

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0482

ANGELA JONES

VERSUS

THE STATE OF LOUISIANA THROUGH THE
DEPARTMENT OF CORRECTIONS, WARDEN
JOHNNIE JONES AND DEACON JOSEPH MAMOU

Judgment Rendered: November 1, 2013

Appealed from the
Eighteenth Judicial District Court
In and for the Parish of Iberville, Louisiana
Docket Number 63,662

Honorable Alvin Batiste, Jr., Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WJC *(by DFW)* concurs in the result.

WHIPPLE, C.J.

In this appeal, an inmate at a state prison challenges the trial court's dismissal, without prejudice, of her petition for damages against the State, a prison warden, and the prison chaplain. The trial court determined: that the inmate's petition alleged multiple, separate torts; that certain of these tort claims were prescribed; and that others were subject to dismissal for the inmate's failure to exhaust administrative remedies. For the following reasons, we amend the judgment, and as amended, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

On March 8, 2004, Angela Jones, incarcerated at the Louisiana Correctional Institute for Women (LCIW) in St. Gabriel, Louisiana, filed a petition for damages in the Nineteenth Judicial District Court against the State of Louisiana through the Department of Corrections (the State) and against Deacon Joseph Mamou, the prison chaplain at LCIW (19th JDC suit).² Ms. Jones alleged that she began spiritual counseling with Deacon Mamou in 2000, became employed by him at his prison office in 2001, and was subjected to his unwanted sexual advances beginning in early 2002 continuing until September or October 2003. In her petition, Ms. Jones alleged Deacon Mamou's conduct constituted a "continuing tort" against her and that the State, as his employer, was vicariously liable for damages he caused her. She also alleged that LCIW officials knew Deacon Mamou had a history of "illicit and illegal conduct with other inmates," including the exploitation of females he was counseling, and that the State was liable for failing to protect those within its custody from "unlawful sexual depredation."

¹As will be shown below, the claims in this case have a lengthy and protracted procedural history involving multiple forums. Given the issues presented on appeal, a recitation of such is necessary to fully address the issues presented for review.

² While we do not consider assertions made in briefs in rendering a decision on appeal, the parties do not dispute that Deacon Mamou resigned as prison chaplain before Ms. Jones filed the 19th JDC suit.

The State responded by filing an exception of improper venue, seeking to have the suit dismissed.

After filing the 19th JDC suit, Ms. Jones filed two additional suits based on the same claims asserted therein: (1) in April 2004, she filed a complaint in federal district court against the State, Deacon Mamou, and Johnnie Jones, Warden of LCIW (federal suit); and (2) in September 2004, she filed a petition for damages against these same three defendants in the Eighteenth Judicial District Court under docket number 61,581 (18th JDC suit #1).

In August 2005, the federal district court dismissed the federal suit without prejudice for failure to exhaust administrative remedies. Thereafter, in August or September of 2005, Ms. Jones submitted a "Request for Administrative Remedy Procedure" (ARP) to LCIW officials in which she adopted the allegations of her federal complaint. A LCIW ARP screening officer denied her ARP as untimely. Ms. Jones then submitted a request for Step Two relief in the ARP process. However, in October of 2005, the LCIW ARP screening officer denied that request as well, informing her that she could not proceed to the second step because her ARP was rejected at the first step due to untimeliness.

Meanwhile, the State and Warden Jones (the State defendants) filed exceptions of lis pendens, prescription, and no cause of action in 18th JDC suit #1. In December 2005, the trial court in that suit signed "Reasons for Judgment," stating that Ms. Jones's September 27, 2004 petition was "prescribed on its face," and that the State defendants' exceptions of prescription and no cause of action were granted. The appellate record shows Ms. Jones moved for and was granted an "appeal" from those "Reasons for Judgment," but the status of that "appeal"

does not appear in the appellate record.³

In February 2006, after receiving the adverse rulings in her federal suit and the 18th JDC suit #1, Ms. Jones filed a motion in the 19th JDC suit, admitting that venue was improper and seeking to have the matter transferred to the Eighteenth Judicial District Court. The Nineteenth Judicial District Court granted the motion, and the suit was transferred to the Eighteenth Judicial District Court under docket number 63,662 (18th JDC suit #2). In May 2006, Ms. Jones amended her petition in 18th JDC suit #2, alleging she had exhausted all administrative procedures and adding Warden Jones as a defendant.

In early 2007, Deacon Mamou and the State defendants separately filed exceptions of lack of subject matter jurisdiction, lis pendens, res judicata, prescription, and no cause of action in 18th JDC suit #2. In response, in December 2007, Ms. Jones again amended her petition in 18th JDC suit # 2 to set forth more detailed allegations describing Deacon Mamou's conduct between March 2000 and September or October 2003. After a hearing, the Eighteenth Judicial District Court signed a judgment on December 11, 2007, granting the State's exception of no cause of action based on Ms. Jones's failure to exhaust administrative remedies and dismissing her suit with prejudice. Ms. Jones devolutively appealed from the adverse judgment.⁴

³An appeal is taken from a judgment, not the written reasons for judgment. LSA-C.C.P. art.1918; Huang v. Louisiana State Board of Trustees for State Colleges and Universities, 1999-2805 (La. App. 1st Cir. 12/22/00), 781 So. 2d 1, 6. Where there are written reasons for judgment and no separate judgment, there is no final judgment and appeal delays do not begin to run. Amite Central Railroad Properties, L.L.C. v. Town of Amite City, 2002-1288 (La. App. 1st Cir. 6/27/03), 859 So.2d 5, 8. In any event, in a "Memorandum in Support of Defendants, DOC and Warden Jones', Amended Declinatory Exception of Lack of Subject Matter Jurisdiction, and Amended Peremptory Exceptions of Res Judicata, and Prescription," filed into the record on December 6, 2011, the State defendants assert that Ms. Jones's appeal from 18th JDC suit #1 "judgment" was dismissed.

⁴Ms. Jones's appeal from the December 11, 2007 judgment was originally lodged in this court under docket No. 2008-2498. Following this court's "Order of Recusal and Incorporated Written Reasons," the Louisiana Supreme Court transferred the appeal to the Fourth Circuit Court of Appeal, by order dated July 9, 2009 (Supreme Court of Louisiana).

In December 2009, the Fourth Circuit Court of Appeal reversed the December 11, 2007 judgment, finding “[w]hile the record reveals that Ms. Jones failed to exhaust her administrative remedies, we are of the opinion that dismissing her case under the theory of No Cause of Action for this reason was in error.” Angela Jones v. The State of Louisiana through the Department of Corrections and Deacon Joseph Mamou, 2009-0972, p. 4 (La. App. 4th Cir. 12/23/09), 2009 WL 8689527 (unpublished). Noting that the December 11, 2007 judgment was silent as to other exceptions filed by the appellees, the Fourth Circuit remanded the matter to the trial court to consider and rule on the other exceptions. Id.

After remand, in December 2011, the State defendants filed amended exceptions, including an exception of lack of subject matter jurisdiction, claiming the trial court was without subject matter jurisdiction to hear Ms. Jones’s case, because she had failed to properly exhaust her administrative remedies in accordance with certain provisions of the Corrections Administrative Remedy Procedure (CARP), LSA-R.S. 15:1171 et seq., and the Prison Litigation Reform Act (PLRA), LSA-R.S. 15:1181 et seq. Alternatively, the State defendants filed exceptions of res judicata and prescription, contending Ms. Jones’s claims were barred by the res judicata effect of the “judgment” rendered in 18th JDC suit #1 and were prescribed as had been “judicially determined” in that same suit. In February 2012, the trial court signed an order allowing Deacon Mamou to adopt the State defendants’ amended exceptions and supporting memorandum.

Ms. Jones opposed the amended exceptions, claiming she was not required to exhaust administrative remedies, because “at the time her cause of action arose,” the Louisiana Supreme Court had previously declared applicable provisions of CARP unconstitutional and the later-amended legislation could not be applied to

deprive her of her vested right to sue.⁵ She further argued that the dismissal of 18th JDC suit #1 had no res judicata effect on 18th JDC suit #2, because the merits of her claims were never determined in the first suit. Lastly, she argued her claims in 18th JDC suit #2 were not prescribed, because they were filed on March 8, 2004, within one year of Deacon Mamou's "last [tortious] act" toward her, which "occurred in September or October 2003."

After a hearing on the amended exceptions, the trial court signed a judgment on February 12, 2012: denying the defendants' exception of res judicata; granting their exception of prescription as to "all alleged acts occurring more than one year prior to the date of filing suit on March 8, 2004," based on its conclusion that the alleged acts giving rise to Ms. Jones's suit were "multiple separate torts subject to their own individual prescriptive periods"; granting their exception of lack of subject matter jurisdiction as to Ms. Jones's remaining claims for her failure to exhaust administrative remedies; and dismissing her action without prejudice.⁶ After a hearing, the trial court denied Ms. Jones's subsequently filed motion for new trial. Ms. Jones then devolutively appealed to this court.⁷

On appeal, Ms. Jones contends, in multiple assignments of error, that the trial court erred: (1) in concluding that Deacon Mamou's tortious conduct was

⁵Ms. Jones also responded to the amended exceptions by amending her petition to allege that LSA-R.S. 15:1172(B)(1)(2)(3) and (C) were unconstitutional "to the extent they apply to tort actions in that they divest the [d]istrict [c]ourts of the original jurisdiction granted by the Constitution in all civil matters and vest original jurisdiction in certain tort actions in the Department of Corrections [o]fficial who administered the Administrative Remedy Procedure" The record does not indicate the resolution, if any, of this constitutional challenge, nor has this issue been raised on appeal.

⁶The February 12, 2012 judgment dismissed Ms. Jones's "action" without prejudice, but does not specifically dismiss Ms. Jones's claim that LCIW officials knew of Deacon Mamou's history of "illicit and illegal conduct with other inmates" and the State was thus independently liable for failing to protect those within its custody from "unlawful sexual depredation." Generally, silence in a trial court's judgment as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. Schoolhouse, Inc. v. Fanguy, 2010-2238 (La. App. 1st Cir. 6/10/11), 69 So.3d 658, 664. Ms. Jones has not assigned this as error on appeal.

⁷The basis for recusal that existed when the first appeal was taken no longer existed at the time the second appeal was taken.

comprised of separate acts, subject to separate prescriptive periods, rather than characterizing his conduct as a “continuing tort,” or as a tort subject to *contra non valentum*, and which was not subject to prescription until the tortious conduct ceased; and (2) in dismissing her suit for failure to exhaust administrative remedies (a) “because there were no applicable administrative remedies when [her] cause of action accrued,” and (b) alternatively, because she had, in fact, exhausted her administrative remedies.

PRESCRIPTION

We first address the trial court’s conclusion that Deacon Mamou’s tortious conduct was comprised of separate torts, subject to separate prescriptive periods, rather than characterizing his conduct as a “continuing tort,” or as a tort subject to *contra non valentum*, and which was not subject to prescription until the tortious conduct ceased.

Liberative prescription runs against all persons unless an exception is established by legislation. LSA-C.C. art. 3467. The one-year liberative prescription period for delictual actions begins to run from the date the injury or damage is sustained. LSA-C.C. art. 3492. Prescription statutes are strictly construed against prescription and in favor of the obligation sought to be extinguished by it. Wimberly v. Gatch, 93-2361 (La. 4/11/94), 635 So.2d 206, 211. The “continuing tort” doctrine provides an exception to the general rule of prescription. When tortious conduct and resulting damages are of a continuing nature, prescription does not begin until the conduct causing the damages is abated. The “continuing tort” doctrine applies only when continuous conduct causes continuing damages, and it is the continuing nature of the alleged conduct that has the dual effect of rendering such conduct tortious and of delaying the commencement of prescription. See Bustamento v. Tucker, 607 So.2d 532, 538-539 (La. 1992).

Similarly, the judicially created doctrine of *contra non valentum* is an exception to the general rule of prescription and is based on the civilian concept that prescription does not run against a party who is unable to act. Wimberly, 635 So.2d at 211; Carter v. Haygood, 2004-0646 (La. 1/19/05), 892 So.2d 1261, 1268. There are four categories where *contra non valentum* is applied to suspend the running of prescription: (1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action; (2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting; (3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; and (4) where the cause of action is not known or reasonably knowable by the plaintiff, even though this ignorance is not induced by the defendant. Carter, 892 So.2d at 1268, citing Plaquemines Parish Commission Council v. Delta Development Company, Inc., 502 So.2d 1034, 1054-55 (La. 1987).

Without specifically labeling her cause of action, Ms. Jones characterizes Deacon Mamou's acts as constituting a "continuing tort." The principles underlying the "continuing tort" doctrine are some of the same that underlie the third category of *contra non valentum*,⁸ which applies when the defendant engages in conduct that prevents the plaintiff from availing himself of his judicial remedies. Carter, 892 So.2d at 1269. That is, although the plaintiff's cause of action has accrued, he is prevented from enforcing it by some reason external to his own will.

⁸For example, the "continuing" nature of a defendant's acts has been used to suspend the running of prescription in medical malpractice cases under the "continuing treatment" or "continuing relationship" rule, Carter, 892 So.2d at 1273; has been recognized in legal malpractice cases under the "continuing representation" rule, Jenkins v. Starns, 2011-1170 (La. 1/24/12), 85 So.3d 612, 615; and has been applied in employment discrimination cases under the "continuing violations" analysis, Alcorn v. City of Baton Rouge, 2002-0952 (La. App. 1st Cir. 12/30/04), 898 So. 2d 385, 388-389, writ denied, 2005-0255 (La. 4/8/05), 899 So. 2d 12. And, in the context of an intentional-infliction-of-emotional-distress case based on sexual harassment, the Louisiana Supreme Court found that the alleged pattern of cumulative and continuous conduct in that case was analogous to the continuing trespass or nuisance situations found in continuing tort cases. See Bustamento, 607 So.2d at 538-539.

Wimberly, 635 So.2d at 211; Doe v. Doe, 95-0006 (La. App. 1st Cir. 10/6/95), 671 So.2d 466, 470, writ denied, 95-2671 (La. 1/12/96), 667 So.2d 523. This third category of *contra non valentum* has been held to encompass situations where an innocent plaintiff has been lulled into a course of inaction in the enforcement of his right by reason of some concealment or fraudulent conduct by the defendant, or because of his failure to perform some legal duty whereby the plaintiff has been kept in ignorance of his rights. Carter, 892 So.2d at 1269, citing Crump v. Sabine River Authority, 98-2326 (La. 6/29/99), 737 So.2d 720, 730.

According to Ms. Jones, the allegations of her amended petition show Deacon Mamou improperly used his position as her spiritual advisor and boss to gain her trust to the extent that “he controlled her moods, feelings, thought[s,] and actions.” Ms. Jones essentially argues that through this overwhelming imbalance of power, authority, and control, Deacon Mamou prevented her from availing herself of her cause of action and that his “continuing tortious conduct caused a cumulation of damages that transformed [his] individual seductions into one actionable tort” She also contends her situation is analogous to cases where *contra non valentum* has been applied to toll prescription because a “special relationship” existed between the plaintiff and the defendant, such that the continuing relationship prevented the plaintiff from asserting his cause of action.

Ordinarily, the party pleading prescription bears the burden of proving the claim has prescribed. In re Medical Review Panel for Claim of Moses, 2000-2643 (La. 5/25/01), 788 So.2d 1173, 1177. Where, as here, the plaintiff’s petition alleges a continuous course of conduct that did not cease to exist until within the year preceding the filing of the suit, the plaintiff’s action is not prescribed on the face of the petition; hence, the defendant maintains the burden of establishing the facts necessary to sustain the plea of prescription. See Bustamento, 607 So.2d at 542. At the trial of an exception of prescription, evidence may be introduced to

support or controvert the defense of prescription, if its grounds do not appear from the petition. LSA-C.C.P. art. 931. Generally, in the absence of evidence, the objection of prescription must be decided upon the facts alleged in the petition, and all allegations therein are accepted as true. Kirby v. Field, 2004-1898 (La. App. 1st Cir. 9/23/05), 923 So.2d 131, 135, writ denied, 2005-2467 (La. 3/24/06), 925 So.2d 1230. In this case, the trial court held an evidentiary hearing, and the parties introduced documentary evidence, consisting of pleadings, rulings, and other documents from the suit records in the 19th JDC suit, the federal suit, and the 18th JDC suits, including Ms. Jones's ARPs and the LCIW's responses to same. However, the parties appear to agree, and the record reflects, that the trial court decided the exception of prescription on the facts alleged in Ms. Jones's petition; thus, those allegations are to be accepted as true. See Donley v. Hudson's Salvage, LLC, 2010-1315 (La. 1st Cir. 12/22/10, ___ So. 2d ___, 2010 WL 5480438 *2 (unpublished). Accordingly, we now turn to the factual allegations of Ms. Jones's petition.

In her amended petition, Ms. Jones basically alleges that in March 2000, she began spiritual counseling with Deacon Mamou and, over the next year, Deacon Mamou gained her "total confidence and trust to the point that he controlled her moods, feelings, thoughts and actions." On Deacon Mamou's advice, Ms. Jones "became involved in activities directed and supervised by him, including out-of-prison trips and religious programs[.]" In 2001, Deacon Mamou arranged for Ms. Jones to work in his prison office, which increased her confidence and trust in him and his control and power over her. In January 2002, Deacon Mamou began "taking advantage of his power and control" over her by "talking to her in a sexual manner about personal feelings and by groping or touching [her] breast and other parts of her body[.]" Although this conduct "stressed" Ms. Jones, Deacon Mamou assured her that "what he was doing would help her and everything would be ok."

In late January or February 2002, Deacon Mamou coerced Ms. Jones into “exposing herself to him while he gratified himself,” again telling her this would “help her[.]” In March 2002, Deacon Mamou “tortiously coerced” Ms. Jones into “an oral sexual relationship by telling her in words to the effect that it would be good for her.” According to Ms. Jones’s petition, this tortious conduct “which began in January 2002 continued and shortly thereafter” Deacon Mamou coerced her “into having sexual relations with him in his prison office and other places at various times in the prison” The “continuous tortious acts” occurred in January, February, March and April 2002 and “continued until September or October 2003 until [Deacon Mamou’s] continuing sexual demands increased [Ms. Jones’s] stresses to the point that she could not sleep or function as a person and she withdrew from all activities[,] including attending religious services.” Ms. Jones alleged that, when she attempted to end the relationship, Deacon Mamou threatened her, told her no one would believe her, and that he would “cut her off” from all outside prison activities, “if she did not go along with what he wanted[.]”

