

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2026 CA 0086

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POBE
LAWRENCE HENDRICKSON, INDIVIDUALLY, AND AS
ADMINISTRATOR OF THE SUCCESSION OF
KENT L. HENDRICKSON

VERSUS

GEAUX MOBILE NOTARY, LLC, DENETRIA BURRIS,
MYRNA E. ARROYO, L.L.C. DBA PROGENY LAW FIRM,
MYRNA E. ARROYO, ABC INSURANCE COMPANY AND
XYZ INSURANCE COMPANY

JUDGMENT RENDERED: OCT 16 2026

Appealed from the Nineteenth Judicial Court
Parish of East Baton Rouge • State of Louisiana
Docket Number 726058 • Section 32

The Honorable William Jorden, Presiding Judge

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PLAINTIFF—Lawrence
Hendrickson

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DEFENDANTS—Myrna E.
Arroyo and Myrna E. Arroyo,
LLC d/b/a Progeny Law Firm

BEFORE: THERIOT, GREENE, AND EDWARDS, JJ.

EDWARDS, J.

Plaintiff, individually and as administrator of the succession of his deceased father, filed this action against numerous defendants, including the attorneys who filed a petition to probate his father's will. Plaintiff contends the attorneys knew or should have known that the will was defective when probated, and therefore, they are liable to him for damages and breach of contract. The district court sustained the peremptory exception raising the objection of peremption filed by the attorney defendants and dismissed all of plaintiff's claims against them with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

This matter concerns the conduct of several actors in relation to the preparation, execution, and probating of the last will and testament of decedent, Kent L. Hendrickson ("Decedent"). On or about November 7, 2020, Decedent was hospitalized in the COVID-19 ward at Baton Rouge General—Mid-City ("BRG"). Dwayne D. Fontenot, a neighbor of Decedent who often assisted him with various personal matters, retained Denetria Burris, a notary public, for the purpose of preparing a last will and testament ("the will") for Decedent on or about November 19, 2020. The will bequeathed Decedent's entire estate to Fontenot and thereby disinherited Lawrence Hendrickson ("Hendrickson"), Decedent's only child. Decedent purportedly executed the will on November 23, 2020.¹ On that same day, Decedent succumbed to his illness and passed away while still hospitalized at BRG.

On or about December 11, 2020, Fontenot retained Myrna E. Arroyo and Myrna E. Arroyo, LLC d/b/a Progeny Law Firm (collectively "the Arroyo

¹ The will states it was executed "pursuant to [former La. C.C. art.] 1577[.]" which established form requirements for notarial testaments. Nevertheless, Hendrickson alleged Decedent was legally blind prior to his death. At each space Decedent's signature was required, only an "X" mark was placed (rather than a signature). The will does not contain any attestation clause similar to the requirements of former La. C.C. art. 1578 or 1579 (repealed by La. Acts 2025, No. 30, § 1), which were applicable in instances when a testator is physically unable to sign or is unable to read.

Defendants”) to file a petition to probate Decedent’s will, open the succession, and have Fontenot appointed as executor (“the petition for probate”). The Arroyo Defendants filed the petition for probate in the Nineteenth Judicial District Court on or about December 21, 2020. On January 8, 2021, the district court ordered the will filed and executed, and it ordered letters of executorship issued confirming the appointment of Fontenot as independent executor.

Hendrickson filed a motion to annul the last will and testament, to remove the independent executor, and for accounting (“motion to annul”) on January 26, 2021, in the succession proceeding. Therein, Hendrickson asserted the will was null and void due to defects in form and substance, citing a lack of procedural capacity of and undue influence on Decedent. The district court held an evidentiary hearing on the motion to annul on November 23, 2021, and at the hearing, it heard testimony from Burris and the two witnesses to the will. At the conclusion of the hearing, the district court declared the will an absolute nullity.² On April 4, 2022, the district court removed Fontenot as independent executor and appointed Hendrickson as the administrator of the succession.

Thereafter, on November 22, 2022, Hendrickson, individually and in his capacity as administrator of the succession, filed a “Petition for Damages and Breach of Contract” (“the original petition”) in a separate docket number at the Nineteenth

² The district court made the following factual findings after the hearing: (1) at the time of the execution of the will, Decedent was physically unable to sign his name due to his deteriorating physical condition; (2) at the time of the execution of the will, Decedent was unable to read the will; (3) at the time of the execution of the will, Decedent was unable to speak and only communicated by nodding; (4) at the time of the execution of the will, there was no other direct evidence that Decedent understood what was occurring; (5) at the time of the execution of the will, one of the witnesses had to physically assist Decedent by holding his arm to the document for him to make his mark; (6) Burris’s testimony as to the day and date of the signing of the will was inconsistent and incorrect; (7) the will did not contain a signature of Decedent, only a mark, and thereby does not meet the requirements of La. C.C. art. 1577; (8) the will did not include language in the attestation clause that Decedent was physically unable to sign his name, or that which is substantially similar, as is required by La. C.C. art. 1578; (9) the will did not comply with the requirements of La. C.C. art. 1579; (10) the totality of the circumstances of the execution of the will demonstrates a possibility that fraud was perpetrated; and (11) the multiple deviations in the legal formalities of the will, taken together with the “increased likelihood” that fraud may have been perpetrated, require that the will be declared an absolute nullity.

Judicial District Court. The original petition named Geaux Mobile Notary, LLC; Burris; the Arroyo Defendants; and Arroyo's and Burris's (unidentified) insurers as defendants. As to the Arroyo Defendants, Hendrickson asserted they were liable to him for failing to investigate the validity of the will or advise him regarding same; for failing to provide competent legal representation under the circumstances; for filing and signing the petition for probate when they knew or should have known the will was invalid due to multiple defects; and for breach of contract with the succession representative to provide competent legal representation to the succession by those actions and omissions. Hendrickson sought damages, including but not limited to: expenses of litigation incurred by both him and the succession; past, present, and future mental anguish, distress, and annoyance; sanctions and costs under La. C.C.P. art. 863; and attorney's fees for the litigation related to both the petition for probate and the original petition under La. C.C.P. art. 863.

On December 29, 2022, Hendrickson issued a subpoena *duces tecum* to BRG requesting "[a]ny and all documentation of visitors and/or potential visitors who requested or were permitted access to [Decedent] or the room/location in which he was located, on November 22, 2020 and November 23, 2020[.]" Shortly after receiving BRG's response to the subpoena, Hendrickson requested leave of court to file a first amended and supplemental petition for damages and breach of contract on February 17, 2023 ("the first amended petition"), in which he added two new allegations: (1) BRG records show that Decedent did not have any visitors on November 22 or 23, 2020, the dates on which Burris and Fontenot alleged they were in Decedent's hospital room; and (2) Burris was liable to him for fraud because BRG's records showed Decedent did not receive any visitors on the date of the alleged execution of the will. The district court granted Hendrickson leave to file the first amended petition on March 2, 2023.

The Arroyo Defendants filed a dilatory exception raising the objection of vagueness/ambiguity to the original petition and the first amended petition on April 21, 2023. Prior to the hearing, Hendrickson sought leave to file a second amended and supplemental petition for damages and breach of contract on April 11, 2024 (“the second amended petition”). The second amended petition added an allegation that the “acts and omissions of Defendants as set forth herein constitute violations of the Louisiana Unfair Trade Practices Act,” which entitle Hendrickson to damages and attorney’s fees. The district court granted Hendrickson leave to file the second amended petition on May 1, 2024.

The Arroyo Defendants filed the peremptory exception raising the objection of peremption on March 31, 2025.³ The Arroyo Defendants argued Hendrickson knew or should have known the basis for his legal malpractice claim against them no later than January 26, 2021, the date on which he filed the motion to annul in the succession proceeding. Therefore, pursuant to the one-year peremptive period provided in La. R.S. 9:5605, governing actions for legal malpractice, the Arroyo Defendants asserted Hendrickson’s claims were preempted prior to November 22, 2022, the date on which he filed the petition. The Arroyo Defendants attached the following exhibits to their exception raising the objection of peremption: the original petition; the first amended petition; the second amended petition; and the motion to annul.

