NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0870

BRIAN K. GLOTFELTY

VERSUS

CRAIG HART, TAMMY KARAS, XYZ INSURANCE COMPANY, RYAN RICHARD, AND JACK STRAIN, JR., IN HIS OFFICIAL CAPACITY AS SHERIFF OF ST. TAMMANY PARISH

Judgment Rendered: December 27, 2013

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Docket Number 2011-16453

Honorable William J. Knight, Judge Presiding

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

WHIPPLE, C.J.

This matter is before us on appeal by the plaintiff from a judgment of the trial court sustaining two defendants' peremptory exception raising the objection of no cause of action and dismissing with prejudice plaintiff's claims against them. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 14, 2011, Mr. Brian K. Glotfelty filed the instant suit for damages against Mr. Craig Hart; Ms. Tammy Karas; XYZ Insurance Company, as Mr. Hart's and/or Ms. Karas's professional liability insurer; Mr. Ryan Richard; and Mr. Jack Strain, Jr., in his official capacity as the Sheriff of St. Tammany Parish. In his petition, Mr. Glotfelty alleged that he was a witness in a divorce proceeding between Ryan and Stacey Richard, wherein Mr. Richard alleged that Mr. Glotfelty and Mrs. Richard were involved in an adulterous relationship. Regarding his claim for damages, Mr. Glotfelty essentially alleged that Mr. Richard, along with Mr. Hart and Ms. Karas, as Mr. Richard's attorneys, had improperly requested and obtained an attachment for his arrest, without a hearing and without adequate notice to him or his attorney, based on his alleged failure to appear at a scheduled deposition and that their acts resulted in his improper arrest, causing him damage. Mr. Glotfelty further alleged that Mr. Richard was, or had represented himself to be, a St. Tammany Parish Sheriff's Office (STPSO) deputy and that Sheriff Strain was vicariously liable for damages caused by the acts of Mr. Richard or any other

STPSO employee in connection with Mr. Glotfelty's arrest.[1]

Mr. Glotfelty's petition set forth the following factual allegations. Beginning in September 2010, Mr. Richard's attorney, Candice L. Jenkins, attempted to schedule Mr. Glotfelty's deposition multiple times. On October 28, 2010, Ms. Jenkins requested the issuance of a subpoena for Mr. Glotfelty to appear at her office on November 9, 2010 to be deposed and further requested that a special process server be appointed, based on her representation that the sheriff had been unable to serve Mr. Glotfelty. The subpoena was served upon Mr. Glotfelty by the special process server on November 2, 2010. However, while the subpoena required Mr. Glotfelty to appear at Ms. Jenkins's office, it had been "defaced and inscribed" with the address for the office of Mr. Hart, who, together with Ms. Karas, had enrolled as counsel for Mr. Richard on November 3, 2010. Notably, Mr. Glotfelty did not allege in his petition that he appeared at either office for his November 9, 2010 deposition.

Mr. Glotfelty further alleged in his petition that on November 16, 2010, Mr. Hart and Ms. Karas filed a Rule for Contempt, seeking to have Mr. Glotfelty held in contempt of court for failing to appear at his deposition and requesting: (1) that he be attached and (2) that he be brought to court for a December 9, 2010 hearing to show cause why he should not be held in contempt of court. On November 22, 2010, the trial court signed an order directing that an attachment be issued for Mr.

[1] On the next day, November 15, 2011, Mr. Glotfelty filed a complaint in federal district court against these same defendants, plus a "John Doe" defendant (identified as the officer who arrested him), asserting claims under 42 U.S.C.A. §§1983 and 1988, and alternatively, under Louisiana tort law, for negligence, wrongful arrest, false imprisonment, and intentional infliction of emotional distress. Mr. Hart and Ms. Karas responded with a motion to dismiss. After a hearing on the motion, the federal district court signed a judgment on April 11, 2012, dismissing Mr. Glotfelty's federal claims with prejudice and his state law claims without prejudice. In its "Order and Reasons," also signed on April 11, 2012, the federal district court concluded Mr. Glotfelty had pled insufficient facts to establish "joint participation" by Mr. Hart, Ms. Karas, and law enforcement to deprive Mr. Glotfelty of constitutional rights, requiring dismissal of his §1983 claims against these defendants. The federal district court also concluded Mr. Glotfelty had failed to state a federal claim against Mr. Richard, Sheriff Strain or "John Doe." Concomitantly, the federal court declined to exercise supplemental jurisdiction over Mr. Glotfelty's state law claims.

