NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 1810

LINDA EILEEN ERVING WIMBERLY

VERSUS

PHILLIP A. WITTMANN, STONE, PIGMAN, WALTHER, WITTMANN & HUTCHINSON, L.L.P., AND ABC INSURANCE COMPANY

Judgment Rendered: SEP 15 2006

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2000-15665

Honorable Donald M. Fendlason, Judge

* * * * * * *

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* * * * * *

BEFORE: WHIPPLE, GAIDRY, AND WELCH, JJ.

Whipple, J. concurs. The judgment at issue on appeal is, at best, legally correct.

WELCH, J.

The plaintiff, Linda Eileen Erving Wimberly (Ms. Wimberly), appeals a judgment in favor of the defendants, Philip A. Wittmann, Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.P., and ABC Insurance Company, granting defendants' Motion for Summary Judgment based on their claim that the plaintiff's action in legal malpractice was perempted pursuant to La. R.S. 9:5605.[1] After a thorough review of the record and the applicable law, we find the trial court was not clearly wrong[2] in finding that the date prescription began to run in plaintiff's case was more than one year after she discovered or should have discovered the acts underlying the claims of legal malpractice; therefore, we affirm the judgment granting the exception and dismissing the plaintiff's suit.

FACTUAL AND PROCEDURAL HISTORY

On December 14, 2000, Ms. Wimberly filed a Petition for Damages asserting a claim for legal malpractice against the defendants, alleging that in January of 1997, Mr. Wittmann contracted to provide legal representation to her in a domestic legal matter against her then husband, Jesse L. Wimberly, III, and that in the course of this legal representation, Mr. Wittmann deviated from the acceptable standards for legal practice causing her to suffer significant financial and emotional damages.

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[1] The defendant raised the issue of peremption in a motion for summary judgment. In **Alcorn v. City of Baton Rouge**, 2003-2682 (La. 1/16/04), 863 So.2d 517 (per curiam), the Louisiana Supreme Court found error in the appellate court's refusal to consider the issue of prescription raised in a motion for summary judgment. The Court relied in part on **Cobb v. Coleman Oldsmobile, Inc.**, 346 So.2d 831 (La. App. 1st Cir.), writ denied, 349 So.2d 1269 (La. 1977), in which this court stated that where the motion for summary judgment states all the essential allegations for an exception of prescription, and the relief sought is dismissal of the suit on the basis that the suit is prescribed, the motion should be characterized as a peremptory exception of prescription. **Trolly Corp. v. Boohaker**, 2005-1595 (La. App. 1st Cir. 6/9/06), ___ So.2d ___. We note that the trial court in this case complied in rendering judgment in favor of the defendants by ordering "that the defendants' Motion for Summary Judgment *and/or Exception of Prescription and/or Peremption* is hereby granted." (Emphasis added).

[2] When judgment is rendered on a Motion for Summary Judgment that is characterized as an exception of prescription, as was done in this case, the summary judgment *de novo* standard of review is inapplicable - the date on which prescription begins to run is a factual issue to be determined by the trier of fact reviewed under the clearly wrong standard. **Trolly**, 2005-1595 at p. 1.

Ms. Wimberly's petition lists the following specific alleged acts of negligence and malpractice:

> 1. Failure to file the necessary pleadings in order to obtain custody and/or specific visitation with petitioner's son;
>
> 2. Failure to formally request psychological evaluations and to set status conferences;
>
> 3. Failure to present necessary financial information to the Court with regard to the setting of spousal and child support;
>
> 4. Failure to set court dates to prosecute Jesse Wimberly, III, on contempt charges for failure to make payments to plaintiff;
>
> 5. Entering into a consent judgment contrary to plaintiff's directives;
>
> 6. Coercing plaintiff into signing a stipulation that was not in her best interest;
>
> 7. Entering into a personal relationship with plaintiff while providing legal representation to her in the domestic legal case against Jesse Wimberly, III;
>
> 8. Any and all other acts of negligence and/or malpractice to be proven at trial on the merits.[3]

Defendants answered the suit asserting, among others, the affirmative defense of prescription or peremption. Defendants subsequently filed a Motion for Summary Judgment asserting there are no genuine issues of material fact regarding whether plaintiff's claim is barred by peremption. That motion was heard and denied by judgment dated April 24, 2003. Discovery continued, during which time the defendants deposed Ms. Wimberly. After conducting that deposition, the defendants filed a second motion for summary judgment re-urging their original motion and asserting that plaintiff's deposition testimony further revealed facts to

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[3] This final allegation, paragraph 3(H) of the petition was stricken from the pleadings by judgment dated November 30, 2001, granting defendants' motion to strike. The record also contains a supplemental and amending petition filed by Ms. Wimberly on March 27, 2003, in which she alleged more particularized acts and incidents of negligence on the part of Mr. Wittmann. However, the record also contains a subsequent motion filed by Ms. Wimberly to dismiss said amending petition. The motion was granted by the trial court on June 16, 2003. We note that although Ms. Wimberly was questioned extensively during her deposition about these allegations, such inquiry and the testimony elicited are irrelevant based on the striking of those allegations.

support their contention that there are no genuine issues of material fact regarding plaintiff's suit being perempted.

The record before us does not contain the entire domestic suit court record, but it does contain pertinent documents, as attachments to the motions for summary judgment, as well as elicited testimony which reveal the following factual history pertinent to the allegations of legal malpractice asserted in this suit and to the salient issue before the trial court: when did Ms. Wimberly discover, or when should she have discovered the malpractice?

Sometime in January of 1997, Ms. Wimberly engaged Mr. Wittmann to represent her in a divorce suit against her then husband. At that time, she discussed with him her primary areas of concern, *i.e.*, custody/visitation with her minor son, as well as spousal and child support. A hearing was set for 1999, and prior to that date, she voiced the following specific concerns she wanted addressed and resolved by the court through Mr. Wittmann's legal representation: she wanted to regain custody and/or specific visitation with her minor son, Jay, whom she alleged Jesse Wimberly had kidnapped in 1998 and refused to return; she wanted Jesse Wimberly ruled into court on a contempt charge and ordered to pay arrearages of court-ordered spousal and child support payments; and she wanted to subpoena Jesse Wimberly's financial records in order to challenge his discovery responses regarding his income, which she alleged were incomplete and inaccurate.

In answers to interrogatories in the malpractice suit before us on appeal, Ms. Wimberly asserts that "at the outset of our attorney-client relationship" she conveyed to Mr. Wittmann her primary concerns, being the custody and visitation with her minor son Jay, as well as the arrearages in child and spousal support payments. Specifically, she asserts she requested that Mr. Wittmann try and obtain an expeditious return to her of the physical custody of her son, with her getting

domiciliary parent status. She asserts that she "asked" and "urged" Mr. Wittmann to request the necessary psychological evaluations to help effectuate the desired custody arrangements. With regard to the support and arrearages issues, she asserts that she urged Mr. Wittmann to set status conferences to set deadlines, to move for contempt against Jesse Wimberly for ignoring court-ordered child and spousal support, and she specifically detailed certain financial documents she urged Mr. Wittmann to subpoena in order to challenge Jesse Wimberly's financial representations, which she stated were false, incomplete, and inaccurate. Specifically, she asserts that "[f]or more than two (2) years, I urged defendant, Wittman[n], to file contempt rules and other pleadings to assert my legal rights against Jesse Wimberly and to force Jesse Wimberly to obey court orders and comply with discovery responses."

