NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0864

MICHAEL J. MARTIN

VERSUS

JOAN MALBROUGH & ASSOCIATES, ET AL.

DATE OF JUDGMENT: FEB 18 2014

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 167,429, PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE MICHAEL E. KIRBY, JUDGE AD HOC

TMH

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Michael J. Martin
Houma, Louisiana

Plaintiff-Appellant
In Proper Person

David G. Sanders
Louisiana Dept. of Justice
Baton Rouge, Louisiana

Counsel for Defendants-Appellees
Judge Randall L. Bethancourt and
Judge David W Arceneaux

* * * * * *

BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: AFFIRMED; MOTION TO SUPPLEMENT THE APPELLATE RECORD DENIED.

KUHN, J.,

Plaintiff, Michael J. Martin, appeals the dismissal of his suit against defendant, David W. Arceneaux, a judge on the Louisiana 32nd Judicial District Court (32nd JDC), pursuant to a peremptory exception raising the objections of no cause of action and prescription. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January of 2002, Mr. Martin was the plaintiff in a medical malpractice suit pending in the 32nd JDC, in which he was represented by the law firm of Malbrough & Associates. On January 8, 2002, Judge Arceneaux signed an order allowing Malbrough & Associates to withdraw as counsel of record for Mr. Martin pursuant to an *ex parte* motion and order to withdraw.

Over ten years later, on August 6, 2012, Mr. Martin, in proper person, filed a suit for legal malpractice alleging that the withdrawal of Malbrough & Associates as his counsel was detrimental to his medical malpractice claim. In addition to naming Malbrough & Associates and several other parties as defendants, Mr. Martin also named Judge Arceneaux and Judge Randall L. Bethancourt as defendants.[1] In response, the defense filed a peremptory exception of no cause of action on the grounds that the claims against Judges Arceneaux and Bethancourt were barred by judicial immunity. The defense also filed an exception of prescription. Following a hearing on February 25, 2013, the trial court rendered judgment sustaining the exceptions of no cause of action and prescription and dismissing Mr. Martin's claims against Judges Arceneaux and Bethancourt. Written judgment was signed that same date. Mr. Martin appealed the judgment, assigning error only as to the dismissal of his suit against Judge Arceneaux on the ground that he failed to state a cause of action against him.

[1] The dismissal of Mr. Martin's suit against Malbrough & Associates is the subject of a separate appeal currently before this Court, docket number 2013-CA-1146, also decided this date.

DISCUSSION

Since the exception of no cause of action raises a question of law and the trial court's decision is based solely on the sufficiency of the petition, appellate courts review rulings on an exception of no cause of action *de novo.* ***Louisiana State Bar Association v. Carr and Associates, Inc.***, 08-2114 (La. App. 1st Cir. 5/8/09), 15 So.3d 158, 167, writ denied, 09-1627 (La. 10/30/09), 21 So.3d 292. The exception is triable on the face of the pleadings, and for purposes of resolving the exception, the well-pleaded facts in the petition are accepted as true in order to determine whether the law affords a remedy on the facts alleged in the petition. The pertinent question is whether, construing the petition in the light most favorable to the plaintiff and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. ***Louisiana State Bar Association***, 15 So.3d at 167.

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. Conversely, when the grounds of the objection cannot be so removed, the action shall be dismissed. An opportunity to amend is not permitted when it would constitute a vain and useless act. La. C.C.P. art. 934; ***American International Gaming Association, Inc. v. Louisiana Riverboat Gaming Commission***, 00-2864 (La. App. 1st Cir. 9/11/02), 838 So.2d 5, 17.

In the instant case, the trial court granted the defense exception of no cause of action on the basis that since Judge Arceneaux was entitled to judicial immunity, Mr. Martin failed to state a cause of action against him. Based on our *de novo* review of the petition and Louisiana jurisprudence, we conclude the trial court was correct.

It has long been held on the grounds of necessity and public policy that judges acting within the scope of their subject matter jurisdiction cannot be held liable for the acts done in their judicial capacities. ***Knapper v. Connick***, 96-0434 (La. 10/15/96) 681 So.2d 944, 946; ***Harris v. Brustowicz***, 95-0027 (La. App. 1st Cir. 10/6/95), 671 So.2d 440, 442-43. Moreover, this absolute immunity attaches to all acts within a judge's jurisdiction, *even if those acts can be shown to have been performed with malice*, in order to insure that all judges will be free to fulfill their responsibilities without the threat of civil prosecution by disgruntled litigants. See ***Knapper***, 681 So.2d at 946; ***Major v. Painter***, 06-470 (La. App. 5th Cir. 10/31/06), 945 So.2d 100, 103. Therefore, in order to state a cause of action against Judge Arceneaux, Mr. Martin must allege facts showing not only malice and corruption, but also that Judge Arceneaux acted beyond his jurisdiction or outside his judicial capacity. See ***Corley v. Village Of Florien***, 04-853 (La. App. 3d Cir. 12/8/04), 889 So.2d 364, 365; ***McCoy v. City of Monroe***, 32,521 (La. App. 2d Cir. 12/8/99), 747 So.2d 1234, 1241, writ denied, 00-1280 (La. 3/30/01), 788 So.2d 441.