Whether analyzed under the rubric of the “continuing tort” doctrine, or the analogous doctrine of *contra non valentum*, when tortious conduct and resulting damages continue over a period of time, Louisiana courts have held, in certain circumstances, that prescription does not begin or run until the conduct causing the damages has abated. See South Central Bell Telephone Company v. Texaco, Inc., 418 So.2d 531, 533 (La. 1982). Typically, courts have found torts to be continuous in nature where each individual act would not necessarily give rise to a cause of action; rather, it is the cumulative effect of regularly occurring or continuous actions that results in successive damages from day to day. See Hunter v. Tensas Nursing Home, 32,217 (La. App. 2nd Cir. 10/27/99), 743 So.2d 839, 842, writ denied, 99-3334 (La. 2/4/00), 754 So.2d 228. The principle behind this equitable doctrine is that it protects a plaintiff from acts which by themselves may not be

unlawful or sufficient to alert the plaintiff that his rights have been violated, but instead require a cumulative process to become actionable. See King v. Phelps Dunbar, L.L.P., 98-1805 (La. 6/4/99), 743 So.2d 181, 192 (Knoll, J., concurring in part, dissenting in part); also see Brown v. Vaughn, 589 So.2d 63, 65 (La. App. 1st Cir. 1991) (In a hostile work environment case, each incident of harassment was of insufficient severity to separately comprise an independent claim for harassment, but taken together, could be of sufficient severity and pervasiveness to establish such a claim.)

In the context of an action for intentional infliction of emotional distress resulting from sexual harassment, the Louisiana Supreme Court has explained that “when the acts or conduct are continuous on an almost daily basis, by the same actor, of the same nature, and the conduct becomes tortious and actionable because of its continuous, cumulative, synergistic nature, then prescription does not commence until the last act occurs or the conduct is abated. Bustamento, 607 So.2d at 542; also see Alcorn v. City of Baton Rouge, 2002-0952 (La. App. 1st Cir. 12/30/04), 898 So.2d 385, 390, writ denied, 2005-0255 (La. 4/8/05), 899 So.2d 12 (hostile work environment and intentional infliction of emotional distress claims not prescribed under “continuing violations” analysis).

On the other hand, when a defendant’s conduct consists of “separate and distinct” acts, with particular damages flowing from each occurrence, even though the acts are similar in nature, Louisiana courts have not always found a pattern of conduct constituting a continuing tortious act. See Woods v. St. Charles Parish School Board, 01-162 (La. App. 5th Cir. 6/27/01), 790 So.2d 696, 702, writ denied, 2001-2220 (La. 11/16/01), 802 So.2d 609; also see Hunter, 743 So.2d at 842. For example, in a case where a dentist sexually abused a patient on numerous occasions over several years, but the acts did not occur daily or on any other regular basis, this court found each act was “separate and distinct,” noting that

damages from sporadic and intermittent acts of sexual abuse arise independently from each separate act of abuse and are not successive damages resulting from a continuing tort. Doe, 671 So.2d at 469-470; also see Fontaine v. Roman Catholic Church of Archdiocese of New Orleans, 625 So.2d 548, 552 (La. App. 4th Cir. 1993), writ denied, 93-2719 (La. 1/28/94), 630 So.2d 787. In an action by a mother alleging that a first grade teacher continuously mistreated, harassed, and physically abused her son over the course of a year, the Fifth Circuit refused to characterize the teacher's conduct as a continuing tort, because the alleged incidents consisted of "discrete, separate events," each of which was "immediately knowable" to the mother, and which did not create a pattern of conduct that "elevate[d] the individual events into a tort greater than its parts." Woods, 790 So.2d at 702. In an action for negligent care against a nursing home, the Second Circuit affirmed the dismissal of several of a niece's claims as prescribed, based on its determination that the described incidents of neglectful care of her aunt were, although similar in nature, clearly "separate and distinct, with particular damages flowing from each individual occurrence." Hunter, 743 So.2d at 842. And, in an action for assault and battery, when the defendant's "separate and distinct acts" against his girlfriend gave rise to "immediately apparent" damages, this court found that prescription ran separately from the date of each act of abuse. Laughlin v. Breaux, 515 So.2d 480, 482-83 (La. App. 1st Cir. 1987).

Based on the facts Ms. Jones alleges in her amended petition, and in light of the above jurisprudential rules defining the scope of the "continuing tort" and *contra non valentum* doctrines, we conclude the trial court correctly found that "the alleged acts giving rise to this suit are multiple separate torts subject to their own individual prescriptive periods" The specifically alleged "separate and distinct" acts by Deacon Mamou consisted of: groping or touching Ms. Jones's breast and other parts of her body in January 2002; coercing her into exposing

herself to him while he gratified himself in January or early February 2002; coercing her into an oral sexual relationship in March 2002; and coercing her into having sexual relations with him in his prison office and other places at various times in the prison, beginning shortly after January 2002 and apparently ending in September or October 2003.