A court hearing was set in January of 1999, which Ms. Wimberly testified she believed was for the purpose of addressing the contempt, support, and custody issues. (We note Ms. Wimberly maintains she believed this to be the purpose of that hearing *despite* her knowledge that Mr. Wittmann had failed to do any of the foregoing acts in preparation therefor.) According to Ms. Wimberly, she rode to the courthouse the day of the hearing with Mr. Wittmann, in his car, and they discussed the issues set for hearing. Ms. Wimberly thought Mr. Wittmann was going to present the case as they had discussed, to protect and further her interests related to custody, support, and arrearages.

Instead, once they arrived at the courthouse, all discussions among the attorneys and Jesse Wimberly began to center around a property division. According to Ms. Wimberly:

> I then began crying and cried for hours. I continually begged Wittman[n] to take our issues to trial because I had all of my documents and was ready to proceed against Jesse Wimberly for arrearages. At the same time, we were also discussing the issue of a visitation schedule, but Wittman[n] eventually told me that he had no

such schedule and that the Court's Social Worker would have to put together a schedule. He said the schedule could not be worked out in Court.

During this time, Wittman[n] kept pushing me and saying, "Let's get this settled." I was upset during the entire day and Wittman[n] was speaking to me in a threatening and coercive tone, telling me all of the negative things that would happen if I did not settle right then and there....

... I repeatedly told Wittman[n] that the offer was completely unfair. Wittman[n] told me that I really had no choice than to accept the offer.

According to Ms. Wimberly, she finally reluctantly agreed to enter into a consent judgment which addressed the property division, child support, and visitation rights, which she claims was not in her best interest, and it did not address at all the issues of arrearages and contempt.

The record contains a partial transcript of the January 12, 1999 hearing in the domestic case:

THE COURT:

All right, Mr. and Mrs. Wimberly, you've both been here all day. You've consulted with your attorneys, you've consulted with each other, and you've been here during the course of this agreement being read into the record, and I must ask each of you if you understand the agreement that was just read into the record?

MR. WIMBERLY:

Yes, I do.

MRS. WIMBERLY:

I hope I do.

THE COURT:

I hope you do, too. And do you agree with it?

MR. WIMBERLY:

I do.

MRS. WIMBERLY:

Not happy, but I have to agree to it.

THE COURT:

Well, I will sign any judgment that you prepare that's in conformity with the agreement that's been read into the record.

...

According to Ms. Wimberly, despite her complete dissatisfaction with the consent judgment, her personal/sexual relationship with Mr. Wittmann continued subsequent to that hearing, during which time he assured her that the judgment was an interim order, temporary in nature, and that he would continue to negotiate on her behalf and "straighten things out." Despite his repeated assurances to her that he would take care of everything, Wittmann failed to follow through on any of those promises and he failed to appear on her behalf at the next scheduled hearing held on December 14, 1999. Instead, Wittmann sent an associate in his firm, Minor Pipes, who appeared and submitted an *ex parte* motion on behalf of the defendants to withdraw as counsel for Ms. Wimberly. Based on these actions, Ms. Wimberly asserts in brief that she was "finally frustrated and emotionally overwrought" and in January she sought the advice of alternative counsel. She asserts that it was not until early 2000 that "she actually questioned the legal performance of Mr. Wittmann" when she met with the potential alternative counsel, Charles Taylor. Therefore, she claims that her suit, filed on December 14, 2000, was well within the one-year peremptive period, which she contends began when she "discovered" in early 2000 that a viable claim possibly existed against Mr. Wittmann for his negligent misrepresentation.

