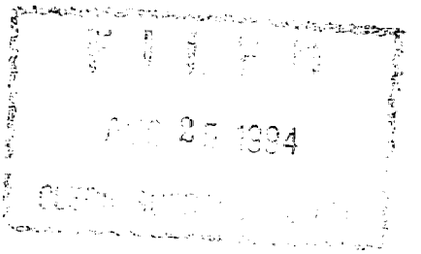
IN THE COURT OF APPEALS OF IOWA

No. 4-110 / 93-0587



HERBERT VANDE KOP,

Plaintiff-Appellant,

vs.

MICHELE McGILL, Administrator of
the Estate of Harvey Wichman Hindt,
a/k/a Harvey W. Hindt, Deceased,

Defendant-Appellee.

Appeal from the Iowa District Court for Lyon County, Charles H. Barlow, Judge.

The plaintiff appeals from the district court's ruling granting the defendant's motion for summary judgment on the plaintiff's legal malpractice claim. **AFFIRMED.**

Michael L. Zenor, of Zenor and Carr, Spencer, for appellant.

Maurice B. Nieland and Jeffrey D. Garreans, of Rawlings, Nieland, Probasco, Killinger, Ellwanger, Jacobs & Mohrhauser, Sioux City, for appellee.

Heard by Donielson, C.J., and Sackett and Habhab, JJ.

PER CURIAM

Plaintiff-appellant Herbert Vande Kop appeals the trial court ruling granting summary judgment and dismissing his legal malpractice action against defendant-appellee Michele McGill, administrator of the estate of Harvey Wichman Hindt. Plaintiff contends the trial court erred in granting defendant's motion for summary judgment. Plaintiff contends Hindt committed malpractice by failing to include divorce provisions in an antenuptial agreement and by failing to fully advise him regarding the agreement. We affirm.

Our review is for correction of errors at law. Iowa R. App. P. 4. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show there is no genuine issue of material fact and the moving party is entitled to a 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). Defendant, the moving party here, has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423. The evidence is viewed in the light most favorable to the plaintiff, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986), and every legitimate inference that reasonably can be deduced from the evidence should be afforded the plaintiffs. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). 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; Gott, 387 N.W.2d at 343.

Plaintiff Herbert Vande Kop married Ella Marie Vande Kop in 1975. In July 1990, after fifteen years of marriage, the marriage was dissolved after a trial and appeal to this court where alimony and property division were the major issues.

The marriage of Herbert and Ella was a second marriage. In November 1975, plaintiff asked decedent attorney, Harvey W. Hindt, to draft an antenuptial agreement. Plaintiff claims he asked the attorney to prepare an agreement that would protect him from claims that might be made by Ella Marie Rastede, his future wife, in the event of a subsequent divorce. Plaintiff contends he was not protected when the dissolution was granted.

Hindt prepared an antenuptial agreement. Plaintiff and Rastede signed the antenuptial agreement on December 1, 1975. The agreement provided for disposition during the lifetime and on the death of either party. There were no references of any kind in the agreement to a possible dissolution or divorce.

After the case was filed, defendant filed a motion for summary judgment on eight grounds. Plaintiff resisted the motion. The trial court dismissed plaintiff's action

ruling on one count and finding it was against public policy at the time the agreement was drafted to put the provisions in the agreement plaintiff complains should have been put in the agreement.

Plaintiff appeals the dismissal of the action contending the summary judgment should not have been granted.

To establish a prima facie claim of legal malpractice, plaintiff must introduce substantial evidence that shows (1) the existence of an attorney-client relationship giving rise to a duty; (2) the attorney, either by an act or failure to act, violated or breached that duty; (3) the attorney's breach of duty proximately caused injury to his or her client; and (4) the client sustained actual injury, loss, or damage. Dessel v. Dessel, 431 N.W.2d 359, 361 (Iowa 1988); Benton v. Nelsen, 502 N.W.2d 288, 291 (Iowa App. 1993).

Plaintiff has not specified what he contends would have been the result reached in his dissolution decree if he had another agreement.

Plaintiff has the obligation to show proof of damage proximately caused by defendant's negligence. See Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986). Plaintiff must show, but for the attorney's negligence, he would not have suffered loss or damage. Blackhawk Bldg. Sys. Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg, 428 N.W.2d 288, 290 (Iowa 1988); Burke v. Roberson, 417 N.W.2d 209, 211 (Iowa 1987).

We will not reverse the trial court's ruling if the ruling can be upheld on any basis appearing in the record. State v. Jespersen, 360 N.W.2d 804, 806 (Iowa 1985). In defendant's motion for summary judgment, defendant advanced there was no proof Hindt's representation was the proximate cause of any damage. To show damage, plaintiff must present evidence that would show he would have obtained a superior result. Shannon v. Hearity, 487 N.W.2d 690, 692 (Iowa App. 1992). To show plaintiff would have obtained a superior result, he should have in his resistance presented evidence showing the difference between the result he would have realized had different advice been given. In resisting the motion, plaintiff presented no such evidence. Plaintiff presented no evidence showing the result reached in his dissolution decree would have been different but for Hindt's representation. There being no evidence to allow a fact finder to find plaintiff would have obtained a superior result, we agree with the trial court that the motion for summary judgment was properly granted. The other issues raised by plaintiff in resisting the motion for summary judgment need not be addressed. The trial court correctly sustained the motion for summary judgment.

AFFIRMED.