For prescription purposes, if damages are immediately apparent to the victim, prescription begins to run from the date the injury is inflicted. See LSA-C.C. art. 3492; Carter, 892 So.2d at 1267; and Clark v. Wilcox, 2004-2254 (La. App. 1st Cir. 12/22/05), 928 So.2d 104, 112, writ denied, 2006-0185 (La. 6/26/06), 929 So.2d 1252. As set forth in Ms. Jones's petition, each coerced sexual act described above, beginning in January 2002, immediately produced "particular damages flowing from each occurrence" that were unlawful and "immediately apparent." See Laughlin, 515 So.2d at 482-83; Fontaine, 625 So.2d at 552 (Sexual abuse suffered by the victim resulted in "immediately apparent damages" at the time the abuse occurred, and those damages were not dependent on a cumulation of events.); State ex rel. Div. of Admin., Office of Risk Management v. National Union Fire Insurance Company of Louisiana, 2007-1134 (La. App. 1st Cir. 2/8/08), 984 So.2d 91, 95, writ denied, 2008-0548 (La. 4/25/08), 978 So.2d 370 (In order for alleged negligent acts to be the basis of a separate tort, the complained-of conduct must consist of separate and distinct acts, each of which gives rise to immediately apparent damages.) Certainly, each coerced sexual encounter was sufficient to trigger Ms. Jones's awareness that her rights had been violated by Deacon Mamou and that she should act to protect those rights. See Berry v. Board of Supervisors of L.S.U., 715 F.2d 971, 981 (5th Cir. 1983).

Unlike the sexually harassing conduct at issue in Bustamento, or the cumulative acts at issue in Brown or Alcorn, Deacon Mamou's tortious acts did not "require a cumulative process to become actionable," nor did his conduct become

tortious and actionable “because of its continuous, cumulative, synergistic nature.” Rather, each of Deacon Mamou’s coerced sexual acts gave rise to “immediately apparent” damages that were “immediately knowable” to Ms. Jones, similar to the acts at issue in Woods, Fontaine, and Laughlin. Ms. Jones essentially argues her damages were not immediately apparent to her, in that Deacon Mamou prevented her from availing herself of her cause of action due to his “overwhelming imbalance of power, authority and control” over her. Nonetheless, we note that, however exploitive Deacon Mamou’s power may have been, Ms. Jones was an adult who was admittedly “stressed” the first time Deacon Mamou tortiously touched her, and who reasonably should have been able to ascertain the detrimental consequences of each coerced sexual act from their inception in January 2002 until they ended in September or October of 2003. Accord Senn v. Board of Supervisors of Louisiana State University Agricultural and Mechanical College, 28,599 (La. App. 2nd Cir. 8/21/96), 679 So.2d 575, 580-81, writ denied, 96-2344 (La. 10/25/96), 681 So. 2d 379; Wadsworth v. ABC Insurance Company, 98-0486 (La. App. 4th Cir. 12/9/98), 732 So.2d 56, 60, writ denied, 99-0453 (La. 4/1/99), 742 So.2d 558.

Nor do we accept Ms. Jones’s argument that *contra non valentum* should be applied to suspend prescription in this case, because there was a “special relationship” between her and Deacon Mamou.⁹ As explained by the Louisiana Supreme Court, when a special relationship, such as physician-patient or attorney-client, exists between the parties, the continuation of the special relationship offers the possibility of correcting any injury and thus may postpone the running of prescription. In re Medical Review Panel for Claim of Moses, 788 So.2d at 1180, citing, 54 C.J.S. *Limitations of Actions* §177 (1987). Further, the continued

⁹Louisiana courts have noted that the tolling of prescription that arises out the continuation of a “special relationship” is based on the third category of *contra non valentum*. Carter, 892 So.2d at 1269.

professional relationship may result in a suspension of prescription if the continuing relationship is likely to hinder the patient's inclination to sue, thus tolling prescription until the relationship terminates. See Taylor v. Giddens, 618 So.2d 834, 843 (La. 1993).

In this case, the allegations of Ms. Jones's amended petition indicate that she and Deacon Mamou had a spiritual advisor/advisee relationship and an employer/employee relationship, both of which Deacon Mamou allegedly used to sexually exploit Ms. Jones. Even accepting these factual allegations as true, we are unable to find that Ms. Jones has adequately pled material facts that would merit application of the "special relationship" version of the *contra non valentum* rule. See Thomas v. State Employees Group Benefits Program, 2005-0392 (La. App. 1st Cir. 3/24/06), 934 So.2d 753, 758 (Only properly pleaded material allegations of fact, as opposed to allegations deficient in material detail, conclusory factual allegations, or allegations of law, must be accepted as true.)

