

NOT DESIGNATED FOR PUBLICATION

DENINAH WEBB,	*	NO. 2004-CA-0440
INDIVIDUALLY AND ON		
BEHALF OF DAUGHTER,	*	COURT OF APPEAL
CHRISTENINA WEBB		
	*	FOURTH CIRCUIT
VERSUS		
	*	STATE OF LOUISIANA
THOMAS KEASLER FOUTZ,		
ADR CORPORATION,	*	
VINCENT GLORIOSO,		
GLORIOSO LAW FIRM, AND	*	
ALL OTHERS	*****	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-6930, DIVISION "B"
Honorable Rosemary Ledet, Judge

Judge Roland L. Belsome

(Court composed of Judge David S. Gorbaty, Judge Edwin A. Lombard,
Judge Roland L. Belsome)

Rev. Deninah Webb
9883 Andover Drive
P. O. Box 872922
New Orleans, LA 70187
IN PROPER PERSON, PLAINTIFF/APPELLANT

FEBRUARY 2,

2005

Gus A. Fritchie III

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COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

This is a legal malpractice case. The appeal arises out of the granting of a Motion for Summary Judgment in favor of defendant, Thomas Foutz, dismissing all claims of plaintiff, Rev. Deninah Webb, individually and on behalf of Christina Webb (Webb). We affirm. Webb has proceeded in proper person at all times in this litigation.

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

On April 23, 2001, Webb instituted a Petition for Damages against Foutz, alleging legal malpractice in his handling of a personal injury action on behalf of Webb and her daughter. On January 8, 2002, Foutz filed the first of two Motions for Summary Judgment, arguing that Webb's claims were barred by the one-year preemptive period set forth in La. R.S. 9:5605. Foutz maintained, therein, that Webb was clearly on notice of her alleged malpractice claims on March 24, 2000, when Webb notified Foutz by letter that she was considering filing a legal malpractice claim against him.

The trial court heard the matter on March 5, 2002. At that time, Webb produced a letter allegedly authored by Foutz, dated May 2, 2000. In this

correspondence, Foutz purportedly admitted to acts of malpractice and requested that Webb continue to retain him as her counsel. The trial court found that the letter created an issue of fact as to whether there was continuous representation sufficient enough to avoid the tolling of the one-year preemptive period. Foutz' first Motion for Summary Judgment was thereby denied. Foutz filed a Writ Application with this court on March 28, 2002. On May 10, 2002, we granted the writ, affirmed the trial court's granting of Summary Judgment, and amended the judgment, finding that the judgment should not have been granted "with prejudice." Webb v. Foutz, 2002-C-0614 (La. App. 4 Cir. 5/10/02).

On April 1, 2003, Foutz again moved for Summary Judgment. This motion was premised on the allegation that the May 2, 2000 correspondence, introduced by Webb at the first hearing, was a forgery. In support of his argument, Foutz introduced his own affidavit, the affidavit of his paralegal, Julie Martinez (Martinez), and an affidavit of forensic document examiner, Robert Foley (Foley). Foutz and Martinez averred that neither he nor anyone on his behalf authored the correspondence and that the correspondence was believed to be a forgery. Foley concluded that Foutz' signature on the letter was a simulation. More particularly, Foley opined that the signature was photocopied and was subsequently overwritten with a

black ballpoint pen.

The trial court heard the matter on May 23, 2003. On May 29, 2003, Summary Judgment was granted in favor of Foutz, dismissing Webb's claims with prejudice. Reasons for Judgment were not provided. Webb's appeal followed.

DISCUSSION:

At the outset, we must note that Webb has specified no assignments of error on the part of the trial court. Furthermore, the only legal argument that can be deciphered from Webb's appellant brief is the statement, "the definitive act of malpractice did not actually occur until the plaintiffs received both the settlement check and the legal file in its' entirety, it was only then that we could conclude, as to what the truth, versus, what was presented to we as clients as the truth." The record also indicates that Webb presented no evidence to the trial court in opposition to the Motion for Summary Judgment, nor did she refute the evidence of Foutz' expert witness.

STANDARD OF REIVEW:

Appellate courts review the granting of summary judgment de novo under the same criteria governing the trial court's consideration of whether summary judgment is appropriate. Reynolds v. Select Properties, Ltd., 93-

1480 (La.4/11/94), 634 So.2d 1180, 1182; Alexis v. Southwood Ltd. Partnership, 2000-1124 (La. App. 4 Cir. 7/18/01), 792 So.2d 100, 101. The summary judgment procedure is designed to secure the just, speedy and inexpensive determination of actions. Two Feathers Enterprise, Inc. v. First National Bank of Commerce, 98-0465 (La. App. 4 Cir. 10/14/98), 720 So.2d 398, 400. This procedure is now favored and shall be construed to accomplish those ends. La. C.C.P. art. 966 A(2).

A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to a material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966. If the court finds that a genuine issue of material fact exists, summary judgment must be rejected. Oakley v. Thebault, 96-0937 (La. App. 4 Cir. 11/13/96), 684 So.2d 488, 490. The burden does not shift to the party opposing the summary judgment until the moving party first presents a prima facie case that no genuine issues of material fact exist. Id. At that point, the party opposing the motion must "make a showing sufficient to establish existence of proof of an element essential to his claim, action, or defense and on which he will bear the burden of proof at trial." La. C.C.P. art. 966(C).

LAW AND ANALYSIS:

La. R.S. 9:5605 provides, in pertinent part, that claims for legal malpractice must be brought: “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.” In the present case, the question raised in the Motion for Summary Judgment was when did Webb discover her cause of action against Foutz for the alleged legal malpractice.

Foutz maintained that Webb’s letter to him on March 24, 2000, threatening to sue him for malpractice, clearly showed that she was aware of the potential claim at that time. The First Circuit Court of Appeal was faced with a similar fact situation in Kennedy v. Macaluso, 99-3016 (La. 1 Cir. 2/16/01), 791 So. 2d 697. In Kennedy, the court found that the plaintiff’s letter, threatening malpractice against the attorney, was an admission that the plaintiff knew of the alleged wrongful conduct at the latest, by the date of the letter. The plaintiff’s malpractice action, filed more than one year from the date of discovery, was untimely.

Webb argued before the trial court that the prescriptive period did not begin to run from the March 24, 2000 letter because Foutz continued to represent her, as evidenced by the May 2, 2000 letter. Although reasons for

judgment were not provided, it is apparent that the trial court discounted Webb's argument. Considering the evidence presented by Foutz in support of the Motion for Summary Judgment, as well as the lack of opposing evidence, we cannot say that the trial court erred.

Finally, Foutz asks this court to assess sanctions against Webb for bringing a frivolous appeal. However, Foutz has neither filed an appeal nor did he answer Webb's appeal. Although La. C.C.P. art. 2164 provides for damages for frivolous appeals, such damages are not proper where the party does not appeal or answer the appeal pursuant to La. C.C.P. art. 2133. Failure to answer or file an appeal precludes a review of a request for sanctions and attorney's fees. Legaux v. Orleans Levee Board, 99-2453 (La. App. 4 Cir. 5/17/00), 769 So. 2d 19. Therefore, Foutz' request for sanctions is not considered.

CONCLUSION:

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED