

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1697

MICHAEL T. DELAHAYE AND CRISTY B. DELAHAYE

VERSUS

MARK D. PLAISANCE

Judgment Rendered: May 2, 2008

* * * * *

Appealed from the Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 554,323

Honorable Wilson Fields, Presiding

* * * * *

Patrick W. Pendley
Plaquemine, LA

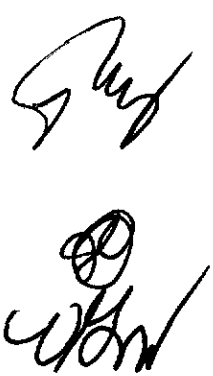
Counsel for Plaintiffs/Appellants
Michael and Cristy Delahaye

Joel E. Gooch
Lafayette, LA

Counsel for Defendant/Appellee
Mark Plaisance

* * * * *

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.



GUIDRY, J.

In this legal malpractice action, plaintiffs, Michael and Cristy Delahaye, appeal the trial court's judgment sustaining defendant's, Mark Plaisance, peremptory exception on the grounds of peremption, and dismissing their claims. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 4, 2003, Michael Delahaye retained Mark Plaisance to represent him in connection with a legal malpractice claim against his former attorney. The parties to that action thereafter submitted to mediation on June 16, 2004, whereupon a settlement agreement was reached that Delahaye was to be paid \$325,000.00. Delahaye subsequently executed a receipt and release of all claims against his former attorney and his malpractice insurer on July 7, 2004.

Thereafter, on June 14, 2005, Delahaye filed a petition for damages naming Plaisance as a defendant. In his petition, Delahaye asserted that he accepted the terms of the aforementioned settlement based on Plaisance's representation that the sum Delahaye would receive would not be subject to federal or state income tax. Delahaye asserted, however, that following execution of the receipt and release, he was advised by his tax counsel and accountant that the settlement funds may be subject to federal and state taxation, which at the maximum federal and state tax rates, could render Delahaye liable for federal and state income taxes up to \$100,000.00.

However, Delahaye subsequently filed a motion to dismiss his claims against Plaisance on November 17, 2005. In his motion, Delahaye stated that his personal income tax returns for 2004 would not be filed until early 2006 due to an extension granted by the Internal Revenue Service to individuals in the aftermath of Hurricane Katrina. Accordingly, Delahaye asserted that he was unable to quantify the amount of his federal and state income tax liability; however, he had

been informed that such liability may exceed five figures. The trial court signed a judgment on November 28, 2005, dismissing Delahaye's claims against Plaisance without prejudice.

Thereafter, on April 16, 2007, Delahaye and his wife, Cristy (collectively referred to as "plaintiffs"), filed a petition against Plaisance, seeking damages for alleged legal malpractice related to the June 16, 2004 settlement agreement. Plaintiffs made the same general allegations as those made in Delahaye's first petition; however, the plaintiffs listed their tax liability for 2004 on the settlement proceeds as \$59,934.00.

Plaisance subsequently filed a peremptory exception raising the objection of prescription and peremption on May 11, 2007, asserting that the plaintiffs' action against him is perempted on its face pursuant to La. R.S. 9:5605. Following a hearing on the exception, the trial court signed a judgment on July 23, 2007, in favor of Plaisance, sustaining his exception on the grounds of peremption, and dismissing plaintiffs' suit. Plaintiffs now appeal from this judgment.

DISCUSSION

Louisiana Revised Statute 9:5605 governs the timeliness for filing a legal malpractice claim and provides, in part:

A. No action for damages against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.

B. The provisions of this Section are remedial and apply to all causes

of action without regard to the date when the alleged act, omission, or neglect occurred. However, with respect to any alleged act, omission, or neglect occurring prior to September 7, 1990, actions must, in all events, be filed in a court of competent jurisdiction and proper venue on or before September 7, 1993, without regard to the date of discovery of the alleged act, omission, or neglect. The one-year and three-year periods of limitation provided in Subsection A of this Section are preemptive periods within the meaning of Civil Code Article 3458 and, in accordance with Civil Code Article 3461, may not be renounced, interrupted, or suspended.

Pursuant to subsection A of La. R.S. 9:5605, the applicable time limitations on legal malpractice actions are one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered, or should have been discovered, or at the latest, within three years from the date of the alleged act, omission, or neglect. Accordingly, the latest one can file a legal malpractice action is three years from the date of the alleged act of malpractice, or one year from the date of discovery of the alleged act of malpractice, whichever occurs first. Paternostro v. LaRocca, 01-0333, p. 5 (La. App. 1st Cir. 3/28/02), 813 So. 2d 630, 634.

Prescription commences to run when a claimant knew or should have known of the existence of facts that would have enabled him to state a cause of action for legal malpractice. The standard imposed is that of a reasonable man and is designed to establish a rule that any plaintiff who had knowledge of facts that would place a reasonable man on notice that malpractice may have been committed shall be held to have been subject to the commencement of prescription by virtue of such knowledge even though he asserts a limited ability to comprehend and evaluate the facts. Carroll v. Wolfe, 98-1910, p. 6 (La. App. 1st Cir. 9/24/99), 754 So. 2d 1038, 1041. The focus is on the appropriateness of the claimant's actions or inactions, and therefore, the inquiry becomes when would a reasonable man have been on notice that malpractice may have been committed. Paternostro, 01-0333 at p. 5, 813 So. 2d at 634.

In the instant case, plaintiffs assert that peremption did not begin to accrue on their legal malpractice claim until April 26, 2006, at the earliest, when plaintiffs filed their 2004 tax return and became aware of the exact amount of their tax liability and paid said liability. However, according to the record, the settlement at issue was effected in June of 2004. In his original petition filed on June 14, 2005, Delahaye alleged that Plaisance committed legal malpractice in representing to Delahaye that the settlement proceeds would not be subject to federal or state income tax. Delahaye also admitted to having been advised by tax counsel and his accountant that the settlement funds may be subject to federal and state taxation, and assuming the maximum tax rates, such liability may be as much as \$100,000.00. Further, in a motion to dismiss the original malpractice action filed on November 17, 2005, Delahaye stated that his accountant would not be filing his 2004 tax returns until 2006 in light of an extension of time offered by the Internal Revenue Service and therefore, was unable to quantify the amount of federal and state tax liability he may owe, but that he had been informed that the tax liability on the settlement proceeds may exceed five figures.

Based on the foregoing, we find that a reasonable man would have known, and Delahaye did know, as early as June of 2005, that there may be potential tax liability as a result of the settlement. The fact that an exact amount of tax liability was not yet determined is irrelevant, as there is no requirement that the quantum of damages be certain or that they be fully incurred, or incurred in some particular quantum, before the plaintiff has a right of action. Harvey v. Dixie Graphics, Inc., 593 So. 2d 351, 354 (La. 1992). Accordingly, because Delahaye knew or should have known of the existence of facts that would have enabled him to state a cause of action for legal malpractice as early as June of 2005, and plaintiffs did not file their action for legal malpractice until April of 2007, their claim is clearly perempted under La. R.S. 9:5605. See also Trolley Corporation v. Boohaker, 05-

1595, pp. 5-6 (La. App. 1st Cir. 6/9/06), 938 So. 2d 157, 160-161. Accordingly, we find no error in the trial court's judgment sustaining Plaisance's peremptory exception on the ground of peremption and dismissing plaintiffs' action.¹

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are to be borne by the appellants, Michael and Cristy Delahaye.

AFFIRMED.

¹ Plaintiffs also assert that the trial court erred in failing to consider notions of equity and fair dealing in its factual determinations. However, the perceived inequities of La. R.S. 9:5605 were recognized and addressed by the Louisiana Supreme Court in Reeder v. North, 97-0239 (La. 10/21/97), 701 So. 2d 1291. In Reeder, the court determined that while the terms of the legal malpractice statute of limitations may seem unfair in that a person's claim may be extinguished before he realizes the full extent of his damages, the enactment of such a statute is a legislative prerogative, and the province of the judiciary is to determine only the applicability, legality, and constitutionality of the statute. Reeder, 97-0239 at pp. 9-10, 701 So. 2d at 1296-1297. Accordingly, we find this assignment of error to be without merit.