Glotfelty's arrest and that he be brought to court on December 9, 2010, for the contempt hearing. However, according to the allegations of Mr. Glotfelty's petition, Mr. Glotfelty was never served with a copy of the Rule for Contempt. Additionally, Mr. Glotfelty averred that while his counsel had contacted Ms. Karas on two occasions prior to November 30, 2010, neither Ms. Karas nor Mr. Hart provided Mr. Glotfelty's counsel with a copy of the Rule for Contempt or advised his counsel that an attachment had been issued for his arrest.

As further set forth in the petition, on December 4, 2010, five days before the scheduled contempt hearing, a STPSO officer arrested and imprisoned Mr. Glotfelty pursuant to the outstanding attachment order. After what he claims was an "unreasonable lengthy period of time," Mr. Glotfelty was released from jail upon posting a $500.00 bond. According to Mr. Glotfelty, on December 9, 2010, the trial court continued the contempt hearing and recalled the attachment order, and, thereafter at the rescheduled contempt hearing, the trial court dismissed the Rule for Contempt.[2]

With regard to his claims for damages against these defendants, Mr. Glotfelty alleged that Mr. Hart, Ms. Karas and Mr. Richard were under a legal duty to ensure that any and all attachments for arrest requested and enforced by them or on their behalf were legal, proper, appropriate, and in conformity with Louisiana law. He further averred that in having the attachment for his arrest improperly issued, Mr. Hart, Ms. Karas and Mr. Richard intentionally or, alternatively, with gross negligence, violated Louisiana law and procedure, causing him to suffer damages.

In May 2012, Mr. Hart and Ms. Karas responded to Mr. Glotfelty's petition with a peremptory exception raising the objection of no cause of action, seeking

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[2]Meanwhile, according to the allegations of the petition, on December 16, 2010, Mr. Glotfelty's deposition was taken, as scheduled by the trial court, in judicial chambers.

dismissal of Mr. Glotfelty's claims against them. After a hearing, the trial court signed a judgment, sustaining the exception, but also granting Mr. Glotfelty leave to file an amended petition to properly state a cause of action against Mr. Hart and Ms. Karas.[3]

Mr. Glotfelty then filed an amended petition, setting forth additional allegations against Mr. Hart and Ms. Karas. Specifically, in his amended petition, he alleged that their acts constituted a "bad faith abuse of process" on the following grounds: intentionally "defacing" the subpoena noticing his November 9, 2010 deposition; improperly requesting an *ex parte* attachment for his arrest and presentment to the court without a hearing or other due process as required by Louisiana law; failing to disclose the existence of the attachment order to his counsel and to the trial court during the December 2, 2010 telephone conference and failing to have the attachment order recalled; and acting in conjunction with Mr. Richard and the STPSO to have him "prematurely" arrested on the attachment. Additionally, Mr. Glotfelty sought a declaratory judgment that LSA-C.C.P. art. 1357, the provision that authorizes the attachment of a witness, is unconstitutional insofar as it "allows for the arrest and seizure of a non-party witness, prior to any hearing, and prior to the non-party witness being properly adjudicated in contempt of [c]ourt ... ."

In response to Mr. Glotfelty's amended petition, Mr. Hart and Ms. Karas again filed another peremptory exception raising the objection of no cause of action, seeking dismissal of Mr. Glotfelty's claims against them. The parties ultimately submitted the matter to the trial court on briefs. On January 2, 2013, the trial court signed a judgment, granting Mr. Hart and Ms. Karas's second exception

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[3] Mr. Glotfelty filed a writ application challenging the trial court's judgment sustaining Mr. Hart and Ms. Karas's objection of no cause of action. This court denied the writ application on December 4, 2012. Glotfelty v. Craig Hart, et al., 2012 CW 1637 (La. App. 1st Cir. 12/4/12) (unpublished action).

of no cause of action and dismissing with prejudice Mr. Glotfelty's claims against them. In written reasons for judgment, the trial court concluded: (1) the allegation that Mr. Hart and Ms. Karas intentionally defaced the subpoena was conclusory in nature, in that Mr. Glotfelty had neither pled specific facts to support the allegation nor cited authority to support a cause of action against an attorney for allegedly changing a street address on a subpoena; (2) Mr. Hart and Ms. Karas had no duty to disclose the existence of the outstanding attachment order to Mr. Glotfelty's counsel during the December 2, 2010 conference call; and (3) as to the remaining allegations, Mr. Glotfelty had failed to specifically plead facts to satisfy the essential requirements for an abuse of process claim.