ACTION OF THE TRIAL COURT

Defendants initially filed a Motion for Summary Judgment urging no genuine issues of material fact remained concerning whether plaintiff's action was perempted. In support of that motion, defendants submitted the plaintiff's answers to interrogatories, the aforementioned partial transcript of the stipulation in the family court proceedings, as well as copies of a Petition and a Supplemental and Amending Petition to Annul Judgment filed by Ms. Wimberly in the family court on December 18, 2000, and April 3, 2001, respectively. In these petitions to annul,

Ms. Wimberly alleges "she was improperly coerced into the terms of the stipulations which resulted in the Judgment of December 16, 1999, and that she never agreed to the terms of the stipulations prior to having such terms read into the record on January 12, 1999." According to defendants, plaintiff knew or should have discovered the alleged acts of malpractice on January 12, 1999, the date she claims to have been threatened and improperly coerced by Mr. Wittmann into a stipulated judgment about which she voiced her complete dissatisfaction, and which failed to address and protect her interests on issues of concern to her. On April 2, 2003, the defendants' Motion for Summary Judgment was denied.

Discovery continued, including the defendants taking Ms. Wimberly's deposition. On November 18, 2004, defendants filed a second Motion for Summary Judgment, re-urging their claim of peremption and adding to the evidentiary support of the motion Ms. Wimberly's deposition. This motion for summary judgment was granted by judgment dated March 14, 2005. It is from that judgment that Ms. Wimberly appeals.

ASSIGNMENT OF ERROR ONE

In her first assignment of error, Ms. Wimberly contends the trial court abused its discretion in granting the defendants' second motion for summary judgment, particularly in light of the trial court's denial of the first motion for summary judgment, finding genuine issues of material fact remained. Ms. Wimberly asserts that because "there was no new evidence submitted to support such a finding," the second motion should have been denied as well. This assignment lacks merit.

In **Trigg v. Pennington Oil Company, Inc.**, 2001-2822 (La. App. 1st Cir. 11/08/02), 835 So.2d 845, the defendants filed two motions for summary judgment, which were denied by the trial court. More than eight years later, defendants filed a third motion for summary judgment. The third motion was

granted and the plaintiff's case dismissed. This court rejected plaintiff's argument, similar to that of Ms. Wimberly, that the trial court was precluded from granting a subsequent motion for summary judgment after having found genuine issues of material fact remained in denying the previous ones, citing the court's prior opinion, **Melton v. Miley**, 98-1437 (La. App. 1st Cir. 9/24/99), 754 So.2d 1088, writ denied, 99-3089 (La. 1/7/00), 752 So.2d 867, as well as numerous other opinions where our courts have held that it is not error for a trial court to consider a re-urged motion or rehear a motion for summary judgment after previously denying one. **Trigg**, 835 So.2d at 845. A trial court may deny a motion for summary judgment, initially, yet find that it becomes appropriate as the parties further augment the record during pre-trial discovery, if the movant has supplemented the record with meaningful additions which clearly establish that there is no longer any issue of material fact. **Monumental Life Insurance Company v. Landry**, 2002-891 (La. App. 3rd Cir. 2/19/03), 846 So.2d 798, 799-800.

Accordingly, the trial court did not err in granting the defendants' subsequent motion for summary judgment after considering additional evidence, namely Ms. Wimberly's deposition testimony, and concluding that this additional evidence established that her action was perempted.

ASSIGMENT OF ERROR NUMBER TWO

In granting the judgment in favor of the defendants, the trial court rendered the following pertinent reasons for judgment:

> The Court is convinced by a thorough review of the record of this matter that the plaintiff knew or should have known of the alleged malpractice by the defendants on January 12, 1999, the date when the terms of a consent judgment were read into the record by plaintiff's former counsel, Mr. Wittman[n], and in the presence of plaintiff.
>
> The Court has further reviewed the language of La. R.S. 9:5605 and the jurisprudence interpreting that statute and finds that plaintiff's claims as asserted in her petition filed on December 14, 2000 are

> preempted as they were filed more than one year after she knew or should have known of the alleged legal malpractice by Mr. Wittman[n].

