FILED
MAR 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-031 / 94-243

LARRY LUCKRITZ and ELIZABETH LUCKRITZ,

Appellants,

vs.

STEVEN MAYER,

Appellee.

Appeal from the Iowa District Court for Clinton County, Bobbi M. Alpers, Judge.

Luckritzes appeal the district court's ruling granting Mayer's motion for summary judgment. **AFFIRMED.**

Paul L. Macek of Dircks, Ridenour and Macek, Davenport, for appellants.

Irene Prior Loftus and Charles E. Miller of Lane & Waterman, Davenport, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Larry and Elizabeth Luckritz appeal the district court order granting Steven Mayer's motion for summary judgment. We affirm.

In the winter of 1992, Elizabeth's mother, Toni Evans, lived and worked in Germany. Toni became acquainted with Nadine Sipos, an unmarried pregnant young woman who was considering placing her unborn child for adoption. Toni wished to assist Elizabeth and Larry in adopting Nadine's child.

Toni developed a close and intimate relationship with Nadine, and she saw to virtually all of the details of the adoption. On March 24, 1992, Toni accompanied Nadine to the office of Lietenant Colonel Shiles, an Army attorney, where Nadine signed four documents prepared by Shiles. In signing these documents Nadine affirmed she was pregnant and did not know the baby's father; that she was irrevocably giving up her parental rights to her unborn child for the next sixty days; and that she consented to her unborn child's placement with and adoption by the Luckritzes.

In April the Luckritzes hired attorney Steven Mayer to represent them in their attempt to adopt Nadine's baby. Mayer prepared and sent a release of custody to Germany. Nadine signed the release on May 16, seventy-two hours after she gave birth. One week after the child's birth, the Luckritzes traveled to Germany to pick up the baby. They did not return to Iowa until June 10.

Upon returning to her home in Texas, Nadine attempted to revoke the release and regain custody of the child. On June 22, the Luckritzes filed a petition for termination of Nadine's parental rights. On the same day Nadine filed a petition for revocation of the release of custody she had signed.

Following a trial on the termination petition the district court found good cause to revoke Nadine's release of custody and dismissed Luckritzes' petition to terminate Nadine's parental rights. The district court decision was not appealed.

Luckritzes subsequently filed a legal malpractice action alleging Mayer was negligent in the preparation of the release of custody. Mayer moved for summary judgment, arguing even if he was negligent in the particulars alleged, his negligence was not the cause of Luckritzes' damages. The district court agreed, concluding Luckritzes' underlying termination action would have failed for reasons other than Mayer's negligence. The district court granted Mayer's motion for summary judgment.

On appeal Luckritzes contend Mayer was not entitled to judgment as a matter of law and it was error for the district court to conclude otherwise. Our review is for correction of errors at law. Iowa R. App. P. 4.

Summary judgment is appropriate if there is no material fact at issue and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); see Farm

Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The court is only concerned with those factual issues that "materially affect the narrow issue posed by the motion for summary judgment." Id. at 424. A fact issue is material "only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law." Fees v. Mututal Fire & Automobile Co., 490 N.W.2d 55, 57 (Iowa 1992). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423. The resisting party must set forth specific facts showing a genuine factual issue exists. Iowa R. Civ. P. 237(e). "Although appellees have the burden of proving that no material fact is in dispute, this does not relieve appellants' burden to make a showing sufficient to establish the existence of an element essential to their case." Shaw v. Soo Line R.R., 463 N.W.2d 51, 53 (Iowa 1990).

In a legal malpractice action the plaintiff must prove not only that the attorney acted negligently in handling the client's affairs, but that the attorney's negligence

caused the client's loss. Morris v. Getscher, 708 F.2d 1306, 1310 (8th Cir. 1983). To recover, the plaintiff must prove that absent the attorney's negligence, the underlying suit would have been successful. Blackhawk Bldg. Sys., Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg, 428 N.W.2d 288, 290 (Iowa 1988) (citing Baker v. Beal, 225 N.W.2d 106, 109 (Iowa 1975)). In making this determination the factfinder is not free to re-decide the issues resolved in the underlying suit. Morris, 708 F.2d at 1310.

Although Luckritzes raise a number of potential fact issues, we do not believe any of them are material to the isssue of whether the underlying termination action would have been successful. In the underlying action the district court reached the following conclusions:

> The Release of Custody signed by Nadine Sipos on May 16, 1992 is invalid because it does not comply with the requirements of Section 600A.4(2) which are meant to insure voluntariness. Furthermore, the Release of Custody signed by Nadine Sipos on May 16, 1992 is revokable. The documents signed on March 24, 1992, and May 16, 1992, when read together misrepresent law and facts which are material to their execution. The Release of Custody signed by Nadine Sipos on May 16, 1992 was not a voluntary document given the issues of coercion and fraud which are raised by the close and intimate relationship which developed between Toni Evans and Nadine Sipos. Even if good cause for revocation does not exist because of fraud, coercion or misrepresentation of law or fact, the best interests of the child are served by custody with the mother. These conclusions are supported by clear and convincing evidence.

We--like the district court--conclude the underlying termination action failed for these reasons rather than Mayer's alleged negligence. Since the Luckritzes were unable to establish this essential element of their legal malpractice claim, Mayer is entitled to judgment as a matter of law. Shaw, 463 N.W.2d at 53. The judgment of the district court is accordingly affirmed.

AFFIRMED.