Our courts have considered four factors in determining whether judges have acted in their judicial capacity and are afforded absolute judicial immunity. These four factors are: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. ***Haley v. Leary***, 09-1626 (La. App. 4th Cir. 8/4/10), 69 So.3d 430, 433, writ denied, 10-2265 (La. 12/17/10) , 51 So.3d 14, cert. denied, ____ U.S. ____, 132 S.Ct. 104, 181 L.Ed.2d 32 (2011).

A review of Mr. Martin's petition herein reveals that the allegations against Judge Arceneaux are exceedingly vague. Mr. Martin questions why Judge

Arceneaux signed the withdrawal order, which he alleges allowed his counsel to "drop the ball on [his medical malpractice] case." He appears to allege that Judge Arceneaux signed the withdrawal order when counsel's motion to withdraw did not merit him doing so. Mr. Martin also alleges that he was afforded no trial or hearing before Judge Arceneaux signed the order allowing the prejudicial withdrawal of counsel. Additionally, according to the petition, Judge Arceneaux, together with other defendants, "created so much CONFLICTS OF INTEREST and RED TAPE that no other attorneys would take [his malpractice] case."

On appeal, Mr. Martin also alludes to fraud and complains that Judge Arceneaux failed to give any reasons for allowing the withdrawal of his counsel, particularly when the *ex parte* motion to withdraw allegedly failed to comply with district court rules. He further argues that Judge Arceneaux violated both the rules of professional responsibility and the canons of judicial conduct by failing to report misconduct by Mr. Martin's former counsel (i.e., their improper and unwarranted withdraw from the malpractice case).

Basically, the allegations of the petition all stem from Judge Arceneaux signing the order allowing Mr. Martin's counsel to withdraw as counsel of record in his medical malpractice suit. This action clearly was a normal judicial function undertaken by Judge Arceneaux in his judicial capacity and was within his subject matter jurisdiction. Furthermore, Mr. Martin's allegations center around a case pending before the 32nd JDC. Under these circumstances, we conclude that Judge Arceneux's signing of the order allowing withdrawal of counsel was an act entitling him to absolute judicial immunity, regardless of any claims of malice, corruption, or fraud. Therefore, the trial court properly dismissed Mr. Martin's suit against Judge Arceneaux since the petition failed to state a valid cause of action against him.

Further, it is apparent that Mr. Martin cannot remove the grounds of the objection by amendment of his petition since his allegations stem entirely from Judge Arceneaux signing the order allowing counsel to withdraw, which was clearly a judicial function within his judicial capacity and jurisdiction. Given this fact, we can contemplate no amendment that Mr. Martin could make that would overcome the judicial immunity attached to that judicial act by Judge Arceneaux. As such, it is of no moment that the trial court's written judgment did not allow Mr. Martin an opportunity to amend his petition, since he was not entitled to such an opportunity.[2] See La. C.C.P. art 934.

CONCLUSION

For the reasons outlined, we affirm the trial court judgment sustaining the exception raising the objection of no cause of action and dismissing, with prejudice, Mr. Martin's suit against Judge Arceneaux.[3] Additionally, the motion filed by Mr. Martin to supplement the appellate record is denied. All costs of this appeal are assessed against plaintiff-appellant, Mr. Martin.

AFFIRMED; MOTION TO SUPPLEMENT THE APPELLATE RECORD DENIED.

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[2] While the trial court verbally indicated at the hearing that it would allow Mr. Martin fifteen days to amend his petition to attempt to state a cause of action against Judge Arceneaux, the written judgment contains no such provision. Although it was not authorized in the signed judgment, Mr. Martin did file a second petition within fifteen days, but he then took the instant appeal from the trial court's February 25, 2013 judgment. Accordingly, neither the second petition, nor any of the other pleadings filed by Mr. Martin after the judgment was rendered and this appeal was taken, and regarding which he has filed a motion to supplement the appellate record, are relevant to the matter currently before us since they were not before the trial court at the time of the judgment. Accordingly, those pleadings cannot be considered in this appeal. See ***Gatlin v. Kleinheitz***, 09-0828 (La. App. 1st Cir. 12/23/09), 34 So.3d 872, 874-75), writ denied, 10-0084 (La. 2/26/10), 28 So.3d 280; ***Pelican Homestead and Savings Association v. Royal Scott Apartments Partnership***, 541 So.2d 943, 947 (La. App. 1st Cir.), writ denied, 543 So.2d 9 (La. 1989). For this reason, the motion to supplement the appellate record is denied.

[3] Considering this result, we pretermit as unnecessary any consideration of the ruling on the defense's exception of prescription.