On appeal, Ms. Wimberly maintains that she did not "discover" the acts of alleged malpractice until January of 2000, when she met with alternative counsel. In her second assignment of error, Ms. Wimberly complains of the finding by the trial court that the date of the consent judgment was the date of discovery, asserting:

> [T]he legal issue in this case is whether or not Louisiana law should be appropriately interpreted to deny the Appellant legal recourse for professional negligence through peremption, which according to the trial court occurred during Appellee's continuing representation of Appellant, despite the fact that the Appellant was involved in a sexual relationship with her lawyer.

For the following reasons, we reject appellant's arguments that are contrary to law and further find, after a thorough review of the record, that the trial court did not clearly err in finding that plaintiff's suit was perempted.[4]

APPLICABLE LAW

Pursuant to Subsection A of La. R.S. 9:5605, the peremptive period for all legal malpractice claims is one year from the date of the act of alleged malpractice or one year from the date it was or should have been discovered, coupled with a mandatory three-year peremptive period from the date of the alleged act of negligence, regardless of when it was discovered. La. R.S. 9:5605(A); **Trolly Corp. v. Boohaker**, 2005-1595, p. 2 (La. App. 1st Cir. 6/9/06), ___ So.2d ___.

Subsection B of La. R.S. 9:5605 expressly states that both the one-year and three-year periods of limitation provided in Subsection A are peremptive, rather than prescriptive, periods. As such, it cannot be renounced, interrupted, or suspended. La. C.C. art. 3461, **Trolly**, 2005-1595 at p. 2. Accordingly, exceptions such as *contra non valentem* and the continuous representation rule, which cannot apply to peremption, are inapplicable in legal malpractice actions. **Perez v.**

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[4] See footnote 2.

Trahant, 2000-2372 (La. App. 1st Cir. 12/28/01), 806 So.2d 110, 114, writs denied, 2002-0847, 2002-0901 (La. 8/30/02), 823 So.2d 953;[5] but cf. **Gettys v. Sessions and Fishman, L.L.P.**, 2000-1077 (La. App. 5th Cir. 10/31/00), 772 So.2d 874, 878, writ denied, 2000-3555 (La. 3/16/01), 787 So.2d 311 (where the fifth circuit applied the continuous representation rule to a legal malpractice action and found the action was timely). Thus, without exception, the latest that one can file a legal malpractice action is three years from the date of the alleged act of malpractice, or one year from the date of discovery of the alleged malpractice, whichever occurs first. **Trolly**, 2005-1595 at p. 2; **Paternostro v. LaRocca**, 2001-0333 (La. App. 1st Cir. 3/28/02), 813 So.2d 630, 634.

Regarding the date of discovery, prescription begins to run when a claimant knew or should have known of the existence of facts that would have enabled her to state a cause of action for legal malpractice. The standard imposed is that of a reasonable man, designed to establish a rule that any plaintiff who had knowledge of facts that would place a reasonable man on notice that malpractice may have been committed shall be held to have been subject to the commencement of prescription by virtue of such knowledge even though he asserts a limited ability to comprehend and evaluate the facts. Thus, the inquiry becomes when would a reasonable man have been on notice that malpractice may have been committed. **Griffin v. Kinberger**, 507 So.2d 821 (La. 1987); **Trolly**, 2005-1595 at p. 2; **Paternostro**, 813 So.2d at 634.

APPLICATION AND ANALYSIS

At the outset, we must reject plaintiff's claim that the recent Supreme Court case of **Carter v. Haygood**, 2004-0646 (La. 01/19/05), 892 So.2d 1261, is

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[5] In **Perez**, we noted: "The 'continuous representation rule' is a suspension principle based on the third application of *contra non valentem,* which suspends prescription when the debtor has done some act effectually to prevent the creditor from availing himself of his cause of action. **Reeder v. North**, 97-0239, p. 11. (La.10/21/97), 701 So.2d 1291, 1297-80." **Perez**, 806 So.2d at 114, n.3. As a suspension principle, the continuous representation rule cannot apply to peremptive periods.

