IN THE SUPREME COURT OF THE STATE OF DELAWARE

A. MARTIN CONAWAY and EVELYN M. CONAWAY,	§	
	§	No. 365, 2008
	§	
Plaintiffs Below-Appellants,	§	
	§	Court Below—Superior Court
	§	of the State of Delaware
v.	§	in and for Kent County
	§	C.A. No. 07C-08-017
JAMES D. GRIFFIN, VINCENT G. ROBERTSON and GRIFFIN & HACKETT, P.A.,	§	
	§	
	§	
	§	
Defendants Below-Appellees.	§	
	§	

Submitted: January 16, 2009
Decided: March 5, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 5th day of March 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The plaintiffs-appellants, A. Martin Conaway ("Martin") and Evelyn M. Conaway ("Evelyn") (collectively, the "Conaways"), filed an appeal from the Superior Court's June 19, 2008 order granting the motion for summary judgment of the defendants-appellees, James D. Griffin, Esquire, ("Griffin"), Vincent G. Robertson, Esquire ("Robertson"), and

Griffin & Hackett, P.A. (collectively, "Griffin & Hackett"). We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, on August 10, 2007, the Conaways filed a legal malpractice action against Griffin & Hackett claiming that Griffin and Robertson negligently failed to protect their property rights to a 1.92 acre tract situated in Dagsboro Hundred, identified as Sussex County tax parcel 1-33-17.09-6.00 ("Parcel 6.00"). Parcel 6.00 originally was owned by the Conaways' father, Robert Conaway, along with two other tracts---a 13.59 acre tract on State Street between Georgetown and Millsboro in Dagsboro Hundred, identified as tax parcel 1-33-17.00-1.00 ("Parcel 1.00") and a 12,500 square foot lot situated on State Street near Millsboro in Dagsboro Hundred, identified as tax parcel 1-33-17.09-8.00 ("Parcel 8.00").

(3) The record further reflects that, in 1958, Robert Conaway transferred Parcel 6.00 to his daughter, Annie, and Willie Wiggins, as her husband. When Annie died intestate in 1978, Griffin was hired by Willie Wiggins and Martin Conaway to represent them as co-executors of Annie's estate. The estate inventory reflects that Parcel 6.00 passed to Willie as Annie's surviving spouse. Willie and Martin, as co-executors, certified that all information filed in connection with the estate was true and correct.

(4) In February 1980, Griffin was hired to prepare a quitclaim deed from Willie to Annie's surviving children, including Martin and Evelyn Conaway. The quitclaim deed expressly quitclaimed and released any remaining lifetime interest held by Willie in Parcel 1.00 and Parcel 8.00 (identified in the quitclaim deed as "1-33, Map #17, Parcel #1" and "1-33, Map #17.09, Parcel #8"). Willie later cohabited with a woman named Elois Doughty on the property known as Parcel 6.00. When Willie died in August 1993, his will bequeathed Parcel 6.00 to Elois Doughty as his wife. The Conaways filed no claims or objections against Willie's estate. On April 26, 1994, Griffin wrote a letter to the Conaways following a meeting with them in his office. The letter confirmed Griffin's conclusion that Parcel 6.00 had passed to Elois Doughty and that the Conaways had no ownership interest in that property.

(5) The record reflects that Parcel 6.00 has changed hands several times since 1993. At some point, Martin and Evelyn asked Griffin & Hackett to investigate the possibility of their filing an action in the Court of Chancery asserting an ownership interest in Parcel 6.00. On March 24, 2004, Robertson wrote a letter to the Conaways answering their inquiry. In the letter, Robertson advised the Conaways that, because they had been on notice of the public records reflecting Willie's ownership of Parcel 6.00

since the late 1970's, he would not be able in good faith to file such an action on their behalf.

(6) This Court reviews the Superior Court's grant of summary judgment *de novo* to determine whether, viewing the facts in the light most favorable to the non-moving party, the moving party has demonstrated that there are no issues of material fact in dispute.[1] Moreover, the 3-year statute of limitations is applicable to a claim of legal malpractice.[2] The statute begins to run at the time of the alleged malpractice and even ignorance of the facts constituting a cause of action is no obstacle to the operation of the statute.[3] The only exceptions to that rule are in cases of infancy, incapacity, fraud,[4] and where there are no observable factors that would place a layman on notice of a problem.[5] In such cases, the statute of limitations begins to run when the defect is discovered.[6]

(7) While the Conaways assert that the Superior Court should not have granted Griffin & Hackett's motion for summary judgment because there are material facts that remain in dispute, such is not the case. The undisputed material facts are that the Conaways were on notice, at least as of

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[1] *Bryant ex rel. Perry v. Bayhealth Medical Center, Inc.*, 937 A.2d 118, 122 (Del. 2007).
[2] Del. Code Ann. tit. 10, § 8106; *Oropeza v. Maurer*, Del. Supr., No. 89, 2004, Steele, C.J. (Sept. 20, 2004).
[3] *Mastellone v. Argo Oil Corp.*, 82 A.2d 379, 383 (Del.1951).
[4] Id.
[5] *Pioneer Nat'l Title Insurance Co. v. Child, Inc.*, 401 A.2d 68, 71-72 (Del. 1979).
[6] Id.

February 1980, that ownership of Parcel 6.00 had passed to Willie as Annie's surviving husband. Moreover, it is undisputed that the Conaways had three years in which to file an action against Griffin & Hackett for legal malpractice, but did not do so until August 2007. Finally, there is no evidence of fraud on the part of Griffin & Hackett. While the Conaways cite to correspondence from Griffin & Hackett, notably Robertson's March 24, 2004 letter, as evidence of the firm's ongoing attempt to hide its failure to include Parcel 6.00 in the quitclaim deed,[7] the correspondence, which speaks for itself, does not reflect an attempt at a cover-up. In particular, Robertson's letter simply outlines the history of the three parcels and explains why there was no good faith basis for an action in the Court of Chancery.[8]

(8) We conclude that the Superior Court neither erred nor abused its discretion when it granted Griffin & Hackett's motion for summary judgment. We affirm the Superior Court's judgment on the basis of its June 19, 2008 decision.

[7] The Conaways later contradict themselves by asserting that Parcel 6.00 was included in the quitclaim deed, an assertion belied by the unambiguous language of the deed itself.
[8] The record reflects that any claim purportedly based on that letter, or on Griffin's April 26, 1994 letter to the Conaways, also was asserted beyond the 3-year statute of limitations and is, therefore, barred.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice