NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0028

LEVERETTE LEE KLEIN

VERSUS

ABC INSURANCE COMPANY AND VINCENT WYNNE

DATE OF JUDGMENT: DEC 09 2015

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 2010-16164, DIVISION A, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE RAYMOND S. CHILDRESS, JUDGE

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and Greenwich Insurance Company

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Guidry, J. Dissents and assigns reasons

Disposition: AFFIRMED.

Holdridge, J. concurs in the result

CHUTZ, J.

Plaintiff-appellant, Leverette "Lee" Klein, appeals the trial court's judgment, dismissing his claims for legal malpractice asserted against defendants, Vincent F. Wynne, Jr., his law firm, Wynne, Goux & Lobello, Attorneys at Law, LLC, and their legal malpractice insurer, Greenwich Insurance Company, based on its finding that an assignment of a money judgment recognizing a mortgage titled in Klein's name for which Wynne was hired to foreclose upon was unenforceable and, therefore, Klein was unable to prove any damages to support the imposition of legal malpractice liability. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2008, Klein hired Wynne and his law firm to "render legal services and advice in connection with foreclosure in St. Tammany Parish."[1] Klein advised Wynne he was the owner of an assignment of a mortgage note and a money judgment, dated July 13, 1999, recognizing a mortgage that encumbered property located at 29218 Berry Todd Road in Lacombe, Louisiana (the Berry Todd Rd property). Klein indicated to Wynne he wanted his ex-girlfriend, Sandra Parnell, removed from the house the couple had lived in together on the Berry Todd Rd property and from which Parnell had successfully had Klein evicted.

Shortly after Wynne undertook representation, Klein complained to Wynne that Parnell was in possession of some of his movable property that she refused to return. Wynne successfully resolved the dispute. According to Wynne, his subsequent attempts to contact Klein to determine whether he wished to proceed with the foreclosure went unanswered, while Klein maintained Wynne failed to communicate with him.

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[1] Although Klein's signature indicated he signed the contract for legal services on February 22, 2001, the parties agree that the correct year of signing was 2008.

Klein discontinued Wynne's legal representation and hired another attorney to pursue foreclosure of the Berry Todd Rd property. With the later-hired attorney representing him, during a hearing on September 29, 2010, Klein learned the judgment recognizing the mortgage on the Berry Todd Rd property was prescribed for failure to have been timely revived.[2]

Klein subsequently filed his petition for legal malpractice, averring that as a result of the failure of either Wynne or his law firm to timely revive the July 13, 1999 judgment, he had lost his opportunity to foreclose on the Berry Todd Rd property and had consequently sustained damages. Wynne and his law firm answered the lawsuit denying liability. After a trial on the merits, the trial court rendered a judgment concluding the assignment from Lawyers Title to Klein was unenforceable at the time Wynne had been hired and, therefore, Klein had not proven he had sustained any damages. A judgment was signed, dismissing Klein's claims for legal malpractice against Wynne and his law firm. Klein appeals.

DISCUSSION

Legal Malpractice:

In order to prevail on a claim for legal malpractice, it was incumbent on Klein to prove (1) the existence of an attorney-client relationship; (2) negligent representation by the attorney; and (3) loss caused by that negligence. ***MB Indus., LLC v. CNA Ins. Co.***, 2011-0303 (La. 10/25/11), 74 So.3d 1173, 1184.

The plaintiff has the responsibility of demonstrating the defendant failed to "exercise at least that degree of care, skill, and diligence which is exercised by prudent practicing attorneys in his locality." ***MB***, 74 So.3d at 1184, (quoting ***Ramp v. St. Paul Fire & Marine Ins. Co.***, 263 La. 774, 269 So.2d 239, 244 (1972)). Typically, a plaintiff will retain an expert witness both to establish the

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[2] See La. C.C. art. 3501 (providing a ten-year prescriptive period for revival of money judgments) and La. C.C.P. art. 2031 (setting forth a procedure for revival of money judgments).

standard of care for prudent attorneys in the relevant locality and to show the defendant's actions fell below the standard of care. But expert testimony is unnecessary where the alleged legal malpractice is "obvious" or the defendant attorney committed "gross error." ***MB***, 74 So.3d at 1184-85.

The parties do not dispute, and the record clearly establishes, the existence of an attorney-client relationship between Klein and Wynne and his law firm. And at the trial of this matter, the parties stipulated that neither Wynne nor his law firm took any steps to revive the July 13, 1999 judgment.

Mark C. Landry, an attorney who practices law in St. Tammany, was admitted as an expert in the law and procedure of the enforcement of mortgages. Landry opined that the failure of Wynne and his law firm to revive and reinscribe the July 13, 1999 judgment was fatal to any possible claim Klein could have brought against the Berry Todd Rd property or the judgment debtors. Thus, Klein established that Wynne and his law firm failed to exercise at least that degree of care, skill, and diligence which is exercised by prudent practicing attorneys in his locality. Moreover, even without expert testimony we would necessarily take notice that a legal duty is breached when the attorney fails to timely reinscribe a money judgment that recognizes a mortgage. Thus, Klein made a prima facie case that Wynne or his law firm was negligent. See ***Ramp v. St. Paul Fire & Marine Ins. Co.***, 263 La. 774, 787-88 (La. 1972).

Once the client has established a prima facie case that the attorney's negligence caused him some loss, the burden of going forward with evidence to overcome the client's prima facie case is placed on the defendant attorney. This is because the law presumes the attorney would not have agreed to handle a claim completely devoid of merit. Thus, the defendant attorney must prove the client could not have succeeded on the original claim. See ***Jenkins v. St. Paul Fire & Marine Ins. Co.***, 422 So.2d 1109, 1110 (La. 1982).

It is not enough for the plaintiff to simply show the attorney acted negligently. The client must also introduce evidence of causation. Although the Louisiana Supreme Court disavowed the "case within a case" doctrine, see ***Jenkins***, 422 So.2d at 1110 (La. 1982), it nevertheless has reiterated that causation "is an essential element of any tort claim." At the very least, the client must establish some causal connection between the alleged negligence and any damages he sustained. See ***MB***, 74 So.3d at 1187.

On review of a legal malpractice claim, the appellate court is directed to determine whether the negligent attorney met his burden of producing sufficient proof to overcome plaintiff's prima facie case. In making this determination, the appellate court views the evidence on the merits of the original claim in the light most favorable to the prevailing party in the trial court. See ***Jenkins***, 422 So.2d at 1110. Therefore, we turn first to an examination of the facts of the original claim.

The Original Claim

The documentary and testimonial evidence established that in 2000, Klein and Parnell, who had been living together in an apartment, decided to purchase property. They ultimately settled on the Berry Todd Rd property, which was owned by Leonard and Vera Turkin Jackson. In May 2000, Klein and Parnell collectively entered into an agreement to purchase the property from the Jacksons for $69,350. The terms and conditions of the purchase agreement required that the buyers pay off the principal mortgage.

Klein and Parnell hired Blake E. Harveston, an attorney who worked as Tammany Title, to assist with the act of sale. Harveston's research revealed the Berry Todd Rd property had several encumbrances against it, including a federal tax lien in excess of $70,000 as well as the July 13, 1999 money judgment recognizing the mortgage. The judgment also awarded the amount of $99,870.82

plus interest, attorney's fees, and costs against the Jacksons, which was the sum due on a promissory note executed on October 15, 1996.[3]

In September 2000, in a letter to Lawyers Title Insurance Corporation (Lawyers Title), which was signed only by Klein, both Klein and Parnell offered to buy the judgment recognizing the mortgage for $1,000. Lawyers Title countered with a $5,000 sale price to which Klein, with Parnell's consent, accepted. On January 17, 2001, an assignment was made of the July 13, 1999 judgment from Lawyers Title by authentic act in only Klein's name. It is undisputed that because they were unable to secure a loan from a lending institution, the proceeds for the purchase of the assignment were lent to Klein and Parnell by Klein's sister, Linda Guerin. A promissory note to Guerin by which the assignment proceeds were paid to Lawyers Title was signed by both Klein and Parnell.[4]

Although the Jacksons had given Klein and Parnell permission to reside on the Berry Todd Rd property after the parties had initially entered into the agreement to purchase, on February 19, 2001, the Jacksons gave notice to Klein and Parnell to vacate the premises. On February 26, 2001, by an order of a justice

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[3] It is undisputed that the original mortgage note made by the Jacksons was to TMS Mortgage Inc., dba The Money Store, and that in January 1999, Lawyers Title Insurance Corporation (Lawyers Title) acquired it by assignment.

Although the subsequent assignment from Lawyers Title to Klein included the promissory note the Jacksons made on October 15, 1996, Klein could not have enforced the mortgage on that basis. Since the July 13, 1999 judgment that was transferred in Klein's name had been rendered as a result of the action by Lawyers Title against the Jacksons on the October 15, 1996 promissory note, Klein was subrogated to Lawyers Title's rights, and had no more rights than it had. See La. C.C. art. 2642 (the assignee is subrogated to the rights of the assignor against the debtor). Because all causes of action that Lawyers Title had asserted on the basis of the mortgage arising from the promissory note had been extinguished and merged into the July 13, 1999 judgment, any action by Klein could only have been based on the July 13, 1999 judgment. See La. R.S. 13:4231 and its 1990 official comment (f) (a judgment in favor of the plaintiff extinguishes and merges all causes of action asserted into the judgment, and any subsequent action by the plaintiff must be based on the judgment itself).

[4] The evidence established that in addition to $5,000 for the purchase of the assignment, Klein and Parnell borrowed another $2,500. According to Klein the extra money was for renovations to the Berry Todd Rd property; Parnell testified it was for the purchase of an additional mortgage encumbering the property. Despite the conflicting testimony, Klein and Parnell agree the promissory note they signed in favor of Guerin was for a total of $7,500.

of the peace court, Klein and Parnell were evicted by the Jacksons from the Berry Todd Rd property.

An act of sale to transfer the property was scheduled for February 28, 2001, but the Jacksons did not appear. Klein and Parnell collectively executed a tender of performance that same day, putting the Jacksons in default under the terms of the agreement to purchase. On March 2, 2001, Klein and Parnell collectively filed an appeal of the justice of the peace court's eviction order in the district court. A petition for specific performance of the agreement to purchase was filed in another division of the district court that same day but only by Parnell. Also, on that same day, in his capacity as the titled owner of the assignment of the judgment recognizing the mortgage that he had acquired from Lawyers Title, Klein requested the district court's clerk of court issue a writ of *fieri facias* to the sheriff to seize and sell the Berry Todd Rd property in satisfaction of the Jacksons' debt.

On March 20, 2001, the Jacksons executed a quitclaim deed whereby they transferred their interest in the Berry Todd Rd property for $69,395 to Parnell only. The terms of the quitclaim deed stated the sale amount included, among other things, Parnell "[p]aying off the Mortgage dated 10/15/1996 in the amount of $100,000," i.e., the Jacksons' principal mortgage debt held by Lawyers Title, which had been reduced to the July 13, 1999 judgment and assigned to Klein. On April 6, 2001, the district court granted Parnell relief on her request for specific performance, recognizing Parnell as the true owner and finding the Jacksons to have no interest in the Berry Todd Rd property.

On September 24, 2003, Klein and Parnell collectively filed a motion to dismiss their lawsuit appealing the justice of the peace court's eviction order. In their joint motion, Klein and Parnell averred their claim was "moot" because the April 6, 2001 judgment recognized Parnell as owner of the property from which she had been evicted. They also requested return of the bond they had posted in

their lawsuit appealing the justice of the peace court's eviction order. And it is undisputed that Klein's March 2, 2001 writ of *fieri facias* was withdrawn subsequent to the district court's order placing title of the Berry Todd Rd property in Parnell's name.

We are mindful in our review of this legal malpractice litigation that we are directed to view the evidence in a light most favorable to Wynne and his law firm as the parties that prevailed in the trial court. See ***Jenkins***, 422 So.2d at 1110. Therefore, to implement this directive, we must presume that in Klein's attempt to enforce the judgment, the Jacksons and Parnell would have respectively availed themselves of all defenses that would have resulted in success over Klein. Any successful approach available to either the Jacksons or Parnell would inure to the attorney defendants.

The Trial Court's Necessary, Implicit Finding

The trial court expressly found the intent of Klein and Parnell "throughout the purchase was joint ownership." It reiterated at the summation of its written reasons that "Klein and Parnell acted together to acquire the property, thus voiding the [assignment from Lawyers Title] by the doctrine of confusion."

It is when the qualities of obligee and obligor are united in the same person that an obligation is extinguished by confusion. See La. C.C. art. 1903. And a mortgage may be extinguished by confusion as a result of the obligee's having acquired ownership of the thing mortgaged. See La. C.C. art. 3319.

Because the trial court applied the doctrine of confusion to find that Klein's assignment was unenforceable after expressly finding that Klein and Parnell acquired "the property" together, it necessarily made an implicit finding that Klein and Parnell jointly owned both the Berry Todd Rd property and the assignment from Lawyers Title in the same proportionate amounts.

Klein asserts the trial court erred in finding extinguishment of the obligations arising from the assignment on the basis of confusion. He maintains the written instruments evincing Parnell's exclusive ownership of the Berry Todd Rd property and his exclusive ownership of the assignment were made by authentic acts. As such, he contends it was improper for the trial court to conclude he and Parnell were joint owners of both the Berry Todd Rd property and the assignment.

Execution of the Money Judgment

In any attempt Klein would have undertaken to execute the money judgment against the Jacksons, the Jacksons would have initially pointed to Parnell as the titled owner of the Berry Todd Rd property since pursuant to the quitclaim deed she expressly assumed their indebtedness for the October 15, 1996 promissory note secured by the mortgage. See La. C.C. art. 1983 (providing contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law). And they could have also relied on the district court's judgment dated April 6, 2001, ordering that they specifically perform in accordance with the February 19, 2001 agreement to purchase. See La. C.C. art. 1764 (providing that a real obligation is transferred to the particular successor who acquires the immovable thing to which the obligation is attached without a special provision to that effect).

Transfer of the Immovable Property

Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. La. C.C. art. 1848. And an authentic act constitutes full proof of the agreement it contains insofar as the parties. See La. C.C. art. 1835. Thus, because the quitclaim deed which was executed in authentic form recognized Parnell as the owner of the Berry Todd Rd

property, the trial court erred in concluding that Klein could have any interest in the immovable property since he was not a party to the act.[5]

Moreover, the record cannot support an implicit finding by the trial court that Klein and Parnell entered into a separate agreement to transfer the Berry Todd Rd property from Parnell to Klein. An oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated under oath. La. C.C. art. 1839. But because the record is devoid of any evidence that under oath Parnell recognized a transfer of immovable property from her to Klein, the trial court erred in finding Klein and Parnell jointly owned the Berry Todd Rd property.

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[5] Noting that Klein does not challenge Parnell's claim of 100% ownership of the Berry Todd Rd immovable property in this appeal and having concluded because the quitclaim deed that transferred the immovable property to Parnell was by an authentic act which constituted full proof of the Jacksons' transfer of ownership of the immovable property, we pretermit a discussion of the effect the trial court's conclusion that Klein and Parnell co-owed the Berry Todd Rd property had on the district court's April 6, 2001 judgment recognizing Parnell as owner of the immovable property.

Defendants' contention that the Berry Todd Rd property was jointly owned by Klein and Parnell because the transfer of the immovable property was a relative simulation is without merit. To find a simulation, it is the intent of the parties to the contract -- not that of third parties -- which must be different from that recited in the written instruments. See La. C.C. art. 2025 (a contract is a simulation when, by mutual agreement, it does not express the true intent of *the parties*) and La. C.C. art. 2027 (a simulation is relative when *the parties* intend that *their contract* shall produce effects *between them* though different from those recited in their contract). There is no evidence Parnell and the Jacksons mutually agreed the written instruments did not express their true intent or they intended to produce effects between them that were different from those recited. Thus, the trial court's finding of joint ownership of the Berry Todd Rd property is not supported by the evidence on the basis of a relative simulation.

Defendants' assertion Klein and Parnell entered into a partnership or joint venture to co-own the Berry Todd Rd property is also without merit. The transfer of the immovable property from the Jacksons to Parnell was not in the name of a partnership, and the record contains no written agreement of partnership. Thus, under La. C.C. art. 2801, the evidence does not support a finding of the existence of a partnership capable of owning immovable property. While the existence of a joint venture is a question of fact, what constitutes a joint venture is a question of law. ***Cajun Elec. Power Co-op., Inc. v. McNamara***, 452 So.2d 212, 216 (La. App. 1st Cir.), writ denied, 458 So.2d 123 (La. 1984). Because there is no evidence the parties mutually agreed to be bound to one another in a business objective, there was no joint venture. See ***Florida Universal Fin. Corp. v. Cox***, 493 So.2d 710, 713 (La. App. 2d Cir. 1986) (noting that in a joint venture, the parties mutually agree to be bound to one another in their business objective; see also e.g., ***Gabriel v. Hobbs***, 2001-0538 (La. App. 4th Cir. 12/19/01), 804 So.2d 853, 855 (two distinct vehicles traveling together to a common vacation destination did not constitute a joint venture).

The Transfer of the Assignment

The record establishes the assignment of the July 13, 1999 judgment recognizing the mortgage on the Berry Todd Rd property from Lawyers Title to Klein was indeed made by authentic act. But Parnell was not a party to the authentic act that identified Klein as the recipient of the assignment. Thus, the form of the contents of the assignment between Lawyers Title and Klein are not dispositive of any subsequent transfer of the July 13, 1999 judgment from Klein to Parnell.

All rights may be assigned with the exception of those pertaining to obligations that are strictly personal. La. C.C. art. 2642. It is not necessary to the perfection of a sale or assignment of incorporeal rights or debts, such as judgments, that it be reduced to writing. ***Elgutter v. McCarthy***, 167 So. 461, 462 (La. App. 2d Cir. 1936). An assignment is a valid transfer of rights and may be done orally. An oral assignment must be proved like any other fact. There is no requirement that an assignment must be in authentic form before a notary and two witnesses. ***Louisiana Mobile Imaging, Inc. v. Ralph L. Abraham, Jr., Inc.***, 44,600 (La. App. 2d Cir. 10/14/09), 21 So.3d 1079, 1082.

Nevertheless, when a writing is not required by law, a contract not reduced to writing for a price or value in excess of five hundred dollars must be proved by at least one witness and other corroborating circumstances. La. C.C. art. 1846. A party may serve as her own witness and the "other corroborating circumstances" may be general and need not prove every detail; however, the corroborating circumstances that are required must come from a source other than the party claiming the oral agreement. Further, the existence or non-existence of a contract is a question of fact, and the trier of fact's determination of this issue will not be disturbed unless manifestly erroneous. Similarly, the issue of whether there were corroborating circumstances sufficient to establish an oral contract is a question of

fact. ***Commercial Flooring & Mini Blinds, Inc. v. Edenfield***, 2013-0523 (La. App. 1st Cir. 2/14/14), 138 So.3d 30, 36.

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." ***Stobart v. State through Dep't of Transp. & Dev.***, 617 So.2d 880, 882 (La. 1993). The reviewing court must do more than just simply review the record for some evidence which supports or controverts the trial court's findings; it must instead review the record in its entirety to determine whether the trial court's finding was clearly wrong or manifestly erroneous. ***Stobart***, 617 So.2d at 882. In making factual determinations, the trier of fact is free to accept or reject in whole or in part the testimony of any witness. Credibility determinations, including the evaluation of and resolution of conflicts in testimony, are factual issues to be resolved by the trier of fact, which should not be disturbed on appeal in the absence of manifest error. ***Commercial Flooring & Mini Blinds, Inc.***, 138 So.3d at 40. When, however, the appellate court finds a reversible error of law or manifest error of material fact was made in the trial court, it is required, whenever the state of the record on appeal so allows, to redetermine the facts *de novo* from the entire record and render a judgment on the merits. ***Wooley v. Lucksinger***, 2009-0571 (La. 4/1/11), 61 So.3d 507, 555.

The July 13, 1999 judgment that Klein brought to Wynne to execute was a money judgment against the Jacksons as well as recognition of the mortgage on the property owned by Parnell. Thus, to execute the judgment against the Berry Todd Rd property, Parnell would have had to have been the named defendant. See La. C.C.P. art. 2702 (when property sold or otherwise alienated by the original debtor has been seized and is about to be sold under executory process, a person who has acquired the property and assumed the indebtedness secured by the mortgage may arrest the seizure and sale on any of the grounds mentioned in Article 2751).

Among the grounds for which Parnell, as the defendant in the executory proceeding, may arrest the seizure and sale of the property by injunction is when the debt secured by the mortgage is extinguished, see La. C.C.P. art. 2751, such as when the qualities of obligee and obligor are united in the same person and the obligation is extinguished by confusion. See La. C.C. art. 1903.

In our review of the trial court's necessary, implicit finding that the parties were joint owners of the assignment, we note when one obligor owes just one performance intended for the common benefit of different obligees, neither of whom is entitled to the whole performance, the obligation is joint for the obligees. La. C.C. art. 1788.

Parnell consistently maintained she was 100% owner of both the Berry Todd Rd property and the assignment. Klein acknowledged Parnell was 100% owner of the immovable property but insisted he was 100% owner of the assignment. Although the record clearly supports a finding Parnell owned 100% of the Berry Todd Rd immovable property, nothing in the record shows any agreement between the parties of joint ownership of the assignment for their common benefit. Absent evidence Klein and Parnell intended to jointly own the assignment for their common benefit, or the proportionate amounts Parnell as obligor owed to herself and Klein as joint obligees, we conclude the trial court's necessary implicit finding that the July 13, 1999 judgment was jointly owned is manifestly erroneous.

Despite its clearly wrong necessary, implicit finding that Klein and Parnell jointly owned the assignment, the trial court stated in its written reasons for judgment it was clear "Parnell paid for the property, paid the taxes, and paid for the purchase of the assignment." These factual findings by the trial court, supported by Parnell's testimony, are not manifestly erroneous.

Insofar as the ownership of the assignment of the July 13, 1999 judgment, our *de novo* review of the evidence shows Parnell purchased the Berry Todd Rd

property as a place for her and Klein to live. Parnell, who has Parkinson's disease, receives Social Security disability payments because she is unable to work. She has a 9th grade education and explained she has trouble reading and writing. Parnell testified she hired and paid for attorneys to assist her in obtaining both the Berry Todd Rd property and mortgages encumbering the immovable property. She indicated she negotiated the reduction of the price of the assignment, admitting she borrowed money from Klein's sister, Guerin, to pay off the mortgages. Parnell stated she -- not Klein -- paid all of the money back to Guerin. Klein lived in the house on the Berry Todd Rd property with Parnell until she had him evicted in the fall of 2007 for failing to pay rent.

According to her recollection, when the title attorney whom she paid to handle the sale of the property from the Jacksons presented her with paperwork, Parnell signed what he told her to sign. In conformity with the trial court's factual findings, Parnell testified she had paid the amount of $1,000 the Jacksons wanted, all of the outstanding property taxes, and all of the money borrowed from Guerin to pay off mortgages encumbering the property. Therefore, Parnell considered herself as the sole owner of the Berry Todd Rd property. Parnell's expectations were that the title attorney had presented her documentation to sign in accordance with her desire to own the Berry Todd Rd property free of debt. Parnell expressly denied she and Klein had an understanding that if they had a disagreement, he could forcibly have her removed from the house.

Parnell's testimony establishes that she and Klein agreed to have the Berry Todd Rd property titled in her name. The assignment in his name was to facilitate the loan of money from his sister. The only evidence Klein offered to show his ownership interest in the assignment vis-à-vis a claim by Parnell was his equivocal testimony that he "thinks" he made one or more payments, possibly in the "usual amount" of $250, on the promissory note to his sister. And although Klein

expressly denied Parnell paid the promissory note back to Guerin stating she "partially" paid it back, during trial when confronted with deposition testimony in which he acknowledged Parnell wrote at least one check to pay back his sister, Klein testified his deposition statements were not entirely correct.

In conformity with the trial court's express finding that Parnell paid for the purchase of the assignment, we likewise find by his testimony Klein acknowledged Parnell paid the proceeds loaned by his sister for the purchase of the assignment from Lawyers Title. Although he equivocated, whether under a manifest error review of the trial court's finding or on a *de novo* review, the record demonstrates that those aspects of Klein's testimony denying Parnell repaid the loan from his sister are simply not credible. Reading the record as a whole, despite his insistence he owned 100% of the assignment, we believe Klein's testimony that Parnell paid the promissory note securing the proceeds Guerin loaned to facilitate the purchase of the assignment is a circumstance from a source other than Parnell corroborating the oral agreement whereby Klein transferred the assignment to Parnell once his sister was paid back. See La. C.C. art. 1839. Therefore, the record supports the finding that Parnell paid 100% of the proceeds used to obtain the assignment from Lawyers Title. On *de novo* review, we conclude Klein failed to overcome the showing made by Wynne and his law firm demonstrating that once Parnell paid Guerin the full amount of the promissory note, full ownership of the July 13, 1999 money judgment against the Jacksons was orally assigned by Klein to Parnell.

Because the record establishes Parnell owns 100% of the Berry Todd Rd property and, on review, the evidence supports the finding Parnell owned 100% of the assignment, she is both the obligee and the obligor of the July 13, 1999 money judgment against the Jacksons that she expressly assumed in the quitclaim deed and by operation of law when she was declared owner of the Berry Todd Rd property by the district court judgment. Thus, through confusion, the obligation

was extinguished. See La. C.C. art. 1903. The trial court correctly concluded the assignment Klein presented to Wynne in February 2008 was unenforceable. As such, Wynne's negligent actions did not cause Klein a loss such that he may recover on his legal malpractice claim against Wynne and his law firm.

DECREE

The trial court's judgment dismissing Klein's claims against defendants-appellees, Vincent F. Wynne, Jr., his law firm, Wynne, Goux & Lobello, Attorneys at Law, LLC, and their legal malpractice insurer, Greenwich Insurance Company, is affirmed. Appeal costs are assessed against plaintiff-appellant, Leverette Lee Klein.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0028

LEVERETTE LEE KLEIN

VERSUS

ABC INSURANCE COMPANY AND VINCENT WYNNE

GUIDRY, J., dissents and assigns reasons.

GUIDRY, J., dissenting.

I respectfully disagree with the majority's conclusion that the evidence establishes that Klein agreed to transfer his assignment to Parnell. There is no dispute that Klein obtained the assignment by authentic act, solely in his name, and as such, the assignment constitutes full proof of the agreement it contains. See La. C.C. art. 1835. Furthermore, while the record supports the conclusion that Parnell reimbursed Klein's sister, Guerin, for the funds used to obtain the assignment, the record is devoid of any evidence demonstrating that Klein and Parnell agreed, orally or otherwise, that Klein would transfer the assignment to Parnell once the funds were repaid. Accordingly, absent any evidence of an agreement to transfer the assignment to Parnell and absent any other evidence of ownership by Parnell of the assignment, there is no basis to find that the assignment was extinguished by confusion. Therefore, because the assignment, owned by Klein, was still enforceable when Klein presented it to Wynne, the trial court erred in dismissing Klein's claims against the defendants, Wynne and Wynne, Goux & Lobello, Attorneys at Law, LLC.