controlling herein. In **Carter**, the Court allowed the continuous relationship/treatment rule to form the basis for the applicability of *contra non valentem* to interrupt the one-year prescriptive period in a medical malpractice action by drawing an analogy to the previously applied continuous representation rule in legal malpractice cases. (See e.g. **Lima v. Schmidt**, 595 So.2d 624, 630 (La. 1992). However, the Court in **Carter**, itself, acknowledged the critical distinction between the current medical and legal malpractice prescriptive statutes, *to wit,* that the legal malpractice statute now expressly provides that both time periods are peremptive, while the medical malpractice statute does not, and questioned whether the doctrine would continue to apply to suspend prescription in legal malpractice claims given the express provision in the current statute that both periods are peremptive. **Carter**, 892 So.2d at 1270, n.8.

As this court noted in **Raby-Magee v. Matzen**, 98-2364 (La. App. 1st Cir. 3/31/00), 764 So.2d 978, in holding that the three-year peremptive period begins to run irrespective of the date of discovery, and is not subject to suspension or interruption:

> We believe the result is inequitable, but statutorily ordained based on the provisions of LSA-R.S. 9:5605. We cannot alter the result without manipulating the statute. The legislature has made a policy determination that there is a three-year peremptive period which "may not be renounced, interrupted, or suspended." ... The Louisiana Supreme Court has applied the statute as written. *See Reeder v. North,* 97-0239 at 8, 701 So.2d at 1296, which noted the potential inequity.

Raby-Magee, 764 So.2d at 979 (footnote omitted). The same is applicable to the one-year limitation in the legal malpractice statute. Notwithstanding the soundness of the continuous representation analysis applied to a medical malpractice claim by the court in **Carter**, its application to a legal malpractice claim is precluded by the statutory language itself. The legal malpractice statute is clear and wholly unambiguous; we must apply it as written. It expressly provides that the one-year

time limitation from the date of malpractice or discovery thereof is peremptive. By definition, peremption cannot be interrupted; therefore, *contra non valentem* based on the continuous representation rule cannot apply to extend the time beyond one year from discovery.

We must also reject plaintiff's pervasive argument on appeal that the law should be interpreted differently in this case based on the fact that she "and her attorney were lovers, a situation that makes 'notice' a horse of a different color, due to the implication of trust which results from romantic union." This argument lacks merit and is contrary to law.[6]

As noted earlier, the standard imposed in determining when a claimant should have known facts sufficient to state a cause of action in malpractice *is that of a reasonable man,* even when he has a limited ability to comprehend and evaluate the facts. **Trolly**, 2005-1595 at p.2, **Paternostro**, 813 So.2d at 634. Thus, as a matter of law, the standard is objective, and Ms. Wimberly's claim that the law should be applied or interpreted differently or more leniently in this case because she was involved in an inappropriate personal relationship with her attorney is simply unsupportable and contrary to law.

The appropriate inquiry on appeal is whether, based on the record before us, the trial court erred in finding that a reasonable man would or should have discovered facts sufficient to state a cause of action in malpractice more than one year prior to the filing of the petition in this case.[7] Our review of the record reveals that the plaintiff's own pleadings, answers to interrogatories, deposition testimony,

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[6] We note that Ms. Wimberly may seek redress for these alleged violation of rules of professional conduct by invoking disciplinary proceedings with the Office of Disciplinary Counsel. See e.g. **In re: Boellert**, 2006-0482 (La. 4/17/06), 926 So.2d 492; **In re: Gore**, 99-3213 (La. 1/28/00), 752 So.2d 853; **In re: Schambach**, 98-2432 (La. 1/29/99), 726 So.2d 892.

[7] We note that both briefs on appeal make specific reference to the depositions of Wittmann and Charles Taylor; however, inexplicably, neither deposition is included in the record before us. We find this omission to be inconsequential, as we conclude later herein that the plaintiff's assertions in pleadings, discovery responses and her deposition testimony, alone, without any contradictory evidence, support the trial court's judgment that her action was perempted.

together with the petitions filed by her in the family court suit to annul the consent judgment, all support a finding that a reasonable man would have known more than one year prior to the filing of this suit, facts sufficient to state a cause of action in legal malpractice against the defendants; therefore, Ms. Wimberly's action was perempted.