Hendrickson opposed the exception.⁴ Therein, Hendrickson stated his claims were not based on legal malpractice but on an intentional tort by the Arroyo

³ The Arroyo Defendants also filed peremptory exceptions raising the objections of no cause of action and no right of action on the same date. These exceptions were heard on the same day as the exception raising the objection of peremption. In light of its ruling on the objection of peremption, the district court declared the objections of no cause of action and no right of action moot. Therefore, those exceptions are not discussed herein. See Chavez v. Metso Minerals Industries, Inc., 2023-01029 (La. 10/24/24), 395 So.3d 771, 786.

⁴ Around the same time, Hendrickson filed a motion for leave to file a third amended and supplemental petition on July 29, 2025 (“the third amended petition”). The third amended petition added allegations that the Arroyo Defendants acted fraudulently when they intentionally

Defendants against a non-client. Therefore, Hendrickson argued that La. R.S. 9:5605 is inapplicable and that the district court should instead apply the general one-year liberative prescription period in former La. C.C. art. 3492⁵ to his claims. Hendrickson then argued that, when applying former La. C.C. art. 3492, the district court should find his claims are not prescribed because the continuous tort doctrine applies to suspend prescription; new evidence was disclosed at the November 23, 2021 hearing on the motion to annul that was crucial to his cause of action; and he did not have procedural capacity to file suit on behalf of the succession until he was appointed succession representative. Hendrickson attached the transcript of the district court's oral ruling on the motion to annul in support of his opposition.

The Arroyo Defendants filed a reply memorandum. The Arroyo Defendants asserted that a non-client such as Hendrickson lacks a right and cause of action against a defendant attorney absent a showing of malice or intent to harm. The Arroyo Defendants argued that Hendrickson failed to make a showing of malice or intent to harm; in fact, they argued that they were merely exercising their duty to zealously advocate for their client, Fontenot, which included advocating for the validity of the will based on the information presented to them.

The district court held a hearing on the exception raising the objection of peremption on August 6, 2025. The Arroyo Defendants offered, filed, and introduced all exhibits attached to their exception at the hearing; Hendrickson did not introduce any evidence. At the conclusion of the hearing, the district court

misrepresented that the will was valid and failed to disclose the will was the product of the fraudulent acts of Burris. However, the district court had not granted Hendrickson leave to file the third amended petition prior to the hearing on the exceptions at issue in this appeal. Therefore, we do not consider the third amended petition or the allegations contained therein in our analysis.

⁵ Prior to July 1, 2024, La. C.C. art. 3492 provided that delictual actions were subject to a one-year liberative prescription, commencing from the day the injury or damage was sustained. **Baxter v. State**, 2025-0731 (La. App. 1 Cir. 2/25/26), ___ So.3d ___, ___, 2026 WL 520424, *4. Article 3492 was repealed by La. Acts 2024, No. 423, § 2, effective July 1, 2024. Because the alleged damage in this case occurred prior to July 1, 2024, former Article 3492 applies. See La. C.C. art. 3493.1—Editors' Notes.

sustained the exception. The district court signed a judgment sustaining the exception raising the objection of peremption and dismissing the suit as to the Arroyo Defendants with prejudice on August 20, 2025.⁶ Hendrickson appealed and assigned as sole error the district court's finding that his claim is subject to peremption under La. R.S. 9:5605(A).⁷

PEREMPTION

"Peremption is a period of time fixed by law for the existence of a right. Unless timely exercised, the right is extinguished upon the expiration of the preemptive period." La. C.C. art. 3458. Accordingly, nothing may interfere with the running of a preemptive period; it may not be renounced, interrupted, or suspended, and exceptions such as *contra non valentem* are not applicable. See Reeder v. North, 97-0239 (La. 10/21/97), 701 So.2d 1291, 1298. Peremption statutes are strictly construed against peremption and in favor of the claim. **Lