

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 2109

RANDALL HARVEY TRANTHAM

VERSUS

ATTY. CARL EDWARD BABIN

Judgment rendered May 6, 2011.



Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C584569
Honorable William A. Morvant, Judge

RANDALL HARVEY TRANTHAM
BAKER, LA

NORA M. STELLY
LAFAYETTE, LA

IN PROPER PERSON
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANT-APPELLEE
CARL EDWARD BABIN

BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

PETTIGREW, J.

This is a legal malpractice action brought by the plaintiff-appellant, Randall Harvey Trantham, against the defendant-appellee, Carl Edward Babin, arising out of Mr. Babin's representation of Mr. Trantham in a prior criminal proceeding. From a judgment sustaining a peremptory exception raising the objection of prescription and dismissing his claims with prejudice, Mr. Trantham appeals. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

According to the record, Mr. Babin was retained by Mr. Trantham in December 2006 to represent him in defense of two criminal drug-related charges and a forfeiture proceeding associated with his arrest. The criminal proceedings continued over the next year. However, in January 2008, a motion to suppress was granted by the trial court, resulting in the dismissal of all criminal charges against Mr. Trantham in March 2008. In May 2008, previously seized currency was returned to Mr. Trantham. An order of expungement was signed by the Commissioner of the 19th Judicial District Court on August 20, 2008, and, according to the record, all records relative to Mr. Trantham's criminal charges have been expunged. In December 2008, the trial court signed an order for the release of two weapons seized in conjunction with Mr. Trantham's arrest.

Mr. Trantham filed the instant action alleging legal malpractice and fraud against Mr. Babin on November 16, 2009. In response, Mr. Babin filed a peremptory exception raising the objections of prescription and no cause of action. Mr. Babin argued that Mr. Trantham's claims were prescribed pursuant to La. R.S. 9:5605¹ and that his allegations

¹ The time limitations for filing actions in legal malpractice are set forth in La. R.S. 9:5605, which provides, in pertinent part, as follows:

A. No action for damages against any attorney at law duly admitted to practice in this state, ... 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.

...
E. The peremptive period provided in Subsection A of this Section shall not apply in cases of fraud, as defined in Civil Code Article 1953.

of fraud were not plead with sufficient particularity to state a cause of action. The prescription exception was set for hearing on July 26, 2010, along with a motion filed by Mr. Trantham to unseal the district attorney's file concerning the criminal charges that were previously dismissed against him. After considering the evidence and the arguments of the parties, the trial court sustained the prescription exception, dismissing Mr. Trantham's claims with prejudice. The trial court also found that based on this ruling, the motion to unseal the district attorney's file was moot. A judgment in accordance with these findings was signed by the trial court on August 4, 2010.

From this judgment, Mr. Trantham has appealed, assigning the following specifications of error:

1. The Trial Court improperly dismissed [Mr. Trantham's] case due to the fact that [Mr. Trantham] asserts, respectfully, that he did state action which constituted fraud, thus extending the [Mr. Trantham's] deadline for alleging legal malpractice to three years.
2. The Trial Court misconstrued the multi-pronged, distracting, and irrelevant defense presentation ..., as well as the substantive law regarding prescriptive tolling as relates to legal malpractice and fraud in allowing the [Mr. Babin] to argue multiple points beyond simple prescription without actually supporting said argument of prescription.

DISCUSSION

Generally, the party pleading prescription has the burden of proving the facts supporting the exception. **Quality Gas Products, Inc. v. Bank One Corp.**, 2003-1859, p. 4 (La. App. 1 Cir. 6/25/04), 885 So.2d 1179, 1181. However, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show the action has not prescribed. **Carter v. Haygood**, 2004-0646, p. 9 (La. 1/19/05), 892 So.2d 1261, 1267. If evidence is introduced at the hearing on the peremptory exception of prescription, the trial court's findings of fact are reviewed under the manifest error standard of review. **Gallant Investments, Ltd. v. Illinois Cent. R. Co.**, 2008-1404, p. 10 (La. App. 1 Cir. 2/13/09), 7 So.3d 12, 19. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Carter**, 2004-0646 at 9, 892 So.2d at 1267.

Subsection B of La. R.S. 9:5605 clearly states that the one-year and three-year periods of limitation provided in Subsection A are both peremptive periods. Peremption and prescription are two different legal concepts that are often confused with each other. Liberative prescription is the barring of a cause of action due to the passage of a certain period of time. La. Civ. Code art. 3447. Liberative prescription may be renounced, interrupted, or suspended. Peremption, however, is a period of time fixed by law for the existence of a right. That is, the law establishes a certain amount of time that a right will exist, and if the right is not exercised during that period of time, it is lost. **Paternostro v. LaRocca**, 2001-0333, p. 4 (La. App. 1 Cir. 3/28/02), 813 So.2d 630, 634. Conceptually, there may not be much difference between the two, but practically, the biggest difference is that peremption cannot be renounced, interrupted, or suspended. *Id.*; La. Civ. Code art. 3461. Exceptions such as *contra non valentem* are not applicable to peremption. **Borel v. Young**, 2007-0419, p. 8 (La. 11/27/07), 989 So.2d 42, 49.

