

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0770

MARY M. BEAUCHAMP

VERSUS

THE SALVATION ARMY AND XYZ INSURANCE COMPANY

Judgment Rendered: DEC 23 2015

* * * * *

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER C625,927, DIVISION 27

*MM
MA*

HONORABLE TODD W. HERNANDEZ, JUDGE

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BEFORE: McDONALD, McCLENDON, and THERIOT, JJ.

McCleendon J. concurs with the result reached by the majority

McDONALD, J.

In this appeal, the plaintiff in a personal injury action appeals from a judgment granting the defendant's peremptory exception of prescription and dismissing her action with prejudice. For the following reasons, we affirm the judgment.

On November 6, 2013, Mary M. Beauchamp filed a petition for damages in Suit Number C625,927 against The Salvation Army, alleging she was injured by falling merchandise while shopping at The Salvation Army's store on April 26, 2010. The Salvation Army responded with a peremptory exception of prescription, and alternatively, a declinatory exception of *lis pendens*, based on an earlier-filed petition Ms. Beauchamp allegedly filed on April 25, 2011, in Suit Number C601,168. After a hearing, the trial court signed a judgment on June 6, 2014, granting The Salvation Army's exception of prescription, dismissing Ms. Beauchamp's action in Suit Number C625,927 with prejudice, and pretermitted the exception of *lis pendens*. Ms. Beauchamp appeals from the adverse judgment, claiming the trial court erred in dismissing her action as prescribed.¹

Delictual actions are subject to a one-year liberative prescriptive period that begins to run from the date the injury or damage is sustained. LSA-C.C. art. 3492; **Doe v. Doe**, 95-0006 (La. App. 1 Cir. 10/6/95), 671 So.2d 466, 469, writ denied, 95-2671 (La. 1/12/96), 667 So.2d 523. The party pleading prescription generally has the burden of proving the plaintiff's action is prescribed. However, where the plaintiff's petition shows on its face that the asserted action has prescribed, the burden shifts to the plaintiff to prove an interruption or suspension of prescription sufficient to bring the action within the prescriptive period. **Laforte v. Gulf Island Fabrication, Inc.**, 10-1605 (La. App. 1 Cir. 5/3/11), 65 So.3d 182, 185, writ denied, 11-1484 (La. 9/30/11), 71 So.3d 296. When the exception of prescription is pleaded at or prior to the trial of the case, evidence may be introduced to support or controvert the exception when the

¹ Ms. Beauchamp also contends the trial court erred in granting The Salvation Army's exceptions of *lis pendens* in Suit Numbers C601,168 and C625,927. However, the June 6, 2014 judgment from which she appeals only deals with Suit Number C625,927 and does not pertain to Suit Number C601,168. Although it appears a judgment was rendered in Suit Number C601,168, Ms. Beauchamp's appeal here is not from that judgment. Further, the June 6, 2014 judgment from which she did appeal did not *grant*, but instead *pretermitted*, consideration of the exception of *lis pendens* in Suit Number C625,927. Therefore, we need not address Ms. Beauchamp's assignment of error on this issue.

grounds thereof do not appear from the petition. See LSA-C.C.P. art. 931; **Kelley v. General Insurance Company of America**, 14-0180 (La. App. 1 Cir. 12/23/14), 168 So.3d 528, 533, writs denied, 15-0157, 15-0165 (La. 4/10/15), 163 So.3d 814, 816. In the absence of evidence, the exception of prescription must be decided on the facts alleged in the petition, which are accepted as true. **Duckworth v. Louisiana Farm Bureau Mutual Insurance Company**, 11-2835 (La. 11/2/12), 125 So.3d 1057, 1072; **Denoux v. Vessel Management Services, Inc.**, 07-2143 (La. 5/21/08), 983 So.2d 84, 88.

Here, Ms. Beauchamp's petition is facially prescribed, because it was filed over two and a half years after the date of her alleged injury. Thus, she had the burden of proving an interruption or suspension of prescription. In the trial court, both she and The Salvation Army devoted much of their arguments to discussing the effect of filings made in Ms. Beauchamp's earlier-filed action in Suit Number C601,168. Such could be relevant because, if timely, the filing of that action may have served to interrupt prescription on Ms. Beauchamp's claim. See LSA-C.C. art. 3462. In conjunction with their filings, the parties both refer to multiple exhibits, but none of the exhibits to which they refer were filed into the record below nor introduced at the hearing on the exception of prescription.²

Appellate courts are courts of record and may not review evidence that is not in the record, nor may they receive new evidence. See LSA-C.C.P. art. 2164; **Denoux**, 983 So.2d at 88. Further, we decline to take judicial notice of proceedings in other suits Ms. Beauchamp filed. The parties did not request that we take judicial notice of other suits nor supply this court with the information necessary to determine the undisputed nature of the facts contained in the record of any other suit. See LSA-C.E. art. 201; contra **Fidelity National Bank of Baton Rouge v. Calhoun**, 08-1685 (La. App. 1 Cir. 3/27/09), 11 So.3d 1119, 1124 (where party requested that court take

² The June 6, 2014 judgment indicates that the court rendered judgment "after reading memoranda filed by all counsel with exhibits, and hearing argument of counsel on April 21, 2014[.]" No exhibits are attached to the memoranda contained in the appellate record, and the transcript of the April 21, 2014 hearing indicates that no exhibits were filed into evidence at the hearing.

judicial notice and supplied court with documents establishing judicially-noted fact). Thus, because no evidence was introduced, we decide the exception of prescription on the facts alleged in Ms. Beauchamp's petition in Suit Number C625,927. See Duckworth, 125 So.3d at 1072; Denoux, 983 So.2d at 89. The petition, filed on November 6, 2013, plainly states that Ms. Beauchamp's injuries were sustained on April 26, 2010. Accepting this date of injury as true, we must conclude that her action is prescribed, because it was filed well after the applicable one-year prescriptive period. Ms. Beauchamp has failed to carry her burden of proving that prescription was somehow interrupted or suspended.

For the foregoing reasons, the June 6, 2014 judgment is affirmed. Appeal costs are assessed to Mary M. Beauchamp.

AFFIRMED.