

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1156

MALCOLM DAVIS AND DEBBIE MARIE DAVIS

VERSUS

LOUISIANA COMMUNITY & TECHNICAL COLLEGE SYSTEM

**Judgment rendered: February 11, 2011**

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Suit number 542,171

Honorable Timothy E. Kelley, Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

## **GUIDRY, J.**

In this action for wrongful termination, plaintiff, Malcom Davis,<sup>1</sup> appeals from a judgment of the trial court sustaining an exception raising the objection of prescription filed by defendant, Louisiana Community and Technical College System (LCTCS), and ordering the dismissal of Mr. Davis' claims. For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Malcom Davis was hired as a welding instructor at the Ruston campus of the Louisiana Technical College (LTC) in March 1998. In August of 1998, Mr. Davis was transferred to the industrial maintenance program, also at the Ruston campus. As of July 1, 1999, LTC was transferred to the LCTC. In August 2002, Mr. Davis was asked to transfer to the Ouachita Parish campus to reopen the machine tool technology class. Thereafter, Mr. Davis was placed on administrative leave (furlough) in June 2003 and was subsequently terminated from employment with LCTCS effective September 5, 2003.

On April 6, 2006, Mr. Davis filed an action against LCTCS for wrongful termination. LCTCS responded by filing a peremptory exception raising the objection of prescription. Following a hearing on the exception, the trial court rendered judgment sustaining the exception and dismissing Mr. Davis' claims against LCTCS with prejudice. Mr. Davis now appeals from this judgment.

### **DISCUSSION**

Ordinarily, the party pleading prescription bears the burden of proving the claim has prescribed. However, when the face of the petition reveals that the

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<sup>1</sup> According to the record, Malcom Davis and his wife, Debbie Marie Davis, filed the instant action seeking damages for loss of income, loss of retirement benefits, loss of consortium, and other monetary damages for pain and suffering, mental anguish, and loss of future employment opportunities. The judgment specifically dismisses "the claims filed by plaintiff, Malcom Davis," and orders said judgment to be a final appealable judgment under La. C.C.P. art. 1915(A) with respect to all claims Malcom Davis has against the defendant. Malcom and Debbie Davis filed a motion and order to appeal from the aforesaid judgment. Since Mrs. Davis' claim is derivative of her husband's claims, the dismissal of his claims has the legal effect of dismissing her claim also.

plaintiff's claim has prescribed, the burden shifts to the plaintiff to demonstrate prescription was interrupted or suspended. Burkart v. Williamson, 09-0294, p. 4 (La. App. 1st Cir. 11/13/09), 29 So. 3d 635, 638.

A claim for wrongful termination is a delictual action subject to a one-year prescriptive period provided for in La. C.C. art. 3492. This prescriptive period commences to run when the plaintiff has actual or constructive notice of the alleged wrongful termination. Clark v. Wilcox, 04-2254, p. 5 (La. App. 1st Cir. 12/22/05), 928 So. 2d 104, 109, writ denied, 06-0185 (La. 6/2/06), 929 So. 2d 1252.

In the instant case, Mr. Davis states in his petition for damages that he was placed on administrative leave without pay in June 2003. Several paragraphs later, Mr. Davis states that "the manner in which he was effectively terminated from his position with [LCTCS]" violated certain vested rights, entitling him to damages. Mr. Davis does not specify a particular date in his petition with regard to a termination. However, neither party disputes, as evidenced by their arguments in memoranda and at the hearing on the exception, that Mr. Davis was terminated effective September 5, 2003, and that he has not worked for LCTCS since that date.<sup>2</sup> Therefore, because Mr. Davis did not file his claim for wrongful termination until April 6, 2006, almost three years after his termination, the burden shifted to Mr. Davis to prove that prescription was interrupted or suspended.

Mr. Davis claims that prescription was suspended under the theory of *contra non valentem*, which is a jurisprudential doctrine under which prescription may be suspended in four distinct situations:

(1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action;

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<sup>2</sup> We note that the parties mention in brief several letters written by LCTCS personnel, as well as other documents, related to Mr. Davis' employment and termination. However, these documents were merely attached to memoranda in support of and in opposition to the exception raising the objection of prescription, and were not formally offered and introduced into evidence at the hearing on the exception. Accordingly, we cannot consider them on appeal. See Denoux v. Vessel Management Services, Inc., 07-2143, pp. 5-7 (La. 5/21/08), 983 So. 2d 84, 88-89.

(2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting;

(3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; and

(4) where the cause of action is not known or reasonably knowable by the plaintiff, even though this ignorance is not induced by the defendant.

Carter v. Haygood, 04-0646, pp. 11-12 (La. 1/19/05), 892 So. 2d 1261, 1268.

Mr. Davis asserts that his cause of action was not known or reasonably knowable by him, because from 2003 to 2006, he continued to negotiate with the President of LCTCS, Dr. Walter Bumphus, and the Chancellor of LCTCS, Dr. Margaret Richard-Montgomery, to be reinstated and/or employed in another position. According to Mr. Davis, it was not until negotiations ceased in 2006 that he realized he was being “permanently” terminated.

However, Mr. Davis did not present any evidence as to the duration or substance of any alleged negotiations, nor did he present any evidence to establish that the September 5, 2003 termination did not, in fact, terminate his employment with LCTCS. Accordingly, Mr. Davis failed to establish that his cause of action for wrongful termination was not known or reasonably knowable in September 2003. Therefore, we find no error in the trial court’s determination that *contra non valentem* does not apply to suspend the running of prescription in this case, and that accordingly, Mr. Davis’ claim is prescribed.

### **CONCLUSION**

For the foregoing reasons, we affirm the judgment of the trial court, sustaining LCTCS’s peremptory exception raising the objection of prescription and dismissing Mr. Davis’ claims against it with prejudice. All costs of this appeal are assessed against appellant, Malcom Davis.

**AFFIRMED.**