UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-3886

LAURIE WILKES WILSON, ANNETTE PAPAS LIDE,
and ROBERT LIDE,

Plaintiffs,

LAURIE WILKES WILSON and ANNETTE PAPAS LIDE,

Plaintiffs-Appellants,

versus

MICHAEL HARGRODER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana

(CA-92-342-D)

(January 19, 1995)

Before REYNALDO G. GARZA, DeMOSS and BENAVIDES, Circuit Judges.

PER CURIAM:[*]

This is a 42 U.S.C. § 1983 civil rights action brought by plaintiff-appellants Laurie Wilson and Annette Lide against defendant-appellees Patrick Canulette, sheriff of St. Tammany

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Parish, and Michael Hargroder, a sheriff's office detective.[1] In their complaint, filed on January 27, 1992, plaintiffs alleged that in 1987 and 1988, Hargroder forced them to comply with his sexual demands by threatening them with criminal prosecution and violence. They also alleged that Canulette attempted to cover up Hargroder's actions and failed to discipline Hargroder for his official misconduct.

In an order entered December 8, 1993, the district court granted summary judgment in favor of the defendants, ruling that Wilson and Lide's lawsuit was untimely under Louisiana's one-year personal injury prescriptive period. LA. CIV. CODE ANN. art. 3492 (West 1994); see also Elzy v. Roberson, 868 F.2d 793, 794 (5th Cir. 1989)(holding that 42 U.S.C. § 1983 action brought in federal court in Louisiana is governed by Article 3492's one-year prescription). Plaintiffs appeal, claiming that the Louisiana doctrine of *contra non valentem* applies to save their untimely filed action from prescription.

DISCUSSION

The wrongful conduct in this case began sometime after January 1987 and ended by October 1988 (as to Lide) and by April 1989 (as to Wilson). Wilson alleged that Hargroder arrested her in January 1987 for distribution of cocaine, then thereafter offered to dismiss or reduce the charges if she would have sex with him. After

[1]Lide's husband, Robert Lide, was initially a plaintiff but voluntarily dismissed his claim on October 6, 1993. The apparently fictitious "ABC Insurance Company" was initially included as a defendant, but no such company ever responded or participated in this suit.

initial resistance, Wilson consented. Wilson and Hargroder had a sexual relationship until 1988. Wilson asserted that Hargroder repeatedly told her that the charges from the January 1987 arrest were still pending against her and that she would be sent to prison if she refused to have sex with him or told anyone about the situation. She also alleged that on at least two occasions he physically threatened her by shoving her up against a wall.

Lide first met Hargroder in August 1987 after he arrested Lide's husband on a probation violation. After Lide's husband was sentenced to three years in prison, Hargroder persuaded Lide to take a ride with him in his unmarked police car. He showed her a packet of cocaine and told her that if she refused to have sex with him, he would plant the cocaine on her, arrest her and send her to prison. In addition, he threatened her life and her family's safety if she did not cooperate. Out of fear, Lide complied. Wilson and Lide also allege that in July 1988, Hargroder forced them into performing sexual acts on each other while he watched.

Hargroder's sexual demands and threats against Lide ceased in October 1988, when she moved out of town. Further, Lide had absolutely no contact with Hargroder for a period of more than two years, from October 1988 to January 24, 1991 (when she and her husband were arrested and charged with possession of marijuana). Lide alleges that as Hargroder arrested her on January 24, 1991, he "made sexual remarks concerning his planned behavior with Plaintiff [Lide]."

Wilson and Hargroder's sexual relationship ended in 1988. Wilson had no confrontational contact with Hargroder at any time after April 1989, although she described three innocuous encounters with him.[2] During the 33-month period between April 1989 and the filing of suit on January 27, 1992, Hargroder made no threats of any kind against Wilson and did not attempt to contact her.

All the conduct alleged by Wilson and Lide, including the verbal harassment of Lide on January 24, 1991, occurred more than one year before they filed their complaint on January 27, 1992.

A state statute of limitations for a § 1983 action begins to run when the plaintiff is in possession of the "critical facts" necessary to determine that she has been injured by the defendant. Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988). Wilson and Lide did not file suit until at least three years after they both possessed the requisite critical facts concerning the injury Hargroder had caused them. They admit that their lawsuit is facially prescribed.

When a petition reveals on its fact that prescription has run, the plaintiff has the burden of showing why the claim is not prescribed. Wimberly v. Gatch, 635 So.2d 206, 211 (La. 1994). Wilson and Lide claim that their action is saved from prescription by a doctrine created by the Louisiana courts, *contra non valentem agere nulla currit praescripto*, which means "prescription does not

[2](1) Wilson was present at a club when Hargroder made a drug arrest that had nothing to do with her; (2) she had a chance meeting with Hargroder in a judge's office; and (3) she contacted Hargroder seeking his assistance concerning her brother's arrest.

run against a party unable to act." This doctrine is a judicially created exception to Louisiana's general rules of prescription and is contrary to the express provisions of the Civil Code. Wimberly, 635 So.2d at 211. Generally, the doctrine of *contra non valentem* suspends prescription where the circumstances of the case fall into one of four categories:

> "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;
>
> 2. Where there was some condition coupled with a 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;**
>
> 4. Where some cause of action is not known or reasonably knowable by the plaintiff, even though his ignorance is not induced by the defendant."

Wimberly, 635 So.2d at 211 (emphasis added). Wilson and Lide in this case rely on the third category, arguing that Hargroder's threats so incapacitated them with fear and emotional distress that they were unable to file their action within the one-year prescription period. In cases under the third category, the cause of action accrues, but the plaintiff is "prevented from enforcing it by some reason external to his own will." Id. (citing Coursey v. State, 375 So.2d 1319, 1322 (La. 1979)).

The district court refused to apply *contra non valentem* to Wilson and Lide's case, finding that the alleged facts do not warrant the application of this exceptional doctrine.

> "Plaintiffs Wilson and Lide were not incarcerated during the years following the alleged abuse by Defendant

> Hargroder. They were certainly able to communicate and make themselves understood at all times. Furthermore, Wilson and Lide held jobs, attended school, or otherwise carried on normal lives from 1988 until 1992. Neither Plaintiff sought psychological or psychiatric treatment until well after the Complaint was filed. And although Plaintiffs allege in their Complaint that they were threatened by Defendant Hargroder in 1987 and 1988, they do not and cannot claim that Defendants took any action which affirmatively prevented them from filing suit between 1988 and 1992."

In addition, the district court noted that "neither Wilson nor Lide has offered any expert medical testimony establishing that they suffered from mental trauma, much less post-traumatic stress disorder." Therefore, the district court found as a matter of law that the *contra non valentem* doctrine did not apply and granted summary judgment to defendants on the prescription issue. This conclusion is consistent with the Louisiana case law, which has generally given the *contra non valentem* doctrine a narrow interpretation. See, e.g., Doe v. Ainsworth, 540 So.2d 425, 426 (La.App. 1st Cir.1989)(noting that application of the doctrine is "rarely accepted."). In the landmark case of Coursey v. State, 375 So.2d 1319, 1324 (La. 1979), a state prison inmate sought recovery for a serious organic brain damage sustained in a knife attack by another inmate. After the stabbing incident, Coursey remained in the custody of the defendant (the state of Louisiana). As the result of inadequate medical care from the state, Coursey was unable for many months to speak, hear or make himself understood. Finding that the tort-caused incompetency of Coursey was of such an extent as to render him mentally and physically incapable of availing himself of his legal remedy, the Coursey court held that

prescription was interrupted during plaintiff's incompetency. Coursey, 375 So.2d at 1322-24.

