

**CINDY R. DORSEY** \* **NO. 2000-CA-0097**  
**VERSUS** \* **COURT OF APPEAL**  
**XYZ INSURANCE COMPANY,** \* **FOURTH CIRCUIT**  
**LOUIS MADERE', JR. ESQ.** \*  
**AND TOMMIE LOCKHART, II** \* **STATE OF LOUISIANA**  
**ESQ.**

\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 98-7025, DIVISION "I-7"  
Honorable Terri F. Love, Judge

\* \* \* \* \*

**JOAN BERNARD ARMSTRONG**  
**JUDGE**

\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin  
and Judge Patricia Rivet Murray)

**DALE EDWARD WILLIAMS**  
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**-AND-**

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COUNSEL FOR DEFENDANT/APPELLEE

**AFFIRMED.**

This is a legal malpractice action. The trial court granted summary judgment for the defendants and dismissed the case. The plaintiff appeals. We believe it is clear that there was no breach of contract and that the alleged malpractice was not the cause of any damages the plaintiff may have suffered. Accordingly, we will affirm the judgment of the trial court.

Plaintiff-appellant, Cindy R. Dorsey, filed in federal court, pro se, an employment discrimination suit against her former employer, Whitney National Bank, and several of the bank's employees. She also filed, pro se, an identical suit in state court which was removed to federal court and consolidated with her action originally filed in federal court.

On February 12, 1997, attorney defendant-appellee Tommy Lockhart, II, enrolled as counsel of record for the plaintiff in federal court. On February 22, 1997, the plaintiff and attorney defendant-appellee Louis Madere entered into a written contract for Mr. Madere to represent the

plaintiff in the federal employment discrimination action. On February 27, 1997, Mr. Lockhart and Mr. Madere filed in federal court a motion to substitute counsel by which Mr. Lockhart withdrew as counsel of record and Mr. Madere enrolled as counsel for the plaintiff. The federal court judge granted that motion.

On May 22, 1997, a preliminary conference was held in the federal court action and a date of January 13, 1998 was selected for the pretrial conference and a trial date of February 9, 1998 was selected.

Sometime in early November 1997, Mr. Madere contacted the plaintiff and told her that he was going to withdraw from representing her in the federal action. On November 10, 1997, the plaintiff picked up her file from Mr. Madere. A few days later, her file was delivered by her or on her behalf by a relative to attorney (non-party) Keith Ward. Mr. Madere sent some additional documents to Mr. Ward under cover of a letter of November 17, 1997. Mr. Madere sent to the plaintiff some of her handwritten notes under cover of a letter of November 17, 1997. On November 17, 1997, Mr. Madere filed in the federal action a motion to withdraw as counsel of record. That motion was granted.

Mr. Ward, after reviewing the plaintiff's file, was willing to take the case but required a \$5,000 retainer. The plaintiff did not furnish the retainer and Mr. Ward did not take the case. The plaintiff then contracted another attorney, Ronald Wilson (a non-party), who reviewed her file but declined to take the case.

On November 24, 1997, about a week after Mr. Madere withdrew as counsel, the defendants in the federal action filed a motion for summary judgment. That motion was set for hearing on December 17, 1997. Mr. Madere heard of that motion for summary judgment and, on December 6, 1997, wrote a letter to the federal court judge explaining the situation and expressing the view that the plaintiff would be disadvantaged if she did not have time to retain counsel or file an opposition. The federal court judge, on December 12, 1997, signed the following order:

The Court has received the attached letters concerning whether the plaintiff, who is proceeding pro se, has received notice in accordance with Local Rules and the Federal Rules of Civil Procedure of the motion of Whitney Bank for summary judgment, which is presently set for hearing on December 17, 1997. Premitting the question whether in fact she did receive notice, the Court finds it serves the interests of justice to afford the pro se plaintiff additional opportunity to respond to the motion. Accordingly,

IT IS ORDERED that the motion of Whitney National Bank for summary judgment be CONTINUED to January 13, 1998 at 9:30 a.m. to be heard at the pre-trial conference. Plaintiff's response must be filed with the Court and received by defense counsel not later than **January 5, 1998**.

Further, the Court has been advised by plaintiff's former counsel that her current address is Cindy R. Dorsey, 6937 Virgilian St., New Orleans, LA 70126, and her phone number is (504) 242-7144. The Clerk is directed to note that as her most current address and phone number. Plaintiff is instructed that she must provide written notice to the Court immediately of any change of address or telephone number. Failure to do so may result in dismissal of her action.

The plaintiff did not file any opposition to the motion for summary judgment. Nor did she appear for the motion hearing and pretrial conference of January 13, 1998. She did not contact the federal court to request additional time to obtain counsel or to offer any explanation for not appearing on January 13, 1998.

In the plaintiff's deposition, when she was asked about whether she had seen the federal court's December 12, 1997 order, she answered: "I can't say if I did or didn't offhand." In her original brief, the plaintiff appears to acknowledge receiving that order. The clerk of court of the federal court would have mailed the order to the plaintiff in accordance with the federal court's order to the address listed in that order. There is nothing in the

record to cast reasonable doubt that the plaintiff received the order.

After the plaintiff did not appear in federal court on January 13, 1998, the federal court judge signed an order on January 15, 1998 in which he found that the plaintiff “has effectively failed to prosecute her action and it is subject to dismissal in accordance with Federal Rule of Civil Procedure 41 (b)” and ordered the case dismissed for failure to prosecute. The federal court judge did not rule upon the defendant’s motion for summary judgment. The plaintiff’s federal action was dismissed solely upon the ground of failure to prosecute.

In April 1998, the plaintiff sued Mr. Madere, his liability insurer, Conregis Insurance company, and Mr. Lockhart. The gist of her action is that, through the alleged fault of Mr. Madere and Mr. Lockhart, her federal employment discrimination suit was lost.

The plaintiff’s first theory is that Mr. Madere breached his written contract with her because, she alleges, the contract did not permit him to withdraw from representing her without her permission. In support of this argument, she relies upon the following language of the contract between her and Mr. Madere:

I further agree and understand that neither I nor my attorney may settle, compromise, dispose of, or in any way discontinue my said **claim and/or lawsuit** without the consent of the other.

(emphasis added). The quoted language of the contract is clear and unambiguous. It addresses “discontinuing” (or settling, compromising or disposing of) the plaintiff’s claims against the defendants in the federal action. It does not address Mr. Madere “discontinuing” his representation of the plaintiff. Therefore, Mr. Madere’s withdrawal was not a breach of the written contract.

Next, the plaintiff argues that Mr. Madere and Mr. Lockhart neglected their federal case by failing to properly gather evidence in support of her claims and she asserts that Mr. Lockhart lost a tape recording that she gave him which was evidence in support of their federal claims. However, these points were not material to the summary judgment below because the federal defendants’ motion for summary judgment was never heard and the plaintiff’s federal claims were never tried or otherwise considered on the merits. Instead, the plaintiff’s federal claims were dismissed solely for failure to prosecute because she did not appear in federal court on January 13, 1998.

A point that the plaintiff does not specifically argue, but which we note, is that, when Mr. Madere told her in early November 1997 that he was dropping her case, the trial date was only about three months away and the pretrial conference was about two and one-half months away. When

terminating a representation, an attorney is required to take steps to the extent reasonably practicable to protect a client's interest, such as allowing time for the employment of other counsel. Louisiana Rules of Professional Conduct, Rule 1.16. It appears that the plaintiff did have time to employ other counsel, as she did consult with two attorneys, when each reviewed the case for her, and there is no reason that she could not have consulted with other attorneys. (The federal court magistrate sent her a list of six attorneys to contact, but she contacted none of them).

More directly pertinent, the actual cause of the dismissal of the plaintiff's federal case was that she did not appear in federal court on January 13, 1998 as she was ordered to do, and that she did not contact the federal court to seek additional time or to explain her situation. The fact that the plaintiff did not appear in federal court as ordered and the fact that she did not contact the federal court in response to the order of the federal court judge cannot be attributed to Mr. Madere or Mr. Lockhart. Attorneys Mr. Ward and Mr. Wilson, who are not parties to this case and who appear to be expert and objective, each testified by deposition, and without contradiction, that a party in the position of the plaintiff would most likely have been given an extension of time by the federal court to retain counsel and that that was particularly so with regard to the particular federal judge to whom her case



had been assigned. Also, we note that it appears that there had been no prior continuance in the federal action. However, they also testified that she would have needed to ask for the extension. We shall never know with certainty if they are correct, because the plaintiff never contacted the federal court and did not appear in federal court as ordered. However, the plaintiff did not rebut their testimony or otherwise show how the dismissal of her federal action was caused by Mr. Madere or Mr. Lockhart or by anything other than her own lack of response to the federal court's order. Under these circumstances, it cannot be said that the timing of Mr. Madere's withdrawal, or anything else done or not done by Mr. Madere or Mr. Lockhart, can be said to have caused the dismissal of the plaintiff's federal action.

For the foregoing reasons, the judgment of the trial court is affirmed.

**AFFIRMED.**