Mr. Glotfelty filed the instant devolutive appeal from the January 2, 2013 judgment. In a single assignment of error, he contends the trial court erred in granting Mr. Hart and Ms. Karas's second exception of no cause of action and dismissing his claims against them.

NO CAUSE OF ACTION

The purpose of the exception of no cause of action is to test the legal sufficiency of a pleading by determining whether the law affords a remedy on the facts alleged in the pleading. Pierrotti v. Johnson, 2011-1317 (La. App. 1st Cir. 3/19/12), 91 So.3d 1056, 1062. To determine the issues raised by the exception, the well-pleaded facts in the petition, and any exhibits attached to the petition, must be accepted as true. See LSA-C.C.P. art. 853; Cardinale v. Stanga, 2001-1443 (La. App. 1st Cir. 9/27/02), 835 So.2d 576, 578. However, Louisiana retains a system of fact pleading; thus, a plaintiff's mere conclusions unsupported by facts will not set forth a cause of action. See Scheffler v. Adams and Reese, LLP, 2006-1774 (La. 2/22/07), 950 So.2d 641, 646-647. An exception of no cause of action should be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim that would entitle him to relief. Badeaux v.

Southwest Computer Bureau, Inc., 2005-0612 (La. 3/17/06), 929 So.2d 1211, 1217. All doubts are resolved in favor of sufficiency of the petition so as to afford a litigant his day in court. See Torbert Land Company, L.L.C. v. Montgomery, 2009-1955 (La. App. 1st Cir. 7/9/10), 42 So.3d 1132, 1135, writ denied, 2010-2009 (La. 12/17/10), 51 So.3d 16.

Generally, no evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. LSA-C.C.P. art. 931. However, evidence admitted without objection may be properly considered by the court and, in such circumstances, the pleadings are considered to have been enlarged. Giles v. Cain, 1999-1201 (La. App. 1st Cir. 6/23/00), 762 So.2d 734, 737. When reviewing a trial court's ruling sustaining an exception of no cause of action, appellate courts conduct a *de novo* review, because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition, or in this case, as next discussed, the petition as enlarged. Badeaux, 929 So.2d at 1217.

In the instant case, the trial court considered evidence beyond Mr. Glotfelty's original and amended petitions in ruling on the second exception of no cause of action. The record shows that Mr. Hart and Ms. Karas attached pleadings and other documents from the Richard divorce record to the memorandum they filed in support of their first exception of no cause of action. Likewise, in his opposition to the first exception, Mr. Glotfelty referenced many of these same pleadings and documents from the Richard divorce record. At the hearing on the first exception of no cause of action, Mr. Hart and Ms. Karas's counsel and the trial court referred to the attachments without objection from Mr. Glotfelty. And, in their memoranda in support of and in opposition to the second exception of no cause of action, the parties adopted by reference the memoranda they filed in support of and in opposition to the first exception of no cause of action. Given

these facts, we conclude the trial court did not err in considering the subject documents from the Richard divorce record in ruling on the second exception of no cause of action. See Hayward v. Winston, 2006-1499 (La. App. 1st Cir. 5/4/07), 2007 WL 1300811 *1 n.1 (unpublished); Stadtlander v. Ryan's Family Steakhouses, Inc., 34,384 (La. App. 2nd Cir. 4/4/01), 794 So.2d 881, 885-886, writ denied, 2001-1327 (La. 6/22/01), 794 So.2d 790.[4] Accordingly, we will review the trial court's decision based on the sufficiency of Mr. Glotfelty's petition as amended and as enlarged.

ABUSE OF PROCESS

To state a cause of action for the tort of abuse of process, a plaintiff must allege two essential elements: (1) the existence of an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular prosecution of the proceeding. Waguespack, Seago and Carmichael (A PLC) v. Lincoln, 1999-2016 (La. App. 1st Cir. 9/22/00), 768 So.2d 287, 290-291, citing Succession of Cutrer v. Curtis, 341 So.2d 1209 (La. App. 1st Cir. 1976), writ denied, 343 So.2d 201 (La. 1977). Abuse of process involves the misuse of a process already legally issued whereby a party attempts to obtain a result not proper under the law. Goldstein v. Serio, 496 So.2d 412, 415 (La. App. 4th Cir. 1986), writs denied, 501 So.2d 208, 209 (La. 1987). Thus, the regular use of process does not constitute an abuse of process; there must be a showing of an abuse through an illegal, improper, or irregular use of process. See Waguespack, Seago and Carmichael (A PLC), 768 So.2d at 292.

