

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 1570

RENITA GARRISON

VERSUS

**THE STATE OF LOUISIANA THROUGH
THE DEPARTMENT OF CORRECTIONS**

Judgment Rendered: March 25, 2011

**Appealed from the
18th Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Case No. 67414**

The Honorable J. Robin Free, Judge Presiding

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Renita Garrison**

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State of Louisiana, through the
Department of Public Safety and
Corrections**

BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

In this case involving injuries allegedly sustained by an inmate in a slip and fall, the plaintiff appeals a judgment dismissing her claims as prescribed. We affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Renita Garrison, an inmate formerly in the custody of the Louisiana Department of Public Safety and Corrections ("DPSC"), was allegedly injured in a slip and fall accident on or about November 12, 2004. Garrison initiated an Administrative Remedy Procedure ("ARP") by handwritten letter which appears to be dated December 15, 2004¹ and which was received by prison officials on January 6, 2005. The DPSC Adult Administrative Remedy Procedure provides that inmates should make their request for an ARP within ninety days of the alleged incident, although this requirement may be waived when circumstances warrant. LAC 22:1.325(A)2 and LAC 22:1.325(G)(1)(a). In her letter, Garrison alleged that her slip and fall injury was caused by the prison's negligence in not providing her proper shower shoes when requested. She also complained of the medical treatment she received by prison medical staff. The relief requested included an examination at Charity Hospital Orthopedic Clinic to determine the extent of her injuries, an investigation into why her request for new slippers was ignored, new slippers, and unspecified monetary compensation for her pain and suffering. A First Step Response dated January 20, 2005 denied Garrison's request for ARP because the medical care received by Garrison was appropriate and there was no record of her alleged requests for new shower shoes. A Second Step Response dated June

¹ Although the handwritten letter requesting an administrative remedy is dated either "Dec 15, 04" or "Dec 25, 04," the body of the letter states, "To This Day Which is Dec 29, 04"

14, 2005 also denied Garrison's request for relief and stated that no further consideration was due in the matter. At this point, Garrison had exhausted her administrative remedies and could file suit in district court. LAC 22:I.325(G)(2)(b).

On July 13, 2005, Garrison filed a petition for judicial review of her ARP in the 19th Judicial District Court. In this petition, she stated that the final agency decision in her ARP was incorrect because her injuries were due to the prison's negligence in not providing her new shower shoes as requested and its handling of her treatment for her injuries was also negligent. Her petition sought as relief an appointment with a medical specialist as well as an investigation into why she was not provided with appropriate shower shoes as requested; there was no request for monetary damages in this petition. Service of this petition was not made on DPSC until December 18, 2007, approximately two and a half years after the final agency decision. Garrison was released from prison during the pendency of her judicial review proceeding, making her requests for relief in that proceeding moot, and her petition for judicial review was dismissed by the 19th Judicial District Court in a judgment dated November 11, 2008.

On January 30, 2009, Garrison filed a petition for damages in the 18th Judicial District Court against DPSC and Warden Johnnie Jones, alleging that "On or about May 2, 2007, Ms. Renita Garrison, was injured on or about November 12, 2004 while inside of the St. Gabriel Women's Prison." Garrison alleged in this petition that defendants are liable for her injuries due to their failure to provide her with "proper facilities and equipment, gear and outfits."

DPSC filed an exception of prescription and exception of lack of subject matter jurisdiction on June 12, 2009. Although there is no minute

entry regarding a hearing on the exceptions, the exceptions were overruled by judgment signed on August 26, 2009.

On August 12, 2009, Garrison filed a supplemental and amending petition in her suit in the 18th Judicial District Court deleting the words "On or about May 2, 2007." DPSC filed an exception of insufficiency of service of process as to Garrison's supplemental and amending petition due to Garrison's failure to serve the petition on the office of risk management and the attorney general, as required by La. R.S. 39:1538.

DPSC filed another exception of prescription on December 2, 2009, the basis of which was that the petition for judicial review did not interrupt or suspend prescription as to Garrison's tort claims, so the tort claims were prescribed. This exception was heard on February 17, 2010 and was granted by the court. Plaintiff's claims were dismissed with prejudice by judgment dated March 8, 2010, and this appeal followed.

DISCUSSION

Louisiana Revised Statutes 15:1172(E) provides that liberative prescription for any delictual action for injury or damages arising out of the claims asserted by a prisoner in a complaint or grievance in an ARP shall be suspended upon the filing of the complaint or grievance and shall continue to be suspended until the final agency decision is delivered. Since the one-year prescriptive period for the inmate's personal injury claim is suspended, rather than interrupted, by the inmate's filing of an ARP, the one-year prescriptive period does not begin anew following delivery of final agency decision; rather, the clock merely stops running during the suspension, and the inmate only has so much of the one year as was remaining when suspension began in which to file suit for damages. *Adams v. Stalder*, 06-0051, p. 5 (La.App. 1 Cir. 3/17/06), 934 So.2d 722, 725-26. In this case,

approximately one to one-and-a-half months passed between the date of Garrison's alleged injury and the date her ARP was filed. Therefore, once the final agency decision was delivered on June 14, 2005, Garrison had approximately ten-and-a-half to eleven months in which to file her claim for damages.

Although Garrison filed a petition for judicial review in accordance with La. R.S. 15:1177 after exhausting her administrative remedies, the judicial review procedure does not apply to delictual actions for injury or damages; tort claims must be filed separately as original civil actions. La. R.S. 15:1177(C). In addition to Garrison's tort claims needing to be filed separately, the 19th Judicial District Court, where the petition for judicial review was filed, was not the proper venue for the tort claims. The legislature has provided that venue for a prisoner's claim asserting damages must be raised in the parish where the prisoner was housed when the cause of action arose. La. R.S. 15:1184(F). Thus, venue for Garrison's tort claims was proper in the 18th Judicial District Court. Even assuming that the petition for judicial review filed by Garrison in the 19th Judicial District Court purported to include her tort claims, when an action is commenced in an incompetent court or an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period. La. C.C. art. 3462. DPSC was not served with the petition for judicial review until December 18, 2007, approximately two and a half years after she had exhausted her administrative remedies and prescription began to run again. Therefore, Garrison's petition for damages, filed in the 18th Judicial District Court on January 30, 2009, was prescribed.

Garrison attempts to argue on appeal that DPSC abandoned their original exception of prescription by failing to appear at the hearing on their

exceptions and failing to file a motion for new trial after judgment was rendered overruling the exceptions, and by doing so, DPSC renounced prescription. DPSC explained that after it filed its exceptions, it discovered that it was relying on an erroneous ARP number and passed on the exceptions. The record does not contain a transcript of a hearing on the exceptions, nor is there a minute entry regarding a hearing. Since Garrison's petition is prescribed on its face, she had the burden of proving that prescription was interrupted or suspended in some way. *Williams v. Sewerage & Water Bd. of New Orleans*, 611 So.2d 1383, 1386 (La. 1993).

A party may renounce prescription after it has accrued. La. C.C. art. 3449. Renunciation may be express or tacit. La. C.C. art. 3450. Tacit renunciation results from circumstances that give rise to a presumption that the advantages of prescription have been abandoned. *Id.* Garrison has not proven that circumstances giving rise to a presumption that DPSC was abandoning the advantages of prescription exist. The trial court did not err in rejecting her assertion that DPSC tacitly renounced prescription and in sustaining the exception of prescription.

CONCLUSION

The March 8, 2010 judgment sustaining DPSC's exception of prescription and dismissing Garrison's claims with prejudice is affirmed. Costs of this appeal are assessed to plaintiff, Renita Garrison.

AFFIRMED.