In sum, we conclude that the trial court correctly determined that Deacon Mamou's tortious conduct was comprised of separate and distinct torts, with particular, immediately apparent damages flowing from each occurrence. Ms. Jones cannot rely on the "continuing tort" or *contra non valentum* doctrines, including that based on any "special relationship," to suspend the running of prescription, under the facts she has alleged herein. Ms. Jones's assignments of error regarding the issue of prescription are without merit.

SUBJECT MATTER JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

In her remaining assignments of error, Ms. Jones contends the trial court erred in dismissing her suit for failure to exhaust administrative remedies, because: (1) there were no applicable administrative remedies when her cause of action arose, and (2) alternatively, that she had, in fact, exhausted her administrative

remedies. According to Ms. Jones, her cause of action arose in January 2002 (when Deacon Mamou's first alleged tortious act occurred); the Louisiana Supreme Court had previously declared applicable exhaustion provisions of CARP unconstitutional in 2001; and the later-amended version of CARP could not be applied to deprive her of a vested right.

In Pope v. State, 99-2559 (La. 6/29/01), 792 So.2d 713, 721, the Louisiana Supreme Court held that certain provisions of CARP were unconstitutional to the extent that they divested the district courts of original jurisdiction over tort actions filed by inmates against the Department of Public Safety and Corrections and its employees. Subsequent to Pope, the Legislature amended portions of CARP by 2002 La. Acts, 1st Extraordinary Session No. 89, §2, effective April 18, 2002, changing the applicable procedure by allowing the filing of an original civil action in district court after the exhaustion of administrative remedies. See Dickens v. Louisiana Correctional Institute for Women, 2011-0176 (La. App. 1st Cir. 9/14/11), 77 So.3d 70, 73 n.1; Walker v. Appurao, 2009-0821 (La. App. 1st Cir. 10/23/09), 29 So.3d 575, 577, writ denied, 2009-2822 (La. 3/5/10), 28 So.3d 1010. However, in Cheron v. LCS Corrections Services, Inc., 2004-0703 (La. 1/19/05), 891 So.2d 1250, 1259, the Supreme Court held that the amended version of CARP could not be applied retroactively to a case in which the claimant would be divested of vested rights. Accord Dailey v. Travis, 2004-0744 (La. 1/19/05), 892 So.2d 17, 21.

A right to assert a cause of action is a "vested property right," and, under Louisiana law, a cause of action accrues when the plaintiff has a "right to sue" – i.e., when there is fault, causation, and damages. See M.J. Farms, Ltd. v. Exxon Mobil Corporation, 2007-2371 (La. 7/1/08), 998 So.2d 16, 33-34; Lee v. City of Shreveport, 46,146 (La. App. 2nd Cir. 3/2/11), 58 So.3d 601, 605, writ denied, 2011-0607 (La. 4/29/11), 62 So.3d 114. In our above discussion regarding prescription, we found the trial court correctly determined that Deacon Mamou's

tortious conduct was comprised of separate and distinct torts. Each of these separate torts gave rise to a separate cause of action, see Laughlin, 515 So.2d at 482, and each cause of action accrued when Ms. Jones had the “right to sue” – when there was fault, causation, and damages, see M.J. Farms, Ltd., 998 So.2d at 34. Because each of Deacon Mamou’s alleged coerced tortious acts gave rise to “immediately apparent” damages that were “immediately knowable” to Ms. Jones, she had the “right to sue” for each act as it occurred. Thus, as to those of Deacon Mamou’s acts occurring before April 18, 2002, the effective date of the amended version of CARP, Ms. Jones’s claims are prescribed, because she did not assert her cause of action for each act within one year of when it occurred. And, her claims with respect to Deacon Mamou’s acts occurring on or after April 18, 2002, the amended version of CARP, effective April 18, 2002, and as explained below, required exhaustion of administrative remedies prior to filing suit.

Pursuant to the amended version of CARP, a prisoner is required to initiate administrative remedies for a delictual action for injury or damages within ninety days from the day the injury or damage is sustained.¹⁰ See LSA-R.S. 15:1172(B)(1). If a prisoner fails to timely initiate or pursue his administrative remedy, the delictual claim is considered abandoned, and any subsequent suit asserting such a claim shall be dismissed with prejudice. LSA-R.S. 15:1172(C). Once an administrative decision regarding a delictual action is rendered, the prisoner then has the right to file his claim as an original civil action in the appropriate district court. LSA-R.S. 15:1177(C); see Dickens, 77 So.3d at 73 n.1. Accordingly, when a prisoner fails to exhaust available administrative remedies,

¹⁰Section 325 of Title 22, Part I of the Louisiana Administrative Code (LAC), outlines the rules and procedures to be followed in formally addressing inmate complaints in adult institutions in Louisiana. As of April 20, 2002, the LAC required inmates to use the procedure set forth therein, the two-step Administrative Remedy Procedure (ARP), before they could proceed with a suit in federal or state court. LAC 22:I:325(A) (2002). Dickens, 77 So.3d at 74. The two-step ARP applies to an inmate’s complaints of personal injury. LAC 22:I:325(E).

the district court and the appellate court lack subject matter jurisdiction to review the claim. See Dickens, 77 So.3d at 75-76; Walker, 29 So.3d at 577.

