NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CW 1914

URGENT CARE & FAMILY MEDICINE

VERSUS

J. PEYTON PARKER, JR

Judgment rendered: DEC 2 2 2016

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On Supervisory Writs from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C636741

The Honorable Todd Hernandez, Judge Presiding

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Baton Rouge, LA

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Urgent Care & Family Medicine

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Attorney for Defendant/Appellant
In proper person

* * * * *

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

HOLDRIDGE, J.

Defendant-appellant, J. Peyton Parker Jr., appeals a judgment against him in a suit on an open account filed by plaintiff-appellee, Urgent Care & Family Medicine. For the following reasons, we convert this appeal to an application for supervisory writs and deny the relief requested.

FACTS AND PROCEDURAL HISTORY

Plaintiff filed suit in Baton Rouge City Court against defendant, an attorney, seeking to collect amounts due on an open account pursuant to La. R.S. 9:2781. Plaintiff performed medical services for two of defendant's clients. The total amount charged for the services was $14,550.00. After trial, judgment was rendered for plaintiff and against defendant for $14,550.00 with judicial interest from date of judicial demand until satisfied, attorney's fees of 33.33 percent and all court costs.

Defendant suspensively appealed the City Court judgment to the Nineteenth Judicial District Court, assigning two errors:

> 1. The court erred in ruling against defendant on vague and confused arrangements for the payment of charges allowing the plaintiff to obtain judgment without satisfying the burden of proof.
> 2. This suit was a result of a letter of surety, not an open account and no attorney fees are authorized. Neither the plaintiff attorneys nor the court addressed the issue relating to the laws of surety.

The district court affirmed the City Court judgment and assessed defendant with the costs of the appeal. From this judgment, defendant suspensively appeals.

On appeal to this court, defendant raises five assignments as error. Defendant contends: (1) the city court erred in basing its ruling on "vague and confused arrangements for the payment of charges allowing the plaintiff to obtain judgment without satisfying the burden of proof" as required by La. C.C. arts. 3039 and 3044 (defendant raised this assignment of error in district court); (2) the

district court erred in failing to give reasons for judgment despite defendant's request[1] and the judgment "conflicts with all fundamental requirements of a contract and . . . uncompensated surety contract"; (3) the city court erred in awarding attorney's fees because the suit is based on a suretyship, not an open account, and the court failed to address the surety issue; (4) the city court erred in failing to rule on defendant's exception of nonjoinder of necessary parties, namely the clients that plaintiff treated whom defendant classified as original obligors against whom a judgment must first be obtained pursuant to La. C.C. art. 3069;[2] and (5) the city court erred in finding defendant liable "for the charges as a result of his opening his own account with the Urgent Care Clinic."

JURISDICTION

We first recognize that this court has no jurisdiction to hear this matter pursuant to its appellate jurisdiction because defendant filed an appeal from the Nineteenth Judicial District Court's appellate review of a Baton Rouge City Court judgment. Appellate jurisdiction over an appeal from a judgment rendered by the City Court of Baton Rouge lies with the Nineteenth Judicial District Court, not the First Circuit Court of Appeal. La. C.C.P. art. 5001.[3] See also McGee v. Campbell,

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[1] Defendant failed to brief this issue; therefore, we deem this assignment of error abandoned. See Uniform Rules-Courts of Appeal, Rule 2-12.4(B)(4); Georgia-Pacific, LLC v. Dresser-Rand Co., 2015-2002 (La. App. 1 Cir. 10/31/16), ___ So.3d ___ n.5.

[2] Defendant failed to raise the issue of nonjoinder when appealing the judgment in the district court and we therefore will not consider it here.

[3] Louisiana Code of Civil Procedure article 5001 states:

> A. Except as provided in Paragraph B of this Article, an appeal from a judgment rendered by a parish court or by a city court shall be taken to the court of appeal.
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> B. Appeal from a judgment rendered by a city court located in the Nineteenth Judicial District shall be taken to the district court of the parish in which the court of original jurisdiction is located.
>
> C. Appeal shall be on the record and shall be taken in the same manner as an appeal from the district court.

