

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1129

KATHERINE RAMEY (INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DAVID F. RAMEY, M.D., AND ON BEHALF OF HER MINOR CHILDREN, KRISTEN RAMEY AND BRAD RAMEY), AND RENEE RAMEY

VERSUS

MICHAEL DECAIRE (ADMINISTRATIVE DIRECTOR, PHYSICIANS' HEALTH FOUNDATION OF LOUISIANA), MARTHA BROWN (MEDICAL DIRECTOR, PHYSICIANS' HEALTH FOUNDATION OF LOUISIANA), PHYSICIANS' HEALTH FOUNDATION OF LOUISIANA (PHRL), PHYSICIANS' HEALTH PROGRAM (PHP), PHYSICIANS' HEALTH COMMITTEE (PHC), AND LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

Handwritten initials/signature

Judgment Rendered: MAR 23 2007

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 491,751

Honorable Timothy E. Kelley, Judge

Sean D. Fagan
Locke Meredith

Counsel for Plaintiffs/Appellees
Katherine Ramey and
Renee Ramey

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Counsel for Defendant/Appellant
Physicians' Health Foundation
of Louisiana (PHFL)

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

McClendon, J. Concurs.

GUIDRY, J.

Defendant, the Physicians' Health Foundation of Louisiana (PHFL), appeals a trial court judgment denying its motion for costs, attorney fees, and sanctions. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On May 8, 2001, Michael DeCaire, Administrative Director of the PHFL, telephoned Dr. David Ramey and informed him that he had tested positive for drug use. A few hours after he received the telephone call, Dr. Ramey committed suicide.

Upon learning that an attorney had made a records request regarding the matter, counsel for the PHFL sent a letter to the attorney dated September 24, 2001. The letter advised the attorney that if Dr. Ramey's widow and children were contemplating some form of legal action against the PHFL, that they should "reconsider such action inasmuch as the [PHFL] is not a treatment facility." The letter continued:

In addition, the Physician's Health Foundation, its programs and personnel enjoy a statutory qualified immunity regarding their activities under La. R.S. 37:1287(D) and (E), and the agreements with the PHP routinely include a release and hold harmless provision.

Nevertheless, on January 23, 2002, Dr. Ramey's widow and children filed suit against various defendants, including the PHFL. Thereafter, the PHFL filed a peremptory exception raising the objection of no cause of action. The trial court subsequently sustained the objection, requiring the plaintiffs to file an amending and supplemental petition in an effort to remove the defects.

In response to this amending and supplemental petition, the PHFL again filed a peremptory exception raising the objection of no cause of action. In addition to raising the objection that had been previously

sustained by the trial court, the PHFL also asserted that the plaintiffs had failed to state a cause of action in light of the qualified immunity provided by La. R.S. 37:1287. After a hearing, the trial court denied the PHFL's exception, finding that the petition, as amended, stated an actionable claim under Louisiana law. The PHFL applied for supervisory writs from this ruling. This court, with one judge dissenting, denied the writ without comment. Ramey v. DeCaire, 2002-2674 (La. App. 1st Cir. 4/7/03) (unpublished). The supreme court then granted certiorari to review the correctness of the trial court's judgment. Ramey v. DeCaire, 2003-1299 (La. 10/10/03), 855 So.2d 355. Ultimately, the supreme court reversed the trial court judgment and sustained the peremptory exception raising the objection of no cause of action. However, it remanded the matter to the trial court to allow the plaintiffs another opportunity to amend their petition. In making its ruling, the supreme court did not rely on La. R.S. 37:1287, although it did note the following:

The judgment of the district court contains no mention of this statute; however, because the exception was denied, we assume the district court had insufficient evidence before it at that stage of the case to dismiss the matter on the basis of La. R.S. 37:1287. Defendants did not mention this statute in their writ application or brief to this court and did not raise the issue of immunity in this court. Consequently, we express no opinion regarding the applicability of La. R.S. 37:1287 in this case.

Ramey v. DeCaire, 2003-1299, p. 6 n.2 (La. 3/19/04), 869 So.2d 114, 118 n.2. On remand, the Rameys filed a second supplemental and amending petition, prompting the PHFL to file its third peremptory exception raising the objection of no cause of action. Following a hearing on the exception, the trial court sustained the exception and dismissed the Rameys' claims against the PHFL with prejudice.

Thereafter, the PHFL filed a motion for sanctions against the Rameys and their attorneys, Locke Meredith and Sean Fagan, seeking to recover costs and attorney fees pursuant to La. C.C.P. art. 863 and/or La. R.S. 37:1287. The PHFL argued that the Rameys and their attorneys had violated La. C.C.P. art. 863 by filing pleadings without making an objectively reasonable inquiry into the facts and law, specifically, La. R.S. 37:1287. It further maintained that the suit was frivolous and without a reasonable good faith basis in express contravention of La. R.S. 37:1287(F). Following a hearing, the trial court denied the PHFL's motion. Judgment was signed accordingly on February 8, 2006. From this judgment, the PHFL now appeals.

DISCUSSION

In its first assignment of error, the PHFL argues that the trial court committed legal error in determining that no violation of La. C.C.P. art. 863 occurred in light of La. R.S. 37:1287. Louisiana Code of Civil Procedure article 863 provides, in pertinent part:

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

* * * * *

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

Louisiana Revised Statutes 37:1287 states, in pertinent part:

D. There shall be no liability on the part of and no action for damages against any nonprofit corporation, foundation, or organization that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed physician who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such physician's fitness and ability to practice medicine with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

* * * * *

F. In any suit brought against any nonprofit corporation, foundation, organization, or person described in Subsection D or E of this Section, when any such defendant substantially prevails in the suit, the court shall, at the conclusion of the action, award to any substantially prevailing party defendant against any claimant the cost of the suit attributable to such claim, including reasonable attorney fees, if the claim was frivolous or brought without a reasonable good faith basis. For purposes of this Subsection, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains a judgment for damages, permanent injunction, or declaratory relief.

