

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 2242

LINDA BALLARD¹

VERSUS

SCHERING CORPORATION, ABC INSURANCE COMPANY
AND WALTER KIRK MULLINS, M.D.

Judgment Rendered: JUN 04 2010

*MM
RHP ymm*

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C510016, SECTION "22"

THE HONORABLE DOUG MOREAU, JUDGE PRO TEMPORE,
AND THE HONORABLE TIMOTHY E. KELLEY²

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

¹ At the time of her deposition, Ms. Ballard had remarried and was Linda Kelley. However, for consistency, in this opinion we will use her name as found in the record and the briefs, which is Linda Ballard.

² The Honorable Doug Moreau, Judge Pro Tempore, sustained the exceptions raising the objection of prescription in favor of Dr. Mullins and Schering Corporation. Thereafter, Judge Timothy E. Kelley returned to the bench and denied the motion for new trial filed by Ms. Ballard.

Kuhn, J. dissents and will assign reasons. (by JMM)

McDONALD, J.

Linda Ballard was diagnosed with Hepatitis C, a viral infection of the liver, by her family physician. She also complained of blood in her stool and of feeling tired. Her family physician referred her to Dr. Walter Kirk Mullins, a gastroenterologist, for further testing. Dr. Mullins ran tests, including a liver biopsy, in October of 2001, and the diagnosis of Hepatitis C was confirmed.

Ms. Ballard had a pre-existing history of depression, including a hospitalization in 2000 after her mother died, and was taking Zoloft, an anti-depressant, when she saw Dr. Mullins. Before he began treatment, Dr. Mullins sent Ms. Ballard to a psychiatrist for an evaluation.

To treat the Hepatitis C, Dr. Mullins prescribed a combination of Peg-Intron (Peg Interferon Alfa-2b) and Rebetol (Ribavirin), collectively known as Rebetron, both of which are manufactured by Schering Corporation. On November 23, 2001, Dr. Mullins gave Ms. Ballard consent forms to sign before beginning her treatment. The consent forms warned that "Severe depression, psychotic episodes, and more rarely suicide have been reported" by patients taking the medication. Ms. Ballard signed the forms. She completed the treatment around February 8, 2002.

On February 16, 2002, Ms. Ballard attempted suicide by ingesting antifreeze. She was rushed to a hospital and survived, but suffered debilitating kidney disease, requiring extensive medical care, including dialysis. The Rebetron treatment successfully cured Ms. Ballard of Hepatitis C.

More than one year after her suicide attempt, on July 23, 2003, Ms. Ballard sued Dr. Mullins and Schering Corporation, asserting that her attempted suicide and resulting injuries were caused by the drugs prescribed by Dr. Mullins and manufactured by Schering Corporation. Ms. Ballard asserted she should never have been given these medications due to her history of depression.

Dr. Mullins and Schering Corporation filed peremptory exceptions raising the objection of prescription.³ The district court sustained the exceptions raising the objection of prescription, dismissing Ms. Ballard's case. Ms. Ballard filed a motion for new trial, which was denied. Ms. Ballard appeals those judgments.

The district court found that Dr. Mullins and Schering Corporation carried their burden of proof demonstrating that Ms. Ballard either knew or reasonably should have known no later than February 16, 2002, of all relevant circumstances necessary to excite her curiosity regarding any legal claims she may have had against Dr. Mullins and Schering Corporation; that suit was not filed until July 23, 2003, rather than within the prescriptive period of one year under La. R.S. 9:5628 (as to Dr. Mullins) and La. C.C. art. 3492 (as to Schering Corporation); and that the evidence showed that the prescriptive period was not suspended, interrupted, or extended. Thus, the case was prescribed.

After examining the record, we cannot say the district court was clearly wrong in sustaining the exceptions raising the objection of prescription or abused its discretion in denying the motion for new trial. Thus, the district court judgments granting the exceptions raising the objection of prescription and denying the motion for new trial are affirmed, in accordance with Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.2A(2), (4), (6), (7), and (8). Costs are assessed against Ms. Ballard.

AFFIRMED.

³ Schering Corporation also filed a peremptory exception raising the objection of no cause of action, which was found moot due to the district court's ruling on the exception of prescription, and a motion for summary judgment, which was deferred by the district court as not properly presented.