2007-1145 (La. App. 1 Cir. 3/26/08), 2008WL11291394, p. 4. This court, however, has plenary power to exercise supervisory jurisdiction over district court cases that arise within its circuit and may do so at any time, according to the discretion of the court. See La. Const., art. V, secs. 10(A), 16;[4] McGee, Id.; Foxy's Health & Racquet Club, Inc. v. Albritton, 2003-1054 (La. App. 1 Cir. 8/15/03), 859 So.2d 151, 153; see also Bradley v. Hostead, 2003-1256 (La. 9/5/03), 852 So.2d 1038, 1039, wherein relator sought review of a district court judgment that affirmed a Baton Rouge City Court judgment, and the Supreme Court granted a writ application for the sole purpose of transferring relator's application to this court for consideration pursuant to La. Const., art. V, sec. 10(A).[5] Accordingly, we convert defendant's appeal to an application for supervisory review and exercise our supervisory jurisdiction in this matter. Therefore, we review the record before us to determine whether it supports the lower courts' judgments.

ASSIGNMENTS OF ERROR

Defendant's assignments of error raise two issues: whether the agreement between plaintiff and defendant was a suretyship or a guarantee of payment on an open account, and secondly, if the agreement did involve an open account, did plaintiff meet its burden of proof under La. R.S. 9:2781. Louisiana Revised Statute 9:2781(A) provides that "[w]hen any person fails to pay an open account within thirty days after the claimant sends written demand therefor correctly setting forth the amount owed, that person shall be liable to the claimant for reasonable attorney

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[4] La. Const. art. V, sec. 10(A) provides, in pertinent part: "Except as otherwise provided by this constitution, a court of appeal has **appellate jurisdiction** of (1) all civil matters ..., (2) all matters appealed from family and juvenile courts, and (3) all criminal cases triable by a jury .... It has **supervisory jurisdiction** over cases which arise within its circuit." (Emphasis added.)

La. Const. Art. V, sec. 16(B) states, "A district court shall have appellate jurisdiction as provided by law."

[5] See also Searles v. Searles, 2010-0709 (La. 5/28/10), 36 So.3d 256, wherein the Supreme Court cited Bradley and granted writs and transferred the application back to this court pursuant to La. Const., art. V, sec. 10(A).

fees for the prosecution and collection of such claim when judgment on the claim is rendered in favor of the claimant." Subsection D of the statute defines "open account" as including:

> any account for which a part or all the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services.

See also Frey Plumbing Co. v. Foster, 2007-1091 (La. 2/26/08), 996 So. 2d 969, 972. In contrast, Louisiana Civil Code article 3035 defines suretyship as "an accessory contract by which a person binds himself to a creditor to fulfill the obligation of another upon the failure of the latter to do so."

At the trial in City Court, Dr. Saiyid Wahid, the owner and medical director of Urgent Care, testified that defendant faxed plaintiff a letter on September 15, 2009 stating that he represented two clients in their claim for damages arising out of an automobile accident. The letter continued, "This letter will guarantee payment of any charges incurred by [the clients] within 90 days from the last treatment." The letter was signed by defendant. Dr. Wahid began seeing the clients on the same date. Plaintiff provided the treatment and sent invoices seeking payment to defendant but he did not pay for the care. When Dr. Wahid spoke with defendant about the bills, defendant did not dispute the debt but said he "would pay tomorrow." When defendant still failed to pay, Dr. Wahid hired an attorney to collect the amount due and the attorney sent defendant demand letters. The contract between Dr. Wahid and the attorney called for a 33 1/3 percent contingency fee. Dr. Wahid also verified the costs the attorney incurred.

Dr. Wahid testified he never saw a letter from defendant attempting to change the original arrangement between plaintiff and defendant, and he had no such letter in his records. He also stated that he would not have agreed to an

arrangement whereby he would be paid only if the case settled or was won by plaintiff. Lastly, he testified that he expected defendant to pay the bills and never intended to bill the patients directly.[6]

Defendant represented himself and testified that he sent the first letter and then faxed plaintiff a second letter on the same date wherein he stated he would only pay plaintiff out of a judgment or settlement. According to defendant, he did not hear from Dr. Wahid so he assumed Dr. Wahid was satisfied with that arrangement. Defendant also testified that Dr. Wahid never spoke to him about any contract or what he (Dr. Wahid) was going to do or how much it was going to cost. When questioned by plaintiff's counsel, defendant testified that his secretary faxed the second letter.

At the end of the trial, the City Court judge issued brief oral reasons wherein she stated that the first letter defendant sent to the doctor created a contract between him and the doctor that defendant would guarantee payment. She then said, "There was no meeting of the minds when--in--when, and if, he sent that second letter, because the doctor never received it." The judge noted that defendant testified he did not send it but he thought his secretary did; however, the judge added, no one ever received it.