Specifically, the PHFL asserts that because it is an entity entitled to qualified immunity pursuant to La. R.S. 37:1287(D), the plaintiffs and their counsel were required to meet a certain pleading threshold in order to state a valid cause of action against it. The PHFL contends that because this pleading threshold was not satisfied, La. C.C.P. art. 863 was violated as a matter of law. We must respectfully disagree.

Louisiana Code of Civil Procedure article 863 imposes an obligation on litigants and their attorneys to make an objectively reasonable inquiry into the facts and law. Subjective good faith will not satisfy this duty of

reasonable inquiry. Connelly v. Lee, 96-1213, p. 4 (La. App. 1st Cir. 5/9/97), 699 So.2d 411, 414, writ denied, 97-2825 (La. 1/30/98), 709 So.2d 710. However, Article 863 is intended to be used only in exceptional circumstances; where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. Tubbs v. Tubbs, 96-2095, p. 7 (La. App. 1st Cir. 9/19/97), 700 So.2d 941, 945.

We cannot say that the existence of La. R.S. 37:1287 clearly barred the Rameys from filing their suit against the PHFL. As an initial matter, we note that the immunity provided by La. R.S. 37:1287(D) is qualified, not absolute. Moreover, the courts have traditionally found statutory immunity to be an affirmative defense. See Stockstill v. C.F. Industries, Inc., 94-2072, p. 6 (La. App. 1st Cir. 12/15/95), 665 So.2d 802, 810, writ denied, 96-0149 (La. 3/15/96), 669 So.2d 428; White v. City of New Orleans, 2000-2683, p. 2 (La. App. 4th Cir. 1/9/01), 806 So.2d 675, 677. Accordingly, a party claiming immunity bears the burden of so proving. See Hurst v. Judson, 2002-2412, p. 3 (La. App. 1st Cir. 7/2/03), 859 So.2d 53, 55. Finally, we note that La. R.S. 37:1287(D) does not expressly reference the PHFL or any other specific entity. It merely refers to nonprofit corporations or foundations who enter into an agreement with the Louisiana State Board of Medical Examiners for a specified purpose. Indeed, in remanding the matter, the supreme court made no suggestion that the plaintiffs would have to further craft their allegations in light of La. R.S. 37:1287 in order to state a cause of action against the PHFL. Accordingly, we discern no legal error on the part of the trial court in this regard.

Alternatively, the PHFL argues that the trial court was manifestly erroneous in concluding that the Rameys' attorneys had made an objectively reasonable inquiry into the facts and law prior to filing suit. In its reasons

for judgment, the trial court stressed that the attorneys for the Rameys did not have fully executed documentation, and that they had reasonably relied on factual information received from witnesses. After reviewing the record herein, we cannot say that the trial court was clearly wrong in concluding that imposition of sanctions pursuant to La. C.C.P. art. 863 was not warranted in this matter.

In its final assignment of error, the PHFL argues that the trial court legally erred in employing a subjective standard when it determined that the PHFL was not entitled to an award of costs and attorney fees pursuant to La. R.S. 37:1287(F). The PHFL argues that an objective standard is required because “no action for damages can lie ... without alleging malice or alleging that the defendants acted without reasonable belief that their action was warranted under La. R.S. 37:1287(D) & (E).” The Rameys and their attorneys counter that even if an objective standard is required, it has been satisfied because the petition contains allegations of fact that demonstrate that the PHFL acted without a reasonable belief that their actions were warranted.

Assuming *arguendo* that the PHFL is correct in its assertion, we agree with the Rameys and their attorneys that they have satisfied such an objective standard. Louisiana utilizes a system of fact pleading; no technical forms of pleading are required. La. C.C.P. art. 854; Badeaux v. Southwest Computer Bureau, Inc., 2005-0612, p. 9 (La. 3/17/06), 929 So.2d 1211, 1218. Therefore, it is not necessary for a plaintiff to plead the theory of his case in the petition. Kizer v. Lilly, 471 So.2d 716, 719 (La. 1985). Thus, no sacramental language or precise legal jargon is required. Indeed, mere legal conclusions of a plaintiff unsupported by facts do not set forth a cause of action. Montalvo v. Sondes, 93-2813, p. 6 (La. 5/23/94), 637 So.2d 127,

131. Rather, the Louisiana Code of Civil Procedure requires the pleader to state what acts or omissions he will establish at trial. Frank L. Maraist & Harry T. Lemmon, 1 Louisiana Civil Law Treatise, Civil Procedure § 6.3, at 102 (1999). Recovery may then be granted under any legal theory supported by the facts. Griffin v. BSFI Western E & P, Inc., 2000-2122, p. 12 (La. App. 1st Cir. 2/15/02), 812 So.2d 726, 736. Based on our review, we conclude that the pleadings allege facts that could be construed as allegations that the PHFL acted without a reasonable belief that its actions were warranted.¹ Therefore, we cannot say that the trial court erred in denying the PHFL's request for costs and attorney fees pursuant to La. R.S. 37:1287(F).

CONCLUSION

For all of the foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to the Physicians' Health Foundation of Louisiana.

AFFIRMED.

¹ Having reached our conclusion based on an objective standard as argued by the PHFL, we pretermitted a determination of the correct standard to apply.