

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1500

DONALD R. DOBBINS, INDIVIDUALLY AND ON BEHALF
OF DONALD R. DOBBINS & ASSOCIATES, LLC

VERSUS

LON NORRIS IN HIS OFFICIAL CAPACITY AS THE
CLERK OF COURT FOR THE CITY OF BATON ROUGE
AND CITY COURT OF BATON ROUGE

Judgment Rendered: May 4, 2007

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 530,869

Honorable William A. Morvant, Judge

* * * * *

Donald R. Dobbins
Baton Rouge, LA

In Proper Person
Plaintiff – Appellant

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Defendants – Appellees
Lon Norris, in his
Official Capacity as the
Clerk of Court and City
Court of Baton Rouge

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

Plaintiff, Donald R. Dobbins, individually and on behalf of Donald R. Dobbins & Associates, L.L.C., appeals a judgment sustaining the defendants' exceptions raising the objections of no cause of action, no right of action, and prescription, and dismissing his action with prejudice. We affirm.

FACTS

On March 31, 2005, Mr. Dobbins initiated this suit with a petition entitled "Breach of Contract and Breach of Fiduciary Duties," naming as defendants Lon Norris, in his capacity as the clerk of court, and the City Court of Baton Rouge. In this petition, Mr. Dobbins alleged that on March 22, 1999, he filed in City Court a petition for damages on behalf of a client entitled *Lonnie Wilkinson v. Christopher Mayeaux, et al.* This suit was dismissed without prejudice on a motion for involuntary dismissal based on a lack of service by citation.¹ Mr. Dobbins seeks damages from the defendants herein claiming that their carelessness and negligence in handling the *Wilkinson* matter, specifically in allegedly losing the checks Mr. Dobbins submitted for service and in failing to effectuate service of citation on the defendants, resulted in the loss of plaintiff's case, "which caused severe emotional and financial damages."

ACTION OF THE TRIAL COURT

The defendants filed peremptory exceptions raising the objections of no cause of action, no right of action, and prescription, which after a hearing, were sustained by the trial court and Mr. Dobbins' action was dismissed. This appeal follows.

NO CAUSE OF ACTION

¹ Also before us is a Motion to Supplement the Record with the judgment of involuntary dismissal rendered in the *Wilkinson* matter. The record before us reveals that at the hearing of the exceptions, the defendants introduced this judgment as an exhibit. Apparently, it was inadvertently not included in the record of this matter submitted to this court. Accordingly, the motion is granted and the record is hereby supplemented with the December 13, 1999 judgment dismissing the *Wilkinson* suit without prejudice.

Louisiana Code of Civil Procedure art. 1201(C) requires that service of citation be requested on all named defendants within ninety days of commencement of the action. Additionally, article 1672(C) of the Louisiana Code of Civil Procedure mandates that an action be dismissed if good cause is not shown why service of the citation is not requested within the ninety-day period provided in La. C.C.P. art. 1201(C). Moreover, our courts have held that simply requesting service and providing service instructions *without payment is not* a request for service sufficient for compliance with La. C.C.P. art. 1201(C). **Jenkins v. Larpenter**, 2004-0318, pp. 4-5 (La. App. 1st Cir. 3/24/05), 906 So.2d 656, 659, writ denied, 2005-1078 (La. 6/17/05), 904 So.2d 711; **Ayers v. Goodwill Industries**, 2003-1576, p. 2 (La. App. 4th Cir. 3/10/04), 870 So.2d 348, 349. In both **Jenkins** and **Ayers**, the plaintiffs requested service of the petition on the defendants and simultaneously filed a request to proceed *in forma pauperis*. Pauper status was denied by the trial court in each of those cases and, as a result, the fees were not paid and service was not effectuated. In both cases, the defendants' motions for involuntary dismissal were granted on the basis of plaintiffs' non-compliance with the ninety-day service period mandated by La. C.C.P. art. 1201(C). Both this court and the Fourth Circuit Court of Appeal held that a professed lack of knowledge that a pauper application has been denied is not "good cause" for non-compliance with the ninety-day service period of La. C.C.P. art. 1201(C).

