of law or create new precedent. The Court did as other Ohio courts have done, applied a well-established rule of law and reached a conclusion based upon Ms. Ruf's undisputed conduct. Ms Ruf's unhappiness with the outcome does not make this case one of great public or general interest.

IV. CONCLUSION

This case does not involve matters of public and great general interest. The Ninth District Court of Appeals applied established case law to the facts relevant to a statute of limitations defense and correctly determined that Ms. Ruf failed to file her claims within the period of limitations. This Court should decline to exercise jurisdiction and should deny the appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing, *Defendants-Appellees Memorandum Opposing Jurisdiction*, has been served by regular U.S. Mail, postage pre-paid, this 5th day of April, 2013 to the following:

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