Louisiana Code of Civil Procedure article 1357 provides the "process" at issue in this case. Pursuant to LSA-C.C.P. art 1357, "[a] person who, without reasonable excuse, fails to obey a subpoena may be adjudged in contempt of the

[4] Compare Woodland Ridge Association v. Cangelosi, 94-2604 (La. App. 1st Cir. 10/6/95), 671 So.2d 508, 510-511 (trial court erred in relying on extraneous evidence in deciding an exception of no cause of action where there was no evidence that plaintiff acquiesced in the enlargement of its petition by the introduction of evidence at the hearing).

court which issued the subpoena," and "[t]he court may also order a recalcitrant witness to be attached and brought to court forthwith or on a designated day." Accordingly, we must determine whether the allegations of Mr. Glotfelty's petitions sufficiently allege that Mr. Hart and Ms. Karas: (1) had an ulterior purpose for using the attachment process authorized by LSA-C.C.P. art. 1357, and (2) used that process to obtain a result not proper under the law.

We first note that Mr. Glotfelty does not expressly allege in his petitions that Mr. Hart and Ms. Karas had an "ulterior purpose" for having him attached and arrested for failing to appear at his November 9, 2010 deposition.[5] What his allegations do set forth is that Ms. Jenkins, Mr. Richard's former counsel, attempted to schedule Mr. Glotfelty's deposition as early as September 2010, that his deposition was continued at least once, and that Ms. Jenkins had a special process server appointed after unsuccessfully attempting to have Mr. Glotfelty served with notice of his deposition. With this history in place, Mr. Hart and Ms. Karas enrolled as Mr. Richard's counsel in early November of 2010. And, when Mr. Glotfelty failed to appear at his November 9, 2010 deposition, Mr. Hart and Ms. Karas took steps to have him attached and arrested in order to accomplish the ultimate goal of taking his deposition – the "regular purpose" for which LSA-C.C.P. art. 1357's process is designed. Thus, rather than setting forth an "ulterior purpose," Mr. Glotfelty's allegations disclose instead that Mr. Hart and Ms. Karas plainly had a legitimate purpose for using the attachment process.

Regarding the second essential element of an abuse of process claim, we conclude that Mr. Glotfelty's petitions fail to sufficiently allege that Mr. Hart and

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[5]In his appellate brief, Mr. Glotfelty states that Mr. Hart and Ms. Karas's "ulterior motive" for the arrest was "to harass, embarrass, and intimidate [him] for his alleged extra-marital affair with Mrs. Richard," but this allegation does not appear in his original or amended petition. Although never addressed by this court, the Fourth Circuit has stated that an ulterior motive is presumed when there is a finding of an irregular use of process. Alden v. Lorning, 2004-0724 (La. App. 4th Cir. 5/4/05), 904 So.2d 24, 28. However, even if we were to presume an ulterior motive in this case, Mr. Glotfelty's petitions remain insufficient as they do not allege an irregular use of process.

Ms. Karas misused the attachment process to obtain a result not proper under the law. First, the fact that the street address on Mr. Glotfelty's deposition notice was changed from Ms. Jenkins's office to Mr. Hart and Ms. Karas's office merely demonstrates that Mr. Richard had retained new counsel who wanted to depose Mr. Glotfelty at their own office, rather than at the office of Mr. Richard's former attorney. Thus, Mr. Glotfelty's allegation that Mr. Hart and Ms. Karas "intentionally defaced" the deposition notice by changing the street address does not allege an abuse of process.

Mr. Glotfelty alleges that his petitions state a cause of action because he maintains that Mr. Hart and Ms. Karas's filing of the rule for contempt on November 16, 2010, constituted an abuse of process, because they requested the issuance of an *ex parte* attachment and order for his arrest without a hearing or other due process. However, while Mr. Glotfelty correctly alleges that a hearing must be held before a witness is adjudged in constructive contempt of court, see LSA-C.C.P. art. 225, we note that nothing in the wording of LSA-C.C.P. art. 1357 specifically requires that a hearing be held before a recalcitrant witness is attached and brought to court. See generally McCoy v. Calamia, 94-1274 (La. App. 3rd Cir. 4/5/95), 653 So. 2d 763, 772-773, writ denied, 95-1091 (La. 6/16/95), 655 So. 2d 336 (where subpoenaed witness failed to appear, plaintiffs could have requested an attachment pursuant to LSA-C.C.P. art. 1357).