Factual findings should not be reversed on appeal absent manifest error. Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989); Trans Pac. Interactive, Inc. v. U.S. Telemetry Corp., 2016-0119 (La. App. 1 Cir. 9/16/16), ___ So.3d ___, ___.

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[6] In his testimony Dr. Wahid initially answered that he never intended to bill the patients directly, but when asked "Did you expect them to pay for these bills?" he apparently misunderstood the word "them" and answered "Yes." However, counsel then asked, "Did you or I guess Urgent Care expect the defendant to pay for these medical bills?" whereupon Dr. Wahid answered, "Mr. Parker, yes." Defendant commented that the question was the same, to which Dr. Wahid asked that the question be repeated. When asked "Did you and Urgent Care expect Mr. Parker, the defendant, to pay these bills?", Dr. Wahid responded, "Yes—yes--yes." There is nothing in the record that indicates the injured parties entered into an open account or other contractual relationship with plaintiff. The only evidence introduced is the contractual relationship between plaintiff and defendant.

If the trial court's or jury's factual findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse. Sistler v. Liberty Mutual Ins. Co., 558 So.2d 1106, 1112 (La. 1990); Trans Pac, Id. Consequently, when there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. Stobart v. State, Through Dep't of Transp. & Dev., 617 So.2d 880, 883 (La. 1993); Trans Pac, Id.

After reviewing the trial testimony and evidence, we cannot say that the City Court's factual findings are manifestly erroneous. Plaintiff established that defendant guaranteed payment of plaintiff's medical services for his clients in the first letter defendant sent plaintiff and that plaintiff accepted those terms by treating the clients. The City Court rejected defendant's testimony that defendant modified the agreement to pay only out of a favorable judgment or settlement. This finding is supported by Dr. Wahid's testimony that he did not receive a second letter and that he would not have agreed to those terms.[7]

As to defendant's contentions that the contract between him and plaintiff was a suretyship, the agreement to pay the clients' medical bills was entered into by defendant directly with plaintiff. The letter defendant sent to plaintiff stated that he would guarantee payment of any charges incurred by the clients within 90 days from the last treatment. There is no showing that the parties agreed that defendant would pay the medical bills upon the failure of his clients to do so. Therefore, a suretyship was not created.[8] We note that in Vezina & Associates v.

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[7] Although defendant contends that the latter letter(s) was attached to plaintiff's petition, the petition itself does not refer to or have any letters attached to it.

[8] Additionally, even if suretyship existed, the surety is still liable for full performance of the underlying obligation pursuant to La. C.C. art. 3045. Louisiana Civil Code article 3045 states, "A surety, or each surety when there is more than one, is liable to the creditor in accordance with the provision of this Chapter, for the full performance of the obligation of the principal obligor, without benefit of division or discussion, even in the absence of an express agreement of solidarity." Therefore, even if a suretyship existed, defendant alone could be sued for the balance due on the open accounts.

Gottula, 94-593 (La. App. 5 Cir. 3/1/95), 652 So.2d 85, 90, the Fifth Circuit held that a law firm was entitled to recover on an open account to collect attorney's fees against a client's father where the father agreed to assume all litigation costs. The court also found that there was no suretyship contract. Id. See also Spiegel v. Martinez, 09-90 (La. App. 5 Cir. 10/13/09), 27 So.3d 889, 892.

Defendant contends that plaintiff is not entitled to attorney's fees. As a general rule, attorney's fees are not due a successful litigant unless specifically provided for by contract or by statute. Frank L. Beier Radio, Inc. v. Black Gold Marine, Inc., 449 So.2d 1014, 1015 (La. 1984). Our courts have construed such statutes strictly because the award of attorney's fees is exceptional and penal in nature. Bridges v. Lyondell Chem. Co., 2005-1535 (La. App. 1 Cir. 6/9/06), 938 So.2d 786, 789, writ denied, 2006-2196 (La. 11/17/06), 942 So.2d 541. However, pursuant to La. R.S. 9:2781(A), plaintiff was entitled to attorney's fees as it met the procedural requirements of the statute. We find no manifest error in the trial court's finding that plaintiff complied with La. R.S. 9:2781 and that plaintiff was entitled to collect attorney's fees from defendant. Defendant's assignments of error have no merit.

CONCLUSION

Accordingly, we find no error in the lower courts' judgments and deny this writ. The costs associated with this supervisory writ are assessed against J. Peyton Parker Jr.

WRIT DENIED.