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PM
4/2/18

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0529

**SHARLYNE RENO, ON BEHALF OF MARY JOSIE KING, INDIVIDUALLY AND ON
BEHALF OF HER DECEASED HUSBAND, LUTHER KING**

VERSUS

**WANDA GENOLA, WANDA CRAWFORD, NURSING HOME, and ABC
INSURANCE COMPANY**

Consolidated With

2018 CA 0530

LUTHER KING ESTATE

VERSUS

**PLANTATION MANAGEMENT, HARVEST MANOR NURSING HOME, WANDA
CRAWFORD, WANDA GENOLA, RENAISSANCE, THE PRUDENTIAL INSURANCE
OF AMERICA, OFFICE OF CITY BENEFITS, OFFICE OF MEDICAID, and THE
CITY PARISH OF EAST BATON ROUGE**

Judgment Rendered: DEC 28 2018

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Docket Nos. 122399 c/w 118857

Honorable Robert H. Morrison, III, Judge Presiding

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Addis, Louisiana

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Sharlyne Reno, on behalf of
Mary Josie King

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Baton Rouge, Louisiana

Counsel for Defendants/Appellees
Plantation Management Company,
L.L.C. d/b/a Harvest Manor Nursing
Home and Wanda Crawford

* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

TMH
Higginbotham, J. concurs.

McCLENDON, J.

In this appeal, the plaintiff challenges the trial court's judgment sustaining the defendants' peremptory exception of prescription, granting the defendants' motion for summary judgment, and dismissing the plaintiff's claims with prejudice. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Mary Josie King¹ and Luther King were married on September 13, 1991. On April 19, 2000, Ms. King initiated divorce proceedings, but the petition was apparently withdrawn in 2005. On March 15, 2005, Mr. King executed a general power of attorney appointing Wanda Genola to act on his behalf, including making "health care decisions, such as surgery, medical expenses, nursing home residency and medication." On March 16, 2005, Mr. King was admitted to Harvest Manor Nursing Home. The Admission Record showed that his "Next of Kin or Legal Representative" was Ms. Genola. Ms. Genola was also listed as a person to contact in case of emergency. Additionally, in the Admission Agreement, signed by Ms. Genola, she was identified as the "Responsible Party" with her relationship being "friend POA." Mr. King also signed a Resident Trust Fund Withdrawal Release, giving his consent to Ms. Genola to withdraw any monies from his Resident Trust Fund Account. Mr. King died at Harvest Manor on December 26, 2007.

On February 12, 2008, Sharlyne R. Reno, on behalf of Mrs. King, filed suit number 118,857 in the 21st Judicial District Court for the Parish of Livingston.² Ms. Reno filed her "Petition for a Temporary Restraining Order and Verification of Irreparable Injury, Loss or Damage," against several parties, including Ms. Genola, Plantation Management Company, L.L.C., d/b/a Harvest Manor Nursing Home (Harvest Manor), and Wanda Crawford, asserting that, upon Mr. King's death, Ms. Genola, without authority, had Mr. King's body cremated and notified Mrs. King of his death only

¹ In the record, Mrs. King is referred to as "Mary Joseph King" and "Mary Reno King" as well as "Mary Josie King."

² On September 21, 2001, Mrs. King executed a power of attorney in favor of her brother, Anthony Reno, and sister-in-law, Sharlyne Reno, giving them the authority, without exception or reservation, to act on her behalf. On August 18, 2005, Mrs. King was placed under a limited interdiction, as she was unable to administer her estate or her finances. Mr. Reno was appointed curator of the estate and finances of Mrs. King, and Ms. Reno was appointed the undercuratrix of Mrs. King.

after the cremation had taken place. Ms. Reno also alleged that Ms. Crawford, a social worker at Harvest Manor, released Mr. King's body to Ms. Genola without the authority to do so. She maintained that Ms. Genola was attempting to collect Mr. King's insurance proceeds and other benefits, causing Mrs. King to live in poverty. Accordingly, Ms. Reno sought a restraining order to restrain, enjoin, and prohibit the defendants from alienating any property belonging to Mr. King's estate.