In her original petition, Ms. Wimberly alleges that Mr. Wittmann failed to perform specific acts in pursuit of her best interests in the family suit: failure to file pleadings related to obtaining custody of her son, failure to formally request psychological evaluations, failure to challenge Jesse Wimberly's submitted financial information by subpoenaing his financial records, failure to prosecute Jesse Wimberly on contempt charges for arrearages in spousal and child support, and coercing her to enter a stipulation that was not in her best interest. Ms. Wimberly's responses to interrogatories further reveal that she was aware of Mr. Wittmann's failure to conduct any of these acts in preparation for the *second* hearing at which she expected her concerns to be addressed by the court. In her answer to Interrogatory number 2, which asked what pleading she thought Mr. Wittmann should have filed, and when he should have filed them, she listed the following: pleadings to pursue support arrearages which should have been filed "after Jesse Wimberly failed to pay his support obligations in accordance with the Consent Judgment;" rules to fix child support, beginning in May of 1998; pleadings to challenge Jesse Wimberly's financial affidavit, "in or around November of 1998;" additional discovery requests and issuances of subpoenas after she suggested to Mr. Wittmann that Jesse Wimberly's responses to discovery were incomplete or inaccurate; numerous pleadings to pursue custody, including requests for a status conference and an *ex parte* order for the return of her son; a rule and request for psychological evaluations (which, according to her deposition testimony, she had been suggesting to Mr. Wittmann to have done since her son

was taken from her in 1998); pleadings to seek spousal support; as well as pleadings to alter the property division, which she complained was inequitable in the consent judgment.

By Ms. Wimberly's own admission, she had knowledge of specific legal pleadings that were necessary to file in order to pursue her concerns and her best interest. She believed these issues were going to be addressed at the initial hearing when the consent judgment, with which she was dissatisfied, was entered. She claims that she believed Mr. Wittmann when he told her that was just an interim order and that he would "take care of things" and assured her that her best interests would be protected. We do not necessarily find, as obviously the trial court did, that this belief and reliance in her attorney was unreasonable. However, Ms. Wimberly's own admissions and allegations clearly reveal that she knew, for over the course of almost an entire year, that despite these verbal promises and assurances, Mr. Wittmann was not, and had not, prior to the date of the December, 14, 1999 hearing, engaged in any preparations whatsoever toward accomplishing the goals desired by Ms. Wimberly to be resolved at that hearing. Given that no preparation had been done, no pleadings filed, and Ms. Wimberly's specific requests had been ignored by Mr. Wittmann, it is almost inescapable that any reasonable person would have known, sometime long prior to the actual date of the hearing when Mr. Wittmann ultimately withdrew, that he had been negligent. Indeed, Ms. Wimberly admits knowledge of numerous failures that occurred such that it would have been unreasonable for her to expect that any of Mr. Wittmann's assurances and promises were going to be met.

Additionally, the record contains copies of petitions subsequently filed by Ms. Wimberly in her family suit seeking to have the consent judgment annulled based on allegations that she was coerced into entering a consent judgment which she felt and verbally expressed at the time was not in her best interest. This fact

alone, feeling coerced by one's own attorney into consenting to things against one's wishes and best interest, is sufficient to support the trial court's judgment as not being clearly erroneous.

Because we find that the record reveals Ms. Wimberly knew or should have known, sometime prior to the actual hearing on December 14, 1999, facts sufficient to state a cause of action in legal malpractice against Mr. Wittmann, the trial court's judgment dismissing her action as perempted must be affirmed. Costs of this appeal are assessed to Ms. Wimberly.

AFFIRMED.