In **Reeder v. North**, 97-0239 (La. 10/21/97), 701 So.2d 1291, the Louisiana Supreme Court was confronted with the application of La. R.S. 9:5605. The supreme court held that La. R.S. 9:5605 must be applied as written because "[t]he Legislature was particularly clear in wording La. R.S. 9:5605 so as to leave no doubt as to its intent." **Reeder**, 97-0239 at 6, 701 So.2d at 1295. Thus, 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. La. R.S. 9:5605(A). In other words, 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**, 2001-0333 at 5, 813 So.2d at 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. **Olivier v. Poirier**, 563 So.2d 1227, 1229 (La. App. 1 Cir.), writ denied, 568 So.2d 1054 (La. 1990). The standard imposed in the case of **Griffin v. Kinberger**, 507 So.2d 821, 823-824 (La. 1987), is that of a reasonable man. That standard 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. The focus is on the appropriateness of the claimant's actions or inactions. **Carroll v. Wolfe**, 98-1910, p. 6 (La. App. 1 Cir. 9/24/99), 754 So.2d 1038, 1041. In maintaining Mr. Babin's prescription exception, the trial court noted as follows in written reasons for judgment:

Mr. Trantham has contended that Mr. Babin failed to expedite the case, and in doing so cites the Rules of Professional Conduct 3.2. He does allege fraud, obviously, an attempt to extend prescription under [La.] R.S. 9:5605, but I looked at paragraph three of the petition, specifically subsections (A) through (U), and none of those allege any facts which would establish fraud. In fact, most of them deal [with] the affidavit for the search warrant issue and not actions taken by Mr. Babin. So, basically, it's a petition indicating he did not like the way his attorney handled the case. And, specifically, paragraphs seven and eight of the petition concede that this case is prescribed because it's beyond the one-year period.

I looked at the chronology, and as Mr. Trantham cites, [La. R.S. 9:5605], you've got one year from the act or omission or one year from discovery. We've got a November 6 arrest. January 18, '08, the court grants a motion to suppress. March 5 of '08, the state dismisses all of the charges in open court. Therefore, for all practical purposes, the criminal proceedings are over.

They did file a motion to expunge which was granted August 20, 2008. And as counsel alluded to, Mr. Trantham sent a letter in October of '08 complaining about the timing, but it was mostly Baker [Police Department] and one other entity's response to the motion to expunge which had been granted.

November 16 of '09, plaintiff files the present malpractice action. All facts involve the criminal proceeding which, as I indicated, was dismissed based on the successful argument in the motion to suppress. This suit is filed well beyond one year after the criminal proceedings have been concluded in his favor. I think it is prescribed on its face.

The burden does shift to plaintiff to show why the case has not prescribed. Plaintiff has failed to come forth with any facts to show why peremption should not be tolled in this matter. Therefore, the Court is

going to grant the exception of prescription, dismissing plaintiff's case as against Mr. Babin, with prejudice, at plaintiff's costs.

Based on the Court's ruling on the exception of prescription, that will moot the motion to unseal the district attorney's file because there is no basis to do so since there's no further pending action before this court.

As previously indicated, Mr. Trantham's petition filed on November 16, 2009, contained allegations of legal malpractice and fraud. However, as the trial court correctly pointed out in its reasons for judgment, none of the facts alleged in the petition are sufficient to establish a claim of fraud against Mr. Babin. Thus, we are left with a claim of legal malpractice that was filed well beyond one year after the underlying criminal charges had been resolved in Mr. Trantham's favor. Under the reasonable man standard espoused in **Griffin**, supra, it is clear that by at least March 2008, when the criminal charges were dismissed, Mr. Trantham had knowledge of facts sufficient to put a reasonable man on notice that legal malpractice may have been committed and was subject to the commencement of prescription by virtue of such knowledge. Thus, prescription was evident on the face of the pleadings.

After a thorough review of the documentary evidence and applicable law, we find the record demonstrates that the decision of the trial court was not manifestly erroneous. We are satisfied that a reasonable factual basis exists for the trial court's findings that the burden shifted to Mr. Trantham to show why the case had not prescribed and that Mr. Trantham failed in that burden. The trial court's findings are entitled to great deference. The trial court did not err in granting Mr. Babin's exception of prescription and dismissing Mr. Trantham's claim with prejudice. Mr. Trantham's arguments on appeal are without merit.

DECREE

For the foregoing reasons, the trial court's August 4, 2010 judgment is affirmed in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B. All costs associated with this appeal are assessed against plaintiff-appellant, Randall Harvey Trantham.

AFFIRMED.