

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

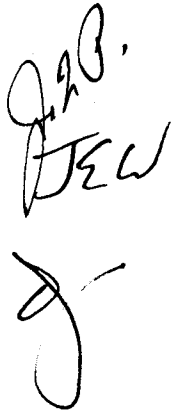
NO. 2014 CA 1178

THE DOC'S CLINIC, APMC

VERSUS

THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF HEALTH
AND HOSPITALS, ET AL.

Judgment rendered April 24, 2015.



Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C575390
Honorable Michael Caldwell, Judge

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

PETTIGREW, J.

This matter has a protracted history that need not be fully repeated herein. For the detailed factual and procedural background, see this court's prior appeal decision, **Doc's Clinic, APMC v. State, Department of Health and Hospitals**, 2007-0480 (La. App. 1 Cir. 11/2/07), 984 So.2d 711, writ denied, 2007-2302 (La. 2/15/08), 974 So.2d 665. This opinion will address only those facts relevant and necessary to resolving the salient issue before us in this appeal -- whether the district court manifestly erred in sustaining a peremptory exception raising the objection of prescription filed by defendant UNISYS Corporation (UNISYS) against the plaintiff, The Doc's Clinic, APMC (Doc's Clinic), and dismissing Doc's Clinic's claims against UNISYS with prejudice.

Doc's Clinic, a professional medical corporation and a DHH licensed Medicaid provider since 1996, filed a Petition for Damages on February 17, 2009, naming as defendants, DHH, and the following persons, individually, and in their official capacities in the Medicaid department of DHH: Paul Davenport, Ben Bearden, Charles Castille, Joseph E. Kopsa, and Jerry Phillips. Doc's Clinic alleged that as a result of a self-audit performed by it, in response to a DHH request made to numerous Medicaid providers, DHH sought the voluntary reimbursement from Doc's Clinic for alleged billing discrepancies, with which Doc's Clinic disagreed. Doc's Clinic alleged that DHH performed subsequent investigations and notified the clinic in July and August 2000, of additional billing irregularities and of its intention to impose sanctions of recoupment and excluding Doc's Clinic and Dr. Kent Hickey, its office manager and physician/owner, from participating in the Medicaid program for a period of five years. However, following remand by this court, in 2003, the sanction of exclusion was reversed by DHH; but ultimately, in 2004, DHH imposed sanctions on Doc's Clinic for recoupment.

As a result of those sanctions, Doc's Clinic alleged that it was compelled to terminate its business; and in the petition, it sought to recover lost profits that Doc's Clinic claims it could have realized but for DHH's wrongful and tortuous actions in wrongfully excluding it from the Medicaid program.

As fully detailed in this court's prior appeal decision, DHH sanctioned Doc's Clinic with the recoupment of approximately \$261,065.33 that was allegedly overpaid by DHH to Doc's Clinic as a result of alleged billing discrepancies. This court, in that prior appeal, reversed the recoupment and ordered reimbursement to Doc's Clinic. **Doc's Clinic, APMC**, 984 So.3d at 733. As noted above, DHH's writ was denied by the Supreme Court on February 15, 2008. Doc's Clinic maintains that this court's reversal of the recoupment, and the subsequent writ denial by the Supreme Court gave rise to its claims for damages.

The DHH defendants filed an exception raising the objection of prescription. In opposition to that exception, Doc's Clinic argued that the writ denial by the Supreme Court on February 15, 2008, marked the end of the administrative procedure it was statutorily required to follow to challenge DHH's sanctions, and also, marked the beginning of the running of the one-year prescriptive period during which it could file a suit seeking tort damages arising from the negligent, fraudulent, and wrongfully imposed sanctions by DHH upon it.¹ Thus, Doc's Clinic claimed that its petition for damages naming DHH and the other individual defendants within that prescriptive period was timely filed. The district court sustained the defendants' exception of prescription as to Doc's Clinic's tort claims on April 30, 2013.²

On April 17, 2013, Doc's Clinic filed an amending petition for damages adding as a defendant, UNISYS Corporation, as DHH's fiscal intermediary, alleging that it negligently and/or intentionally implemented a fraudulent auditing system that did not comply with federal guidelines, that it failed to advise Doc's Clinic of the discrepancies in the electronic system (as compared to the manual HCFA 1500 forms), and that its electronic submission system was incompatible with Doc's Clinic's billing system. Doc's Clinic alleged that

¹ A person or entity that wishes to contest an administrative sanction imposed by the DHH secretary may seek judicial review first, by a hearing conducted by the Department in compliance with the Administrative Procedure Act, and thereafter, by a hearing in the Nineteenth Judicial District Court. La. R.S. 46:437.4.C(1), (2) and (3). See also La. R.S. 49:964 and 965, detailing the procedure of judicial review and the appeal thereof.

