

NOT DESIGNATED FOR PUBLICATION

PERRY MCAULEY * **NO. 2004-CA-0202**
VERSUS * **COURT OF APPEAL**
NATIONAL AUTOMOTIVE * **FOURTH CIRCUIT**
INSURANCE COMPANY, *
LUCAS W. WILKES AND * **STATE OF LOUISIANA**
MILDRED WILKES *
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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 92-615, DIVISION "C"
Honorable Wayne Cresap, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Charles R. Jones, Judge James F. McKay, III and
Judge Dennis R. Bagneris, Sr.)

J. Richard Kanuch
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REVERSED AND REMANDED

This is an appeal from the trial court's granting of a peremptory exception of prescription. For the reasons assigned, we reverse and remand.

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

On February 17, 2000, plaintiff/appellant, Perry McAuley ("McAuley"), was involved in an automobile accident with defendant/appellee, Lucas Wilkes ("Wilkes"). On February 16, 2001, McAuley filed a petition for damages against Wilkes, National Automotive Insurance Co. ("National"), the insurer of the Wilkes vehicle, and Mildred Wilkes, the owner of the vehicle. McAuley alleged that he was traveling in a northerly direction on Jacob Drive in Chalmette, Louisiana, when the Wilkes vehicle, traveling in a southerly direction, hit him head-on.

The defendants filed an answer and third party demand, naming Tony Moley and Moley Enterprises (collectively referred to as "Moley") as third party defendants. The third party demand alleged that Moley was the owner of a dumpster that was illegally placed partially on the roadway, thereby blocking the normal lane of travel. Wilkes further alleged that the dumpster was a contributing factor in the accident between himself and McAuley.

On May 4, 2001, McAuley filed a supplemental and amending petition, naming Moley as a defendant. The amended petition alleged that the dumpster, which Moley owned and placed at a new construction site on

Jacob Drive, obstructed the flow of traffic and contributed to the accident. It is further alleged that Wilkes hit the dumpster before colliding with McAuley. The amended petition specifically asserts joint and solidary liability between Moley and the defendants named in the original petition.

Moley filed a peremptory exception of prescription, alleging that the McAuley's action against Moley was barred by one-year liberative prescription. A hearing on the exception was held October 24, 2003, at which time the trial court sustained the exception of prescription, dismissing Moley from the action with prejudice. McAuley filed this devolutive appeal.

DISCUSSION

McAuley asserts that the trial court erred in maintaining the exception of prescription, relying on La. C.C. art. 2324(C). The article provides: "Interruption of prescription against one joint tortfeasor is effective against all joint tortfeasors." In further support of his position, McAuley cites Doyle v. Mitsubishi Motor Sales of America, 99-0459 (La. App. 1 Cir. 3/31/00), 764 So. 2d 1041. In Doyle, the driver and parents of a passenger killed in a two-car accident brought a timely filed negligence action against the vehicle's manufacturer and the other driver. The plaintiffs amended their petition to name the Louisiana Department of Transportation and Development (DOTD) as a defendant, alleging joint liability on the part of

the DOTD for placing signs on the roadway that obstructed the driver's view. The appellate court held that the action against one tortfeasor interrupted prescription against all joint tortfeasors, namely, the DOTD.

Delictual actions are subject to a liberative prescriptive period of one year, which commences to run from the date the injury is sustained. La. C.C. art. 3492. The delictual action against Moley was not filed during the one-year prescriptive period, although suit was timely filed against Wilkes and National. Under La. C.C. art. 3462, prescription is interrupted by the commencement of suit against the obligor in a Court of competent jurisdiction and venue. Further, the interruption of prescription by suit against one solidary obligor is effective as to all solidary obligors. La. C.C. arts. 1799 and 3503. The same principle is applicable to joint tortfeasors. La. C.C. art. 2324(C). Renfroe v. State ex rel. Department of Transportation and Development, 01-1646 (La. 2/26/02), 809 So. 2d 947.

Our review of the facts in the present case reveals that McAuley timely filed the original petition for damages against Wilkes and National. Further, the supplemental and amended petition named Moley as a defendant and specifically alleged joint liability among the defendants. The original and amending petitions involve the same accident, and both assert the defendants are at fault in causing that accident. After a thorough review of

the record, we conclude that the trial court erred in not finding that prescription was interrupted pursuant to C.C. art. 2324(C).

STANDARD OF REVIEW:

The standard of review of appellate Courts in reviewing a question of law is simply whether the Court's interpretative decision is legally correct. Glass v. Alton Ochsner Medical Foundation, 02-0412 (La. App. 4 Cir. 11/06/02), 832 So. 2d 403. Furthermore, if the decision of the District Court is based on an erroneous application of law rather than on a valid exercise of discretion, the decision is not entitled to deference by the reviewing Court. Kem Search, Inc. v. Sheffield, 434 So.2d 1067, 1071-1072 (La.1983).

CONCLUSION:

For the foregoing reasons, we find the trial court erred in granting the exception of prescription. Accordingly, the judgment is reversed and remanded to the trial court for further proceedings.

REVERSED AND REMANDED