Wilson and Lide, in contrast to Coursey, did not suffer a mental and physical incapacity rendering them unable to file suit. Although they may justifiably have felt fear and embarrassment over the alleged incidents, they retained sufficient mental and psychological capacity to inform others of the acts. Accordingly, *contra non valentem* does not apply to save their case from prescription. See Laughlin v. Breaux, 515 So.2d 480 (La. App. 1st Cir. 1987); Bock v. Harmon, 526 So.2d 292 (La.App. 3d Cir. 1988); Doe v. Ainsworth, 540 So.2d 425 (La.App. 1st Cir.1989); Fontaine v. Roman Catholic Church of Archdiocese of New Orleans, 625 So.2d 548 (La.App. 4th Cir.1993).

In Breaux, 515 So.2d at 482, the plaintiff brought an untimely civil action against her former boyfriend for assault and battery. She claimed she was unable to file suit during the prescription period because she suffered from Battered Woman's Syndrome. Her treating psychologist testified she displayed the characteristics of the syndrome, including "learned helplessness," a type of passivity. The Louisiana appellate court, however, held that that symptom alone was insufficient to suspend prescription under *contra non valentem*. The court noted that plaintiff was running her own business, had discussed the situation with friends, counselors and her psychologist, and had called the police on defendant. Breaux, 515 So.2d at 482.

In Bock, defendant's former wife and children sued him for sexual and other abuse that occurred over six years. Bock v. Harmon, 526 So.2d 292 (La.App. 3d Cir. 1988). The trial court sustained defendant's exception of prescription against the adult son, because suit was filed more than two years after the son attained majority. (Prescription was suspended as to the claims against the father during the son's minority.) The son claimed he was unable to file suit due to embarrassment, fear of ridicule, limited recall from drugs his father gave him, a distorted view of his father's power and accountability, and ignorance of the law. The appellate court nonetheless declined to apply the third category of *contra non valentem* and affirmed the trial court's judgment sustaining the exception because it found the father took no affirmative overt action to prevent the son from filing suit and the son was fully aware of the illegality and perverse nature of the things his father did. Id.

In Doe, 540 So.2d at 425, the plaintiff sued his former minister based on four alleged acts of sexual molestation which occurred six years earlier when plaintiff was 15 to 16 years old. Plaintiff claimed the minister had a psychic, spiritual and sexual control over him which suppressed his ability to perceive defendant's wrongful conduct. In declining to apply the third category of *contra non valentem*, the appellate court noted that three years before plaintiff filed suit, plaintiff discussed his homosexual experiences with both his parents and psychiatrist and, the following year, plaintiff had defendant perform his wedding

ceremony. The appellate court, therefore, affirmed the trial court's finding that the evidence failed to disclose any action by or on behalf of defendant which restrained plaintiff from filing suit. Id.; see also Fontaine v. Roman Catholic Church, 625 So.2d 548 (La.App. 4th Cir. 1993)(similar claims against priest, court refused to apply *contra non valentem*, noting that the plaintiff, who filed suit in 1989, "does not allege that Cinel took any action to prevent him from filing suit once their relationship terminated in late 1985 or early 1986.").

Wilson and Lide attempt to rely on Held v. State Farm Ins. Co., 610 So.2d 1017 (La. App. 1st Cir. 1992), in which the plaintiff was a victim of sexual abuse by her father beginning when she was 12 years old and continuing past the age of 18. The claim was filed three years after the plaintiff achieved majority (turned 18). The appellate court applied *contra non valentem* to suspend the running of the prescription period for those three years, holding that plaintiff was prevented from timely filing her suit by post-traumatic stress disorder, which prevented her from placing the sole blame for the abuse on her father, and her parents' financial domination over her and refusal to pay for her therapy. Id. at 1020. The Held case is distinguishable from Wilson and Lide's case because the sexual abuse continued unabated until August 1988 when Held moved out of her father's house and into a college dormitory. Whenever Held came home during her first year at college, her father would continue to demand sexual contact with her despite her protests. The one year prescription period (October 28, 1987 to

October 28, 1988) thus ran out while the abuse and psychological control was ongoing. During much of the two additional years that passed before she filed suit on October 26, 1990, Held was still financially dependent on her parents. Held told a counselor about the abuse about a month after she left home in 1988, and began receiving therapy from a clinical social worker, who testified at trial. Held continued to see the therapist continuously until at least 1991. After Held confronted her parents about the abuse, they stopped paying for her college expenses. They agreed to pay for her therapy, but stopped paying in the fall of 1990. Despite the hostility and cutoff of financial support from her parents, Held was able to continue with her therapy and stay in school. The court held:

> "The completely unrebutted evidence paints a sad picture of an abused young woman struggling almost desperately to regain her human equilibrium while facing a most hostile family environment. Initially her parents paid for therapy, but this was while she was still struggling with the guilt phase and her role in the matter. Only after she successfully overcame this impediment to recovery did she accept in her own mind [that] she was truly an innocent victim. At that time, (summer/fall 1990), she placed the sole guilt on her father."

Held, 610 So.2d at 1019. In contrast, Wilson and Lide were aware of their cause of action. They were not suffering from a post-traumatic stress disorder that prevented them from placing guilt on Hargroder. They knew that what Hargroder had done was wrong; Wilson testified at her deposition that after she and Lide were forced to engage in lesbian sexual acts, the two agreed that one day Hargroder would pay for his actions. Neither Wilson nor Lide sought any therapy until well after the filing of their complaint. They

lived normal lives for two years with no further threats or even communication from Hargroder.

The Louisiana Supreme Court recently issued a new decision discussing the *contra non valentem* doctrine. In Wimberly v. Gatch, 635 So.2d 206, 211 (La. 1994), the plaintiffs were the parents of a child who was sexually abused by the defendant, a neighbor. The Louisiana Supreme Court held that doctrine of *contra non valentem* suspended running of prescription until parents, as opposed to the child victim, learned about the molestation and/or various types of molestation. Id. at 218. In distinguishing Breaux, Bock, Doe and Fontaine, the Louisiana high court stated that "[a]ll of these cases involve majors, persons of legal age filing suit on their own behalf against the defendant tortfeasors. Thus, none are dispositive of the principal issue involved herein. ... The child victim of sexual abuse does not react to the situation according to adult concepts of self-determinism with autonomous, rational choices. ... In fact, their behavioral patterns vastly differ from adult expectations." Id. at 212-13.

In contrast to the child in the Wimberly case, Wilson and Lide were both adults at the time of the alleged abuse and during the period of two to three years after all threats and sexual demands ceased, in which they could have filed suit but did not do so. Unlike the plaintiff in Coursey, they were not incarcerated and they were physically and mentally able to communicate and make themselves understood. Unlike the plaintiff in Held, 610 So.2d at 1019-20, they do not offer any expert medical testimony

establishing that they suffered from mental trauma or post-traumatic stress disorder. Wilson and Lide's case is also different from the Held case in that they were adults when the abuse began, and they were not tied to the defendant by parental bonds and financial dependance. For about two years after the sexual relationship with Hargroder ceased, and all threats ceased, Wilson and Lide carried on normal lives; they did not seek psychological or psychiatric treatment until after the complaint was filed. As in Doe v. Ainsworth, 540 So.2d 425 (La.App. 1st Cir. 1989), "[w]e do not mean to deprecate the psychological trauma" Wilson and Lide may have experienced, "but we are unable to apply the `exceptional' doctrine of *contra non valentem* to this case." Id. at 427.

Therefore, for the reasons stated in this opinion, and stated by the district court in its order of December 8, 1993, we hold that Wilson and Lide's lawsuit was untimely under Louisiana's one-year personal injury prescriptive period, and that the Louisiana doctrine of *contra non valentem* does not apply. The defendants' motion for summary judgment was correctly granted.

AFFIRMED.