NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0694

JACKIE ROGERS

VERSUS

JAMES A. WILLIAMS, DONNA U. GRODNER, GRODNER & ASSOCIATES, AND AZBY INSURANCE COMPANY

On Appeal from the 18th Judicial District Court
Parish of Iberville, Louisiana
Docket No. 63902, Division "C"
Honorable Alvin Batiste, Jr., Judge Presiding

Jackie Rogers **Kinder, LA**	**Plaintiff-Appellant** **In Proper Person**
Jack E. Truitt **Madisonville, LA**	**Attorney for** **Defendant-Appellee** **James A. Williams**
Donna U. Grodner **Grodner & Associates** **Baton Rouge, LA**	**Attorney for** **Defendants-Appellees** **Donna U. Grodner and** **Grodner & Associates**

BEFORE: PARRO, KUHN, AND DOWNING, JJ.

Judgment rendered December 21, 2007

PARRO, J.

An inmate in the state prison system appeals a summary judgment that dismissed his legal malpractice claim against an attorney and the law firm at which she worked. For the following reasons, we affirm.

Factual Background and Procedural History

This is a suit for legal malpractice by inmate Jackie Rogers (Rogers) against James A. Williams (Williams), Donna U. Grodner (Grodner), and Grodner & Associates, who allegedly provided him legal representation in an action for damages, referred to as "The BioProducts Litigation," related to a chemical spill in St. Gabriel on February 24, 2000. In his petition, Rogers alleged that he entered into a contingency fee agreement with Williams to represent him in his claim for damages. Apparently, Williams represented other similarly situated persons. Rogers further alleged that he was a member of a class for which a settlement was reached in connection with the chemical spill and that his portion of the settlement proceeds had never been delivered. Williams allegedly acknowledged that he had an attorney-client relationship with Rogers and informed Rogers that his claim had been referred to Grodner of Grodner & Associates. Upon contacting Grodner, Rogers was informed that he was not included in Grodner's data base of clients and that Grodner had not received a referral of his claim from Williams.

Accordingly, Grodner and her law firm filed a motion for summary judgment, denying (1) that a class settlement was reached in The BioProducts Litigation, (2) that her referral list from Williams included Rogers, and (3) that she ever represented Rogers in the litigation or any other matter. In the absence of a contractual relationship, Grodner and her law firm sought to be dismissed from Rogers' claim. Attached to their motion was an affidavit by Grodner in which she declared, in pertinent part:

> On or about November 28, 2001, Ms. Grodner did take referrals from Mr. James Williams. The attached is the contract and an excerpted portion in alphabetical order of clients of Mr. Williams who were referred. Mr. Jackie Roger's name is not on the referral list. We did not send him a postcard advising him of the referral and we have never represented to him that we represent him on any case. ... We have checked all of our

> databases in all of our cases and Mr. Jackie Roger's name is not in any of our computer databases. We keep all claimants' names in our database and Mr. Rogers' name is not in our database. We do not have and have never had any file in our office on Mr. Rogers. Mr. Rogers has never signed a contract with Donna Grodner or Grodner & Associates to represent him on any matter.

After having had a motion for appointment of counsel denied, Rogers filed an opposition to Grodner's motion, noting Williams' allegation that Grodner & Associates was responsible for Rogers' claim and settlement proceeds. In support of this position, Rogers referred to a June 22, 2006 letter from attorney Jack E. Truitt on behalf of Williams. However, he failed to offer this letter or any evidence to support his claim.

The motion for summary judgment was granted by the trial court at the hearing on February 7, 2007, and the judgment dismissing Rogers' legal malpractice claim against Grodner and her law firm followed. Rogers appealed. Rogers challenges the trial court's granting of summary judgment and dismissal of his claims against Grodner and her law firm.[1]

Discussion

Summary judgments are reviewed on appeal *de novo*, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Smith v. Our Lady of the Lake Hospital, Inc., 93-2512 (La. 7/5/94), 639 So.2d 730, 750. A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. Jarrell v. Carter, 632 So.2d 321, 323 (La. App. 1st Cir. 1993), writ denied, 94-0700 (La. 4/29/94), 637 So.2d 467. The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art. 966(A)(2); Rambo v. Walker, 96-2538 (La. App. 1st Cir. 11/7/97), 704 So.2d 30, 32. The motion should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to material fact and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

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[1] Only one of Rogers' four assignments of error pertains to his claims against Grodner and her law firm; the remaining assignments of error address his claims against Williams, which are not before the court in this appeal.

The initial burden of proof is on the moving party. However, on issues for which the moving party will not bear the burden of proof at trial, the moving party's burden of proof on the motion is satisfied by pointing out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the nonmoving party must produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial; failure to do so shows that there is no genuine issue of material fact, and the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(C); Clark v. Favalora, 98-1802 (La. App. 1st Cir. 9/24/99), 745 So.2d 666, 673.

At a trial on the merits, Rogers would have the burden of proving the existence of an attorney-client relationship with Grodner and her law firm. Therefore, once Grodner pointed out, by way of an affidavit, that neither she nor her law firm represented Rogers in The BioProducts Litigation, Rogers would have had the burden to produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial. In connection with his opposition to the motion for summary judgment, Rogers failed to timely serve on Grodner any opposing depositions, answers to interrogatories, admissions on file, or affidavits to support his position.[2] In light of such failure, there was no genuine issue of material fact, and Grodner and her law firm were entitled to judgment as a matter of law.

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[2] On January 26, 2007, after the originally scheduled hearing date for the motion, an opposition was filed by Rogers to the motion for summary judgment. Despite recognizing that fact, Rogers prayed that the motion be denied and that the trial court "reaffix this matter for hearing on a day, date and hour to be fixed by this Honorable Court." In connection with his opposition, Rogers submitted an order which, in pertinent part, provided:

> IT IS ORDERED that this matter be; and, same is hereby fixed for the 7 day of March 2007.
>
> IT IS ORDERED FURTHER that Defendants be; and, they are hereby ORDERED on the day, date and hour first above written to show cause, if any they have, why the relief prayed for should not be granted.

Confusion as to the nature of Rogers' January 26, 2007 filing arises as a result of Rogers' erroneous belief that the trial court had previously ruled on the motion for summary judgment. Seemingly, he wanted the trial court to rehear the matter. Nonetheless, the record does not contain an order continuing the hearing on Grodner's motion for summary judgment, which had been reset for February 7, 2007, when Rogers did not appear at the originally scheduled hearing. Moreover, the record does not show that Grodner and her law firm were ever served with an order continuing the hearing date from February 7, 2007, to March 7, 2007.

Attached to Rogers' appellate brief were the following: (1) a February 23, 2006 letter from Williams' assistant to Rogers, (2) a March 13, 2006 letter from Williams' assistant to Rogers, (3) a February 28, 2006 letter from Rogers to Williams' assistant, (4) a March 20, 2006 letter from Grodner to Rogers, (5) an April 3, 2006 letter from Grodner to Rogers, (6) an April 19, 2006 letter from Grodner to Rogers, (7) a June 22, 2006 letter from Williams' attorney to Rogers, and (8) documentation establishing Rogers' domicile at the time of the chemical spill. None of these documents are included in the record in this matter. Since they are not part of the appellate court record, they may not be considered in this appeal. See Capital Bank & Trust Co. v. Lacey, 393 So.2d 668, 670 (La. 1980). In so ruling, we pretermit discussion of whether such documentation, if it had been properly filed in the record of the trial court proceeding, would have been sufficient to satisfy Rogers' burden of proof.

Decree

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal are assessed to Jackie Rogers.

AFFIRMED.