Moreover, although Mr. Glotfelty alleges that LSA-C.C.P. art. 1357 is unconstitutional to the extent that it "allows for the arrest and seizure of a non-party witness, prior to any hearing, and prior to the non-party witness being properly adjudicated in contempt of [c]ourt," (and requests a declaratory judgment to this effect) this allegation of unconstitutionality is not pertinent to the issue presented for review in this appeal, i.e., whether he has stated a cause of action against Mr. Hart and Ms. Karas.

Mr. Glotfelty also alleges that Mr. Hart and Ms. Karas's: (1) failure to disclose the existence of the outstanding attachment order during the parties' December 2, 2010 telephone conference with the court, and (2) failure to have the attachment order recalled after the court rescheduled his deposition for December 16, 2010, constituted an abuse of process. According to Mr. Glotfelty, neither he nor his attorney knew about the outstanding attachment order, and Mr. Hart and Ms. Karas's failure to disclose the attachment order intentionally deprived him and his attorney of the opportunity to take action to prevent his "unlawful" arrest.

Again, these allegations do not disclose a misuse of the attachment process. Even if Mr. Glotfelty and his attorney actually were unaware of the outstanding attachment order,[6] he has not alleged that Mr. Hart and Ms. Karas were responsible for their lack of knowledge. Nor does he cite any authority for his assertion that Mr. Hart and Ms. Karas had an "affirmative duty" to disclose the existence of the attachment order to him.[7] Further, the fact that the court rescheduled Mr. Glotfelty's deposition during the December 2, 2010 telephone conference did not obligate Mr. Hart and Ms. Karas to take action to have the attachment order recalled; in representing Mr. Richard, their client, Mr. Hart and Ms. Karas

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[6] We note in this regard that, while Mr. Glotfelty alleged in his original petition that he had not been served with the Rule for Contempt, included in the attachments to the memorandum in support of the exception of no cause of action which were referenced by the parties and considered by the trial court was the affidavit of the special process server, wherein he attested that Mr. Glotfelty was personally served on December 2, 2010, with: (1) the Rule for Contempt, (2) a December 9, 2010 "trial subpoena," and (3) a subpoena noticing Mr. Glotfelty's deposition for 2:00 p.m. on that same day, December 2nd, at Mr. Hart and Ms. Karas's office. Additionally, another attachment to the memorandum in support of the exception of no cause of action was Mr. Glotfelty's motion to continue the December 9, 2010 contempt hearing, wherein Mr. Glotfelty specifically represented that on December 2, 2010, he had been served with a witness subpoena to appear in court for the December 9, 2010 contempt rule and that "[t]he contempt rule served on December 2nd on Mr. Glotfelty contained an exparte order of attachment." Moreover, in his brief to this court, Mr. Glotfelty acknowledges that he was in fact served with the subpoena and Rule on Motion for Contempt.

[7] The Rules of Professional Conduct establish minimum standards for the ethical conduct of attorneys, not only in their relations with their own clients, but with adversaries, opposing attorneys, the public, and the courts. However, as this court has noted, *albeit* in dicta, an attorney's breach of a rule imposing a duty relating to the general public would not, absent very unusual circumstances, vest a non-client with a delictual cause of action against an attorney. See Teague v. St. Paul Fire and Marine Insurance Company, 2006-1266 (La. App. 1st Cir. 4/7/09), 10 So.3d 806, 824, writ denied, 2009-1030 (La. 6/17/09), 10 So. 3d 722.

maintained the right to have Mr. Glotfelty brought to court to explain why he failed to appear at his November 9, 2010 deposition.

