

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0519

MALIK A. IHSAAN¹

VERSUS

BLUE RIBBON FOOD STORE OF BATON ROUGE, INC., ET AL

Judgment rendered October 29, 2010.

* * * * *

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 446,248
Honorable R. Michael Caldwell, Judge



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MALIK ALQADR IHSAAN
WINNFIELD, LA

DANIEL R. ATKINSON, JR.
BATON ROUGE, LA

IN PROPER PERSON
PLAINTIFF-APPELLANT

ATTORNEY FOR
DEFENDANTS-APPELLEES
BLUE RIBBON FOOD STORE OF
BATON ROUGE, INC. & AMERICAN
CENTRAL INS. CO.

* * * * *

BEFORE: KUHN, PETTIGREW, JJ., and KLINE, J. *pro tempore*.²

¹ Although plaintiff is referred to as "Malik A. Ishan" in the petition for damages, it appears from his appellate brief that the correct spelling of his name is "Ihsaan."

² Judge William F. Kline, Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

PETTIGREW, J.

In this case, plaintiff, Malik A. Ihsaan, filed suit against defendants, Blue Ribbon Store of Baton Rouge, Inc. and its insurer, for personal injuries he sustained following an alleged slip and fall accident. Defendants filed a motion for summary judgment, which the trial court granted. The trial court found that Mr. Ihsaan had not shown that he would be able to carry his burden of proof at trial. The judgment granting summary judgment in favor of defendants and dismissing, with prejudice, Mr. Ihsaan's claims was signed by the trial court on November 10, 1998. According to the record, Mr. Ihsaan filed a motion and order for appeal from this judgment, which was granted on December 10, 1998. However, there is no indication that Mr. Ihsaan pursued this appeal. Also signed on December 10, 1998, was an order allowing S. Jay Thomas and Greg Rozas to withdraw as counsel of record for Mr. Ihsaan because of irreconcilable differences in the nature and legal strategy to be used in the suit.³ It appears from this motion that another counsel of record for Mr. Ihsaan, John B. Comish, was to remain on the case.

On December 7, 1998, Mr. Ihsaan filed a complaint with the Office of the Disciplinary Counsel ("ODC") against Mr. Comish concerning his handling of the case, namely allowing a non-lawyer to negotiate settlements directly with the insurance adjuster regarding Mr. Ihsaan's claim.⁴ In a letter to the ODC acknowledging Mr. Ihsaan's complaint, Mr. Comish indicated that he had advised Mr. Ihsaan to seek new counsel "as this office no longer wished to represent him." The ODC matter proceeded to the Louisiana Supreme Court, and, in a December 13, 2004 per curiam decision, the court ordered that Mr. Comish be suspended from the practice of law for a period of three years, with all but one year and one day of the suspension deferred subject to the condition that any further misconduct would be grounds for making the deferred portion of the suspension executory or imposing additional discipline.

³ We note from the record that Mr. Thomas was present on behalf of Mr. Ihsaan at the hearing on the motion for summary judgment and was also the attorney who filed the motion and order for appeal from the November 10, 1998 judgment on Mr. Ihsaan's behalf.

⁴ Mr. Ihsaan's complaint was one of three filed with the ODC against Mr. Comish. The other two complaints are not relevant to the case before us and warrant no further discussion.

No further action was taken in this case by Mr. Ihsaan until December 28, 2009, when he filed a motion to annul the November 10, 1998 judgment based on La. Code Civ. P. arts. 2002 and 2004.⁵ Mr. Ihsaan argued that the summary judgment should be annulled because it: (1) was rendered while he was incarcerated and the case was settled without his knowledge or consent; and (2) was obtained by fraud or ill practices. The matter proceeded to hearing on February 8, 2010.

The trial court pointed out to Mr. Ihsaan, who appeared in proper person, that Article 2004 allows one year from the date of discovery of the fraud within which to file the action to annul. The trial court also noted that although Article 2002 allows an action to annul to be filed at any time for the reasons stated therein, because Mr. Ihsaan had not alleged any grounds specified in Article 2002, he was relegated to the one year restriction found in Article 2004 for his motion to annul based on fraud allegations. Thus, the trial court dismissed the motion to annul in a judgment signed March 5, 2010. An appeal by Mr. Ihsaan followed. After a thorough review of the record and exhibits, we find the trial court acted within its discretion in dismissing Mr. Ihsaan's motion to annul. See Johnson v. Cain, 2008-0936, p. 3 (La. App. 1 Cir. 11/14/08), 999 So.2d 51, 53, writ denied, 2009-0295 (La. 4/3/09), 6 So.3d 773. Thus, in accordance with Uniform Rules-- Courts of Appeal, Rule 2-16.2A(2) and (7), we affirm the judgment below and assess all costs associated with this appeal against plaintiff/appellant, Malik A. Ihsaan.

AFFIRMED.

⁵ Louisiana Code of Civil Procedure article 2002 provides, in pertinent part, as follows:

- A. A final judgment shall be annulled if it is rendered:
 - (1) Against an incompetent person not represented as required by law.
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- B. Except as otherwise provided in Article 2003, an action to annul a judgment on the grounds listed in this Article may be brought at any time.

Louisiana Code of Civil Procedure article 2004 provides, in pertinent part, as follows:

- A. A final judgment obtained by fraud or ill practices may be annulled.
- B. An action to annul a judgment on these grounds must be brought within one year of the discovery by the plaintiff in the nullity action of the fraud or ill practices.