Thereafter, on December 23, 2008, Ms. Reno, on behalf of Mrs. King, filed suit number 122,399 in the 21st Judicial District Court for the Parish of Livingston. In her "Petition for Damages" against Harvest Manor, Ms. Crawford, Ms. Genola, and Harvest Manor's liability insurer, Ms. Reno asserted that she was Mrs. King's mandatary, that Mrs. King was married to Mr. King at the time of his death, and that when Mr. King was admitted to Harvest Manor in 2005, Harvest Manor and Ms. Crawford refused to accept that Mrs. King and Mr. King were married. Ms. Reno further alleged that Ms. Crawford informed her that Ms. Genola provided to Ms. Crawford a power of attorney signed by Mr. King, as well as a copy of the petition for divorce filed in 2000 signed by Mrs. King. Ms. Reno contended that shortly after the power of attorney was signed, Ms. Genola removed Mrs. King as Mr. King's beneficiary on his retirement account and insurance policies, making Ms. Genola the new beneficiary. Ms. Reno further alleged that after Mr. King died on December 26, 2007, Ms. Genola had Mr. King cremated without Mrs. King's knowledge. Ms. Reno also claimed that Ms. Genola began receiving checks from Harvest Manor in January 2008, drawn on Mr. King's estate account depriving Mrs. King of her rightful ownership to the benefits. On July 1, 2009, Ms. Reno filed an Amended and/or Supplemental Petition for Damages, adding the claim that Harvest Manor improperly released Mr. King's body to the funeral home on December 26, 2007.

On October 22, 2010, Ms. Reno filed a Motion to Consolidate the two lawsuits. That motion was signed on November 3, 2010. There was no certificate of service on the motion to consolidate, and on November 9, 2010, Harvest Manor and Ms. Crawford filed an Objection to Consolidation of Lawsuits. In their objection, Harvest Manor and Ms. Crawford asserted that the claims in the two suits were not the same. Specifically, they maintained that the first suit sought only injunctive relief and that damages were

not sought until the second suit was filed. On January 18, 2011, Harvest Manor and Ms. Crawford filed a motion to set the objection for hearing. The minute entry for the hearing date of May 31, 2011, indicates that counsel for Ms. Reno “withdrew the Motion to Consolidate.”³ The minute entry also reflects that a judgment was to be submitted. However, the record does not indicate that a judgment was ever submitted to or signed by the trial court.

Subsequently, on February 22, 2017, Harvest Manor and Ms. Crawford filed a Motion to Dismiss on Grounds of Abandonment in the first suit, number 118,857, asserting that no step had been taken in the prosecution or defense of the action for a period of more than three years. The trial court dismissed suit number 118,857 based on abandonment on March 8, 2017.⁴

Harvest Manor and Ms. Crawford then filed a Peremptory Exception of Prescription and Motion for Summary Judgment in the second suit, number 122,399, on May 4, 2017. In their exception, Harvest Manor and Ms. Crawford objected to the petition, as amended, contending that it was filed more than one year after the events alleged therein occurred.⁵ Additionally, in their motion for summary judgment, Harvest Manor and Ms. Crawford argued that Ms. Reno presented no evidence that Harvest Manor ever applied for or received any benefits owed to Mr. King or his estate. They also asserted that Harvest Manor had Mr. King’s body delivered to Renaissance Funeral Home, as required by law, but gave no instructions on the disposition of the remains.

Following a hearing on October 23, 2017, the trial court took the matter under advisement, and on October 24, 2017, issued reasons for judgment granting the

³ Ms. Reno contends that the minute entry erroneously states that her counsel withdrew his motion to consolidate.

⁴ Ms. Reno asserts that suit number 118,857 could not have been dismissed as abandoned, because it is consolidated with suit number 122,399.