Lastly, Mr. Glotfelty alleges that Mr. Hart and Ms. Karas abused the attachment process by acting in conjunction with Mr. Richard and the STPSO to have him "prematurely" arrested on the attachment order. As earlier noted, the attachment order issued after Mr. Glotfelty's failure to appear for his deposition (after being served with a subpoena to do so) and required that Mr. Glotfelty be brought to court for a December 9, 2010 contempt hearing. The STPSO officer executed the attachment order by actually arresting and imprisoning him five days earlier, on December 4, 2010. According to Mr. Glotfelty, the fact that the STPSO executed the attachment for his arrest so quickly after its issuance, when there were thousands of unserved warrants in St. Tammany Parish, seems "more than coincidental." Mr. Glotfelty alleges that Mr. Richard, as an STPSO deputy, and Mr. Hart, as an appointed judge of the Abita Springs Mayor's Court and former employee of the St. Tammany Parish District Attorney's Office, had a "close connection" to the STPSO and that this "relationship" allowed the attachment to be served and executed in an "expedited fashion."

We are unable to find that the above allegations disclose or sufficiently set forth facts demonstrating that Mr. Hart and Ms. Karas misused the attachment process. Mr. Hart may have worked in local government in some capacity at pertinent times in this case; but, under our system of fact pleading, an allegation that Mr. Hart somehow used this "close connection" to improperly influence the STPSO to execute the attachment "in an expedited fashion" is merely conclusory and speculative. There are no factual allegations that Mr. Hart communicated with the STPSO regarding the execution of the attachment order, that he entered into some type of plan with the STPSO to execute the attachment prematurely, or that he was even aware that the STPSO would execute the attachment before December

9, 2010. Pleadings that establish only possibility, speculation, or unsupported probability do not suffice to establish a cause of action. Major v. Pointe Coupee Parish Police Jury, 2007-0666 (La. App. 1st Cir. 12/21/07), 978 So.2d 952, 956. Accordingly, we find that Mr. Glotfelty's conclusory allegations, unsupported by facts, do not set forth a cause of action for abuse of process against Mr. Hart and Ms. Karas. See Waguespack, Seago and Carmichael (A PLC), 768 So.2d at 292.

In sum, based on our *de novo* review of the judgment of the trial court's sustaining Mr. Hart and Ms. Karas's peremptory exception raising the objection of no cause of action, we conclude that, based on the facts alleged in Mr. Glotfelty's petition, as amended, and as enlarged by the pleadings and documents from the Richard divorce record, the law does not afford a remedy for abuse of process to Mr. Glotfelty against Mr. Hart and Ms. Karas. Even after the trial court gave him the opportunity to amend his petition, Mr. Glotfelty has not adequately alleged facts demonstrating that Mr. Hart and Ms. Karas had an ulterior motive for using LSA-C.C.P. art. 1357's attachment process or that they misused the attachment process to obtain a result not proper under the law.[8] Despite acknowledging that he was served with notice and a subpoena commanding him to appear for his November 9, 2010 deposition, Mr. Glotfelty did not allege that he appeared, or made any effort to appear, on that date. Thus, Mr. Hart and Ms. Karas had a lawful right to utilize the attachment procedure authorized by LSA-C.C.P. art. 1357 to secure his presence. Mr. Glotfelty's original and amended petitions

[8] When a petition fails to state a cause of action, but may be amended to cure the defect, the court shall grant plaintiff leave to amend his petition. See LSA-C.C.P. art. 934. If the petition's allegations are merely conclusory and fail to specify the acts that establish a cause of action, then the district court should permit plaintiffs the opportunity to amend the petition. Badeaux, 929 So.2d at 1219. In contrast, when the grounds of the objection of no cause of action cannot be removed, then plaintiffs need not be given an opportunity to amend. Mr. Glotfelty has already been given the opportunity to amend his petition so as to state a cause of action and has been unable to do so. From our review of the record, we find that Mr. Glotfelty has failed to demonstrate that he will be able to remove the grounds for the exception of no cause of action by another amendment of his petition. See Pearl River Basin Land and Development Company, L.L.C. v. State ex rel. Governor's Office of Homeland Security and Emergency Preparedness, 2009-0084 (La. App. 1st Cir. 10/27/09), 29 So.3d 589, 594.

contain no allegations to support a claim that the attachment procedure was improperly, illegally, or improvidently sought or ordered.

Accordingly, we find no merit to the assignment of error.

CONCLUSION

For the above reasons, the trial court's January 3, 2013 judgment, granting the exception of no cause of action filed by Craig Hart and Tammy Karas, and dismissing with prejudice the claims of Brian K. Glotfelty against Craig Hart and Tammy Karas, is hereby affirmed. Costs of this appeal are assessed to appellant, Brian K. Glotfelty.

AFFIRMED.