

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 12, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1992

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

Anthony Pratt,

Plaintiff-Appellant,

v.

Frank M. Cappozzo,

Defendant-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
FRANK T. CRIVELLO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Anthony Pratt appeals *pro se* from an order dismissing the legal malpractice complaint he filed against Frank M. Cappozzo. Pratt claims the trial court erred in dismissing the complaint because the defect in the summons was not fundamental and because the complaint states a claim

upon which relief may be granted. Because the complaint fails to state a claim for legal malpractice, we affirm the dismissal.¹

I. BACKGROUND

On March 21, 1995, Pratt filed a summons and complaint, *pro se*, alleging that Cappozzo was negligent in representing him regarding his March 1993 arrest for federal criminal bank fraud charges and the subsequent proceedings at the trial and appellate court levels.

Cappozzo filed a motion to dismiss alleging both that the summons and complaint served on him were defective because neither was signed, and that the complaint failed to state a claim. Pratt filed a response opposing the motion. The trial court granted the motion, ruling both that the summons was defective and the complaint failed to state a claim. Pratt now appeals.

II. DISCUSSION

Whether a complaint states a cause of action for which relief can be granted is a question of law that we decide *de novo*. *Blue Cross v. Fireman's Fund Ins. Co.*, 132 Wis.2d 62, 64-65, 390 N.W.2d 79, 80 (Ct. App. 1986), *aff'd*, 140 Wis.2d 544, 411 N.W.2d 133 (1987). From our review of Pratt's complaint, we conclude that he has failed to state a claim for legal malpractice.

Section 802.02(1)(a), STATS., requires a complaint to have a “short and plain statement of the claim, identifying the transaction or occurrence ... out of which the claim arises and showing that the pleader is entitled to relief.”

To show that he is entitled to relief, Pratt must show: (1) the

¹ Because our decision regarding the adequacy of the complaint disposes of this appeal, we need not address the trial court's alternate reasons for dismissal—the defective summons. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

existence of a lawyer-client relationship; (2) that the acts Cappozzo committed or failed to commit constituted negligence; (3) that the negligent acts were a substantial factor in causing injury; and (4) the extent of injury. *Lewandowski v. Continental Cas. Co.*, 88 Wis.2d 271, 277, 276 N.W.2d 284, 287 (1979). Pratt must show that but for the negligence of Cappozzo, he would have been successful in the defense of his case. *Id.*

Although the complaint does allege the other required factors, it does not allege in any manner that, but for Cappozzo's negligence, Pratt would have won his federal criminal case or appeal. Accordingly, the complaint fails to state a claim for legal malpractice and was properly dismissed by the trial court.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.