² That judgment was appealed by Doc's Clinic to this court, and was docketed as 2013 CA 1845; however, after issuing a rule to show cause why the appeal should not be dismissed, as it appeared it was from a partial judgment without the required designation as a final appealable judgment required by La. C.C. P. art. 1915(B), this court dismissed that appeal on March 13, 2014.

UNISYS was jointly and solidarily liable with the previously named defendants.³ UNISYS filed an exception raising the objection of prescription. In opposition to UNISYS's exception, Doc's Clinic asserted that its claims against UNISYS arose out of the same conduct, transaction, or occurrence set forth in the original petition; therefore, those claims relate back to that filing date of February 17, 2009, and the amending petition is therefore, timely, pursuant to La. C.C.P. art. 1153.

UNISYS's exception was heard by the district court on July 22, 2013. Notably, only counsel for UNISYS was present at that hearing; neither counsel for, nor representative of, Doc's Clinic made an appearance. Following that hearing, the district court signed a judgment August 1, 2013, sustaining the exception, finding all claims against UNISYS had prescribed, and dismissing Doc's Clinic's claims against UNISYS with prejudice.⁴ Doc's Clinic appealed that judgment.

A trial court's findings of fact on the issue of prescription are subject to the manifest error-clearly wrong standard of review. **Guillot v. Doughty**, 2013-1348 (La. App. 1 Cir. 3/21/14), 142 So.3d 1034, 1041, writ denied, 2014-0824 (La. 6/13/14), 140 So.3d 1192. At the trial of a peremptory exception, evidence may be introduced to support or controvert the defense of prescription, if its grounds do not appear from the petition. La. C.C.P. art. 931. Generally, in the absence of evidence, the objection of prescription must be decided based upon the facts alleged in the petition, which must be accepted as true. **Illes v. State ex rel. Div. of Admin., Roman Catholic Church of Diocese of Baton Rouge**, 2014-0689 (La. App. 1 Cir. 12/23/14), ___ So.3d ___.

³ In our previous decision, this court described UNISYS's role as follows:

The UNISYS Corporation is DHH's fiscal intermediary in connection with the processing of Medicaid claims submitted by authorized health care providers. Pursuant to its contract with the State of Louisiana, UNISYS performs various services relative to the administration of the Medicaid program, including the processing, payment, and review or adjudication of reimbursement claims. **Doc's Clinic, APMC**, 984 So.2d at 716, fn.2.

⁴ The record before us contains the one-page transcript of that hearing. Presumably, since neither the plaintiff nor its counsel was in attendance, the district court did not hear argument, and no evidence was presented. The district court merely stated that the exception was very similar to the one it had previously sustained in favor of DHH and that the plaintiff's late-filed opposition to the exception raised the same arguments as before. The district court stated, "clearly any tort claims had prescribed," and sustained UNISYS's exception with regard to any claims in tort.

On appeal, Doc's Clinic reiterates its argument advanced in opposition to the exception: that the one-year prescriptive period did not begin to run until after it had exhausted its administrative remedies regarding its challenge to DHH's sanctions, which was February 15, 2008, the date on which the Supreme Court denied writs. Doc's Clinic also argues on appeal, for the first time, that UNISYS is a joint tortfeasor with the defendants named in the original petition, and pursuant to La. C.C. art. 2324(B) and (C), the timely filing of the original petition interrupted prescription as to UNISYS.

UNISYS asserts that prescription was evident from the face of the original petition and the amending petition through which it was added as a defendant. It argues, therefore, that the burden of proof shifted to Doc's Clinic to present evidence and/or legal support that its tort claims against UNISYS were not prescribed.⁵ Noting Doc's Clinic's absence from the hearing on the exception and its failure to present any evidence whatsoever, UNISYS maintains Doc's Clinic fell woefully short of meeting its burden of proving its claims were not prescribed. UNISYS maintains that the district court did not commit manifest error in sustaining its exception on this basis alone. However, UNISYS additionally argues that Doc's Clinic cannot raise, for the first time on appeal, the new argument that UNISYS is a joint tortfeasor and, therefore, the original petition served to interrupt prescription against it. Finally, UNISYS asserts that even if this late-posed argument were to be considered, it lacks merit because the district court also sustained an exception of prescription in favor of the originally named defendants; therefore, even if UNISYS's joint-tortfeasor status were considered, the tort claims are still prescribed.

We find it unnecessary to address either of the parties' arguments on appeal, as we find a separate basis exists upon which it can be determined that the district court did

⁵ We agree with UNISYS's representation of the law and the applicable burden of proof. Ordinarily, the party pleading prescription bears the burden of proving that the claim has prescribed. **Oracle Oil, LLC v. EPI Consultants, Div. of Cudd Pressure Control, Inc.**, 2011-0151 (La. App. 1 Cir. 9/14/11), 77 So.3d 64, 67, writ denied, 2011-2248 (La. 11/23/11), 76 So.3d 1157. However, when prescription is evident from the face of the pleadings, the burden shifts to the plaintiff to show the action has not prescribed. **Straub v. Richardson**, 2011-1689 (La. App. 1 Cir. 5/2/12), 92 So.3d 548, 552, writ denied, 2012-1212 (La. 9/21/12), 98 So.3d 341, cert. denied, 133 S.Ct. 1805, 185 L.Ed.2d 811 (2013). The petition and the amending petition seek damages arising out of sanctions that were imposed in 2004. Thus, the one-year tort claims are prescribed from the face of the petition. Accordingly, the burden then shifted to Doc's Clinic to show that the claims were not prescribed.

not manifestly err in sustaining the exception of prescription. In the earlier appeal by Doc's Clinic, challenging the sanctions imposed upon it by DHH, this court noted: "[s]ince *the exclusion order and \$28,432.51 recoupment have been reversed*, this appeal relates exclusively to the August 4, 2000 recoupment." (Emphasis added.) **Doc's Clinic, APMC**, 984 So.2d at 718. This court was referring to the first phase of Doc's Clinic's administrative process. Doc's Clinic's original challenge to DHH's sanctions had been heard by an Administrative Law Judge who submitted a recommended decision to the then DHH Secretary (David W. Hood) that recommended reversal of the exclusion order, as well as the majority of the remaining recoupment amount. At that time, DHH Secretary Hood issued a final decision on April 3, 2003, that *accepted the ALJ's recommendation to reverse the exclusion order*, but reversed the ALJ's recommendation regarding the recoupment, instead upholding the recoupment. Thereafter, Doc's Clinic continued to proceed with the administrative process by challenging the remaining recoupment in the Nineteenth Judicial District Court.

The sanction of excluding Doc's Clinic from participating as a Medicaid provider for five years, which forms the basis in the petition for damages for lost profits, was reversed by DHH Secretary Hood's decision dated April 3, 2003. Although Doc's Clinic filed subsequent pleadings for judicial review of DHH's actions, those subsequent pleadings concerned *only* the issue of the recoupment, as the exclusion of Doc's Clinic had been reversed and was not further challenged by any party.

Delictual actions are subject to a liberative prescription of one year, which begins to run from the day injury or damage is sustained. La. C.C. art. 3492. Prescription commences when a plaintiff obtains actual or constructive knowledge of facts indicating to a reasonable person that he or she is the victim of a tort. **Guillot**, 142 So.3d at 1046. Constructive knowledge is *whatever notice is enough to excite attention and put the injured party on guard and call for inquiry*. Such notice is tantamount to knowledge or notice of everything to which a reasonable inquiry may lead. **Id.**, see also **Campo v. Correa**, 2001-2707 (La. 6/21/02), 828 So.2d 502, 510-11.

Based on the foregoing, we find that as of April 3, 2003, Doc's Clinic had actual knowledge that the sanction of excluding it from participation in the Medicaid program had been reversed. Thus, as of that date, Doc's Clinic had notice that the sanction of exclusion that had been imposed on it was wrongfully imposed, and therefore, prescription began to run from that date on all tort claims, including the claims at issue for lost profits that Doc's Clinic may have had against the defendants involved in the sanctioning process. Accordingly, those claims prescribed one year from that date, or April 3, 2004. Therefore, the petition for damages filed on February 17, 2009, as well as the amending petition filed on April 17, 2013, adding UNISYS as a defendant, asserted claims that were prescribed, and untimely filed.

For the foregoing reasons, we find the district court did not err in sustaining the exception of prescription filed by UNISYS and dismissing Doc's Clinic's claims against it. Accordingly, that judgment is affirmed. All costs of this appeal are assessed to the plaintiff, The Doc's Clinic, APMC.

AFFIRMED.