"Good cause" is not defined by La. C.C.P. art. 1672(C); however, it is well settled in our jurisprudence that mere confusion regarding a party's correct name or *inadvertence or mistake in requesting service* on the part of plaintiff's counsel *is not a sufficient basis for good cause*. **Norbert v. Loucks**, 2001-1229, p. 3 (La. 6/29/01), 791 So.2d 1283, 1285. Moreover, the "good faith" requirement of La. C.C.P. art. 1672(C) is strictly construed and is reasonably read as requiring an

accurate request of service upon the proper agent for the defendant. **Barnett v. Louisiana State University Medical Center-Shreveport**, 2002-2576, pp. 1-2 (La. 2/7/03), 841 So.2d 725, 726; see also **Thomas v. Louisiana Department of Public Safety and Corrections**, 2002-0897, p. 8 (La. App. 1st Cir. 3/28/03), 848 So.2d 635, 639-40, writ denied, 2003-2397 (La. 11/21/03), 860 So.2d 552.

In this case, although Mr. Dobbins alleges that the failure to effectuate service was caused by the defendants' negligence in losing the checks he had submitted for service more than a year and a half before, Mr. Dobbins' own petition reveals that the submission of his checks to the defendants was made more than ninety days after the filing of the petition. Thus, Mr. Dobbins was in violation of the service mandate of La. C.C.P. art. 1201(C) even before the alleged negligence of the clerk of court's office in purportedly mishandling his checks: paragraph 3 of the petition alleges he filed suit on behalf of Wilkinson on March 22, 1999; paragraph 4 states that Mr. Dobbins did not submit checks to the clerk of court for service of citation until July 14, 1999, more than ninety days after suit was filed. Therefore, by his own admission, Mr. Dobbins did not timely effectuate service on his named defendants, rendering moot as irrelevant any alleged acts of negligence on the part of the defendants in "losing the checks" submitted by Mr. Dobbins and not returning same to Mr. Dobbins until March of 2001.² Accordingly, we find the trial court did not err in sustaining the exception of no cause of action, and on this basis alone, the suit was properly dismissed.

NO RIGHT OF ACTION

The defendants also urged, in the alternative, the exception raising the objection of no right of action, which was also sustained by the trial court. Again, we find no error. Pursuant to La. C.C.P. art. 681, an action can be brought only by

² Even had the defendant clerk of court's office promptly processed the checks and effectuated service, the suit would have been subject to dismissal for Mr. Dobbins' failure to remit the checks to the defendant in a timely (within ninety days) fashion.

a person having a real and actual interest, which he asserts. Defendants note that the petition names only Mr. Dobbins, individually and on behalf of Donald R. Dobbins & Associates. The petition alleges that as a result of the negligence of the defendants, his client, Lonnie Wilkinson, “suffered loss of [his] case” resulting in “severe emotional and financial damages.” Mr. Dobbins’ petition seeks the “total amount of damages incurred in prosecuting this [Wilkinson] case and the total amount of original value of the [Wilkinson] case.”

The petition *fails* to allege any damages suffered directly by Mr. Dobbins or his law firm that were caused by the defendants’ negligence in failing to effectuate service. According to the allegations of the petition, Wilkinson lost his cause of action against Christopher Mayeaux, et al., because of the alleged negligence of Norris and the City Court. Thus, the loss suffered, if any, was Wilkinson’s loss. Although Mr. Dobbins alludes in brief to having paid Mr. Wilkinson \$10,000 for an assignment of his rights, and therefore, he “clearly stated a cause of action through subrogation,” we find that the petition fails to make any such allegation and the record is also devoid of any evidence to establish this purported assignment of rights. Without such proof, Mr. Dobbins cannot show any real or actual interest in any damages that Wilkinson may have suffered based on the dismissal of his suit. Therefore, Mr. Dobbins has failed to assert a right of action against these defendants and the trial court properly sustained the exception.

PRESCRIPTION

The Wilkinson suit was dismissed for lack of service on December 13, 1999. (No appeal was taken from that final judgment.) The alleged acts of negligence by the defendants in failing to properly process Mr. Dobbins’ checks occurred no later than the date of dismissal of the case. Therefore, Mr. Dobbins had one year from December 13, 1999, or until December 13, 2000, to file this suit. It was not filed until March 31, 2005, more than four years after prescription had run. Although

Mr. Dobbins styled his petition as one for “Breach of Contract and Breach of Fiduciary Duties” pursuant to La. C.C. 3499 (providing a ten-year liberative prescription period for personal actions), the trial court correctly noted that the allegations of Mr. Dobbins’ petition sound in negligence, and the one-year prescriptive period for delictual actions (La. C.C. art. 3492) applies. Therefore, the trial court did not err in also sustaining the exception of prescription.

For all of the foregoing reasons, we find no merit in any of plaintiff’s/appellant’s assignments of error. The trial court did not err in sustaining each of the exceptions and in dismissing Mr. Dobbins’ action. Accordingly, the judgment of the trial court is affirmed; costs of this appeal are assessed to Mr. Dobbins.

AFFIRMED.