The record clearly indicates Ms. Jones failed to timely exhaust her administrative remedies as to claims based on any of Deacon Mamou's tortious acts occurring on or after April 18, 2002. Under LSA-R.S. 15:1172(B)(1), she was required to initiate administrative remedies within ninety days from the day any injury or damage was sustained. Her ARP was not signed until August 29, 2005, and not received by LCIW officials until September 29, 2005 (R21, 28, 133), well over ninety days after any alleged post April 18, 2002 injuries and damages were sustained.¹¹ Further, on September 29, 2005, an LCIW ARP screening officer specifically examined and rejected Ms. Jones's ARP as untimely. Ms. Jones then submitted a request to go to Step Two of the ARP process. By notice dated October 8, 2005, the LCIW ARP screening officer denied that request as well, informing Ms. Jones that she could not proceed to the second step, because her ARP was rejected at the first step due to untimeliness. Thus, because the record demonstrates that Ms. Jones failed to timely exhaust available administrative remedies for all acts arising on or after April 18, 2002, the district court and this court lack subject matter jurisdiction to review these claims. See Dickens, 77 So.3d at 75-76; Walker, 29 So.3d at 577.¹² Ms. Jones's assignments of error

¹¹Ms. Jones did not file her ARP until after the federal district court dismissed her federal suit. Notably, in the "Magistrate Judge's Report" signed August 9, 2005, the federal magistrate noted, "[P]laintiff has candidly admitted that she has never filed a "formal" grievance pursuant to the LCIW's administrative review procedures." Angela Jones v. The State of Louisiana Through The Department of Corrections, Warden Johnnie W. Jones, And Deacon Joseph Mamou, No. 04-250-RET-DLD (M.D. La. 2005).

¹²Cf. Jackson v. State, 2011-1716 (La. App. 1st Cir. 3/23/12), 92 So.3d 391, 395, 397, wherein this court vacated a judgment and dismissed an appeal for lack of subject matter jurisdiction, because the record was "devoid" of any evidence that the plaintiffs "initiated, complied with, or exhausted any statutorily-required administrative remedy procedure prior to filing suit in the district court." Thereafter, the Louisiana Supreme Court granted the plaintiff's writ application and remanded the suit to the trial court for an evidentiary hearing on the availability of an administrative remedy pursuant to LSA-R.S. 15:1171 et seq. Jackson v. State, 2012-0912 (La. 6/22/12), 90 So.3d 1069, 1070.

regarding this issue are without merit.

In reviewing the February 12, 2012 judgment, we note that the trial court determined (1) “all alleged acts occurring more than one year prior to the date of filing suit on March 2, 2004” were prescribed, and (2) it had no subject matter jurisdiction as to Ms. Jones’s “remaining claims,” because she failed to exhaust administrative remedies. However, we conclude that **April 18, 2002**, the effective date of CARP, as amended, is the relevant date for determining which of Ms. Jones’s claims are prescribed and which were subject to dismissal for lack of subject matter jurisdiction. Therefore, we will amend the judgment accordingly.

CONCLUSION

For the above reasons, the trial court’s February 12, 2012 judgment is amended to: grant the defendants’ exceptions of prescription as to all alleged acts occurring prior to April 18, 2002, the effective date of the amended version of CARP and to dismiss those claims with prejudice; and to grant the defendants’ exceptions of lack of subject matter jurisdiction as to Ms. Jones’s remaining tort claims for failure to exhaust administrative remedies and to dismiss those claims without prejudice.¹³ The judgment, as amended, is affirmed. No costs are assessed in this pauper suit.¹⁴

AMENDED, AND AS AMENDED, AFFIRMED.

¹³As noted in footnote four, Ms. Jones amended her petition below to allege that certain provisions of the amended version of CARP were unconstitutional. Because the record does not indicate the resolution, if any, of this constitutional challenge, we dismiss Ms. Jones’s remaining tort claims without prejudice. In the event her constitutional claim is ultimately decided, Ms. Jones will then have no remaining claims in this action.

¹⁴The trial court signed an order on February 5, 2012, allowing Ms. Jones to pursue her appeal in forma pauperis pursuant to LSA-C.C.P. art. 5181.