

**SHERRY CARTHANE**

\*

**NO. 2004-CA-0424**

**VERSUS**

\*

**COURT OF APPEAL**

**HAILEY, MCNAMARA, HALL,  
LARMANN & PAPALE, L.L.P.,  
LAURENCE E. LARMANN,  
KEVIN O. LARMANN,  
DARREN A. PATIN, ROBERT  
ANGELLE, ARTHUR J.  
BREWSTER AND DOES 1-5**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*

\*

\*\*\*\*\*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2003-14419, DIVISION "G-11"  
HONORABLE ROBIN M. GIARRUSSO, JUDGE

\*\*\*\*\*

**JAMES F. MCKAY III  
JUDGE**

\*\*\*\*\*

(Court composed of Judge Charles R. Jones, Judge James F. McKay III,  
Judge Roland L. Belsome)

ROBERT B. EVANS, III  
KATHLEEN C. GASPARIAN  
WILLIAM B. GORDON III  
BURGOS & EVANS, L.L.C.  
New Orleans, Louisiana 70119-6135  
Attorneys for Plaintiff/Appellant

MICHAEL G. GAFFNEY  
New Orleans, Louisiana 70130  
Attorney for Defendant/Appellee, Robert Angelle

WILLIAM E. WRIGHT, JR.  
MARK G. TAUZIER

DEUTSCH, KERRIGAN & STILES, L.L.P.

New Orleans, Louisiana 70130-3672

Attorneys for Defendants/Appellees, Hailey, McNamara, Hall,  
Larman & Papale, L.L.P., Laurence E. Larmann, Kevin O. Larmann,  
and Darren A. Patin

## **AFFIRMED**

The plaintiff, Sherry Carthane, appeals from the trial court's maintaining of the defendants', Hailey, McNamara, Hall, Larmann & Papale, L.L.P.'s, Kevin Larmann's, Laurence Larmann's, and Darren Patin's (Hailey McNamara's), exceptions of no cause of action. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On or about March 20, 2001, Sherry Carthane was injured when she slipped and fell outside of the Saenger Theater. Ms. Carthane later brought a lawsuit against the Saenger. Hailey McNamara represented the Saenger in this Lawsuit.

Through the discovery process, Hailey McNamara obtained medical information relating to Ms. Carthane. Ms. Carthane contends that Hailey McNamara disclosed her confidential medical information to others, including Robert Angelle and Arthur Brewster. Ms. Carthane further contends that Mr. Angelle evicted her business practice and Mr. Brewster used the information in an unsuccessful attempt to impeach her expert

testimony at a trial in Lafayette.

Ms. Carthane filed suit against Hailey McNamara, Robert Angelle and Arthur Brewster, alleging that they unreasonably and seriously interfered with her zone of privacy, without her consent and without any authority, by intruding upon her seclusion and by revealing her private facts. Mr. Angelle, Mr. Brewster, and Hailey McNamara filed exceptions of no cause of action and exceptions of prescription. The trial court maintained the exceptions of no cause of action filed by Mr. Angelle, Mr. Brewster and Hailey McNamara as well as the exception of prescription filed by Mr. Angelle and Mr. Brewster. Ms. Carthane now appeals the trial court's judgment only as to the finding of no cause of action against Hailey McNamara.

## **DISCUSSION**

The issue before this Court is whether the trial court erred in maintaining Hailey McNamara's exception of no cause of action.

The purpose of an exception of no cause of action is to test the legal sufficiency of the plaintiff's petition by determining whether the law affords a remedy on the facts pleaded. While well-pleaded facts are accepted as

true, the court will not consider conclusions of fact. MD Care, Inc. v. Angelo, 95-2361 (La.App. 4 Cir. 3/20/96), 672 So.2d 969. In evaluating an exception of no cause of action, a court must only look as far as the face of the well-pleaded complaint. No evidence may be introduced to support or controvert the exception. Reis v. Fenasci & Smith, 93-1785 (La.App. 4 Cir. 4/14/94), 635 So.2d 1319.

In the instant case, Ms. Carthane's petition alleges that Hailey McNamara was "made privy to Carthane's medical information, including her ongoing ailments and corresponding medications. Said medical information reveal[ed] that Carthane suffered a partial disability as a result of the Saenger incident, and that she was prescribed various prescription medications as treatment for her various injuries." The petition goes on to state that upon learning of Carthane's medical condition, and in pursuing zealous representation of the Saenger, Hailey McNamara disclosed this information to Mr. Angelle and Mr. Brewster.

An attorney's duty is to zealously represent his client. Cooper v. Olinde, 565 So.2d 978, 988 (La.App. 1 Cir. 1990). An attorney does not owe a legal duty to his client's adversary when acting in his client's behalf.

Mauberret-Lavie v. Lavie, 03-0099 (La.App. 4 Cir. 6/11/03), 850 So.2d 1, 4.

The intent of this rule is not to reduce an attorney's responsibility for his or her work, but rather to prevent a chilling effect on the adversarial practice of law and to prevent a division of loyalty owed to a client. Penalber v. Blount, 550 So.2d 577 (La. 1989). It is also well settled that absent privity of contract, an attorney is not liable to third parties unless he exceeds the limits of his agency. An attorney may be answerable to a non-client for malpractice where the offended party is able to establish fraud or collusion, or other intentionally tortious conduct. Crockett v. Crockett, 612 So.2d 89 (La. 1993).

In the instant case, there is no privity of contract between Ms. Carthane and Hailey McNamara, nor is there any indication that Hailey McNamara exceeded the limits of its agency or was guilty of fraud, collusion or any other intentionally tortious conduct. Furthermore, the filing of a personal injury claim destroys or takes away statutory health care provider – patient privilege. Hortman v. Louisiana Steel Works, 96-1433 (La.App. 1 Cir. 6/20/97), 696 So.2d 625. Accordingly, we find no error in the trial court's maintaining of Hailey McNamara's exception of no cause of action.

**DECREE**

For the foregoing reasons, we affirm the judgment of the trial court.

**AFFIRMED**