⁵ Specifically, Harvest Manor and Ms. Crawford argued that since suit number 122,399 was filed on December 23, 2008, any claims arising from any action, error, omission, or neglect by the staff at Harvest Manor occurring prior to December 23, 2007, were prescribed. Furthermore, because Mr. King died on December 26, 2007, at which time his remains were transferred to the funeral home, Harvest Manor and Ms. Crawford asserted that any claims against them are limited to the dates between December 23, 2007, and December 26, 2007. Harvest Manor and Ms. Crawford also urged that any claims in the amended petition filed on July 1, 2009, were prescribed as well, as those claims were made more than one year after the death of Mr. King on December 26, 2007.

peremptory exception of prescription and the motion for summary judgment.⁶ On December 4, 2017, the trial court signed a judgment in conformity with its written reasons and dismissed all claims asserted in the petition for damages, as amended, with prejudice. Ms. Reno has appealed.

DISCUSSION

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show no genuine issue as to material fact and mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966A(3). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria governing the trial court's determination of whether summary judgment is appropriate. **In re Succession of Beard**, 13-1717 (La.App. 1 Cir. 6/6/14), 147 So.3d 753, 759-60.

The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue before the court on the motion for summary judgment, the mover's burden does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point to the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. LSA-C.C.P. art. 966D(1). When a motion for summary judgment is made and supported as provided in LSA-C.C.P. art. 967, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in LSA-C.C.P. art. 967, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him. LSA-C.C.P. art. 967B.

⁶ The trial court signed an earlier judgment on July 10, 2017, granting the peremptory exception of prescription. Ms. Reno filed a motion for new trial, asserting that the notice of the hearing was not timely and further asserting that her counsel believed the hearing had been continued. The matter was set for October 23, 2017, at which time the trial court granted the motion for new trial and heard argument on the exception of prescription and motion for summary judgment.

In this appeal, Ms. Reno has narrowed her arguments to two. First, Ms. Reno contends that upon Mr. King's death, Mrs. King was denied the right to bury her husband because Harvest Manor improperly relied on an expired power of attorney by Ms. Genola to transfer Mr. King's body to Renaissance Funeral Home, rather than trying to contact Mrs. King's representative. Ms. Reno asserts that, as a result of Harvest Manor's negligence, Mr. King's remains were cremated contrary to Mr. and Mrs. King's wishes. Ms. Reno's second argument is one of unjust enrichment. She alleges that because of Harvest Manor's incorrect reporting of Luther King's marital status to governmental agencies, Mrs. King was deprived of Mr. King's Medicaid and the Social Security benefits that had been paid to Harvest Manor directly, resulting in her impoverishment.

In support of their motion for summary judgment, Harvest Manor and Ms. Crawford submitted the affidavit of Wade Welborn, the licensed nursing home administrator of Harvest Manor. Mr. Welborn attested to the documents attached to the affidavit maintained at Harvest Manor related to Mr. King, including certified copies of the Admission Record, Resident Fund Authorization, and Admission Agreement. Also included in the documents was a Medicaid Worksheet, showing that Mr. King's sources of income were Social Security benefits in the amount of \$961.00 per month and his City of Baton Rouge-Parish of East Baton Rouge retirement benefits in the amount of \$208.00 per month, resulting in a total monthly income of \$1,169.00. The worksheet also showed a deduction of \$38.00 per month for personal care, leaving a balance of \$1,131.00 per month in patient liability for Mr. King's care.⁷ Additionally, Harvest Manor included copies of Mr. King's power of attorney to Ms. Genola and Mr. King's authorizations that directed payment of his social security benefits and retirement benefits to Harvest Manor. Further, a copy of the Resident Fund Statement showed all amounts received and deposited into and disbursed from the resident trust fund maintained for Mr. King at Harvest Manor. Mr. Welborn attested that the funds in the

⁷ Harvest Manor also provided a copy of its decision, effective January 1, 2007, to change Mr. King's nursing home payment to \$1,188.37, based on the increase in his social security benefits to \$1,167.60 per month.

