

JESSIE B. SANDERS

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NO. 2005-CA-0413

VERSUS

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COURT OF APPEAL

**VERNA R. GUESNON,
MARVIN E. ROBINSON, JR.,
METRO LEGAL CENTER,
L.L.C. AND C. ARNOLD LAIN**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-19295, DIVISION "N-8"
HONORABLE ETHEL SIMMS JULIEN, JUDGE

**JAMES F. MCKAY III
JUDGE**

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,
Judge Michael E. Kirby)

GEORGE R. BLUE, JR.
GEORGE R. BLUE, JR., L.L.C.
New Orleans, Louisiana
Counsel for Plaintiff/Appellant

MARVIN E. ROBINSON, JR.
VERNA R. GUESNON
METRO LEGAL CENTER, L.L.C.
New Orleans, Louisiana
Counsel for Defendant/Appellees

AFFIRMED

The plaintiff, Jessie Sanders, appeals the trial court's dismissal of her action for negligence and legal malpractice against the defendants, Verna R. Guesnon, Marvin E. Robinson, Jr., and Metro Legal Center, L.L.C. We affirm.

FACTS AND PROCEDURAL HISTORY

Jessie Sanders had amassed some \$67,000.00 in credit card debt and on October 22, 1999, she sought out the services of the Metro Legal Center to handle her bankruptcy. Although Ms. Sanders had hoped to save her home, her attorney, Verna Guesnon, determined that based on the plaintiff's income a Chapter 13 plan would not be viable, so a Chapter 7 bankruptcy plan was filed. Ms. Sanders had hoped to have her sons purchase her home out of bankruptcy but they were unable to come up with the necessary funds. The home ended up being sold to Celina Carter for \$67,000.00 on May 31, 2000.

In the meanwhile, Ms Sanders fired Metro Legal Center from the case on May 10, 2000, only to rehire them on June 23, 2000. During the actual

sale of the property, Ms. Sanders was represented by C. Arnold Lain. On July 11, 2000, Metro received correspondence from the bankruptcy trustee threatening the revocation of the plaintiff's discharge in bankruptcy if the funds requested at the meeting of creditors were not paid. Ms. Sanders paid the amount due the trustee and she received her discharge from the bankruptcy on July 25, 2000. At this point, Metro's representation of Ms. Sanders ceased.

Ms. Sanders had hoped to repurchase the home from her sister but her sister was unwilling to sell the property back to her. Metro, in fact, attempted to set up an act of sale for the property, but that sale never took place.

On December 13, 2003, Ms. Sanders filed suit against Metro, Verna Guesnon, and Marvin Robinson, Jr. alleging that the defendants committed acts of negligence and legal malpractice which caused her to suffer significant financial loss, emotional distress and loss of enjoyment of life. On October 26, 2004, the matter proceeded to trial. On December 6, 2004, the trial court dismissed the plaintiff's case. It is from this judgment that the plaintiff now appeals.

DISCUSSION

On appeal, the plaintiff raises the following assignments of error: 1) the trial court committed manifest error in failing to accept the uncontroverted testimony of plaintiff's expert as true; 2) the trial court committed manifest error in finding that the defendants had not committed legal malpractice; 3) the trial court committed manifest error in finding that the defendants had not committed fraud; 4) the trial court committed manifest error in not awarding damages to appellant; and 5) the trial court committed manifest error in its findings of fact in its reasons for judgment.

The well established standard of appellate review dictates that this Court not overturn a judgment of a lower court absent an error of law or finding of fact that is manifestly erroneous or clearly wrong. Rosell v. ESCO, 549 So.2d 840 (La. 1989); Stobart v. State through Department of Transportation and Development, 617 So.2d 880 (La. 1993). The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong but whether the factfinder's conclusion was a reasonable one. Arceneaux v. Dominique, 356 So.2d 1330 (La. 1978).

In regards to expert testimony, trial judges have the discretion to

exclude relevant evidence if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading or by considerations of undue delay, or waste of time. La. Code of Evidence Art. 403. The trial court’s function is to determine that all expert testimony which is admitted into evidence is both reliable and relevant. Furthermore, the refusal of the trial court to receive such evidence will rarely, if ever, provide grounds for reversal. Sunset Ins. Co. v. Gomilla, 02-633 (La.App. 5 Cir. 12/30/02), 834 So.2d 654. In the instant case, the trial court found that because of the expert’s “intimate involvement with the facts surrounding the case, his solicitation of the supposedly erroneous homestead exemption waiver, and his financial gain resulting from thwarting defendant’s efforts to convert to Chapter 13 to save the house, his interest is too great for the Court to rely on his testimony.” We find no error in this conclusion.

In a legal malpractice case, the plaintiff must prove: (1) there was an attorney-client relationship; (2) the attorney was negligent; and that (3) that negligence caused plaintiff some loss.” The plaintiff must also show that the attorney failed to exercise the degree of care, skill and diligence which is exercised by prudent practicing attorneys in the locality where the attorney

practices law. The attorney is not, however, required to exercise perfect judgment in every situation. Spellman v. Bizal, 99-0723 (La.App. 4 Cir. 3/1/00), 755 So.2d 1013, 1017. In the instant case, there is no indication that what the defendants did was not in accordance with what any attorney in their situation would have done. Accordingly, we find no error in the trial court's finding that there was not any legal malpractice.

Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction. La. C.C. Art. 1953. In the instant case, the defendants obtained no benefits from the bankruptcy of the plaintiff. There is also no indication that they misrepresented or suppressed the truth. Therefore, we find no error in the trial court's finding of no fraud in this case.

Based on the record before this Court, we also find nothing manifestly erroneous in the trial court's reasons for judgment or in its not awarding any damages to the plaintiff.

DECREE

For the foregoing reasons, we affirm the trial court's dismissal of the

plaintiff's case.

AFFIRMED