Trust Fund Account were accounted for and appropriately disbursed.⁸ He also attested that after Mr. King's death, Harvest Manor delivered the body of Mr. King to Renaissance Funeral Home and attached a copy of the Disposition of Body form.⁹

In opposition to the motion for summary judgment, Ms. Reno submitted copies of the Admission Record, Admission Agreement, Medicaid Worksheet, and Mr. King's authorizations for payment of his social security and retirement benefits to Harvest Manor. She also offered copies of the petitions in the two lawsuits, the motion and order to consolidate, the deposition of Ms. Crawford, the petition for divorce filed by Mrs. King, the withdrawal of the divorce petition, and the affidavit of Ms. Reno. In Ms. Reno's affidavit, she stated that she attempted to obtain impoverished spouse benefits for Mrs. King but was unable to do so and that during the time Mr. King was at Harvest Manor, Mrs. King did not have sufficient income to support herself.

The trial court found that Ms. Reno failed to prove that Mrs. King was deprived of any impoverished spouse benefits due to the actions of Harvest Manor or Ms. Crawford or that Harvest Manor or Ms. Crawford gained an advantage. Specifically, the trial court determined that there was no contention or pleading that Harvest Manor was unjustly enriched at Mrs. King's expense by any actions of Harvest Manor and that Ms. Reno failed to show that she applied for or was denied any benefits based on any actions of Harvest Manor or Ms. Crawford. Therefore, it granted the motion for summary judgment.¹⁰

On our *de novo* review of the record, we agree with the trial court that Ms. Reno failed to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. Ms. Reno produced no evidence showing that Mrs. King applied for any federal benefits or that Harvest Manor received any benefits belonging to Mr. King or his estate. Moreover, the Resident Trust Fund Statement showed no payments to Ms. Genola after

⁸ We note that the Resident Fund Statement shows that the only check disbursed by Harvest Manor in 2008 relating to Mr. King was on January 24, 2008, to Renaissance Funeral Home in the amount of \$84.96, which zeroed out the funds in the account.

⁹ Harvest Manor also filed a reply memorandum with exhibits to the opposition filed by Ms. Reno.

¹⁰ The trial court also found that Ms. Reno's claim that Harvest Manor improperly released Mr. King's body was prescribed and sustained the exception raising the objection of prescription.

the death of Mr. King as alleged by Ms. Reno. Additionally, although Mr. King resided at Harvest Manor for more than two years, Ms. Reno presented no evidence that Mrs. King provided any instructions to Harvest Manor as to how she wished his body should be handled upon his death.¹¹ Nor did she offer any evidence that Harvest Manor requested that Mr. King's body be cremated or gave any direction as to the disposition of his remains. Harvest Manor took no action other than having Mr. King's body delivered to the funeral home. Accordingly, we find no error by the trial court in granting the motion for summary judgment. Furthermore, because we find that summary judgment in favor of Harvest Manor and Ms. Crawford dismissing Ms. Reno's claims is proper, we need not address the exception raising the objection of prescription and preterm discussion of same.

CONCLUSION

For the foregoing reasons, we affirm the December 4, 2017 judgment of the trial court. Costs of this appeal are assessed to the plaintiff, Sharlyne R. Reno, on behalf of Mary Josie King.

AFFIRMED.

¹¹ We also note LSA-R.S. 8:655A, which, at the time of Mr. King's death, provided:

A. The right to control interment, as defined in R.S. 8:1(26), of the remains of a deceased person, unless other specific directions have been given by the decedent in the form of a written and notarized declaration, vests in and devolves upon the following in the order named:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) A majority of the surviving adult brothers and sisters of the decedent.
- (5) A majority of the adult persons respectively in the next degrees of kindred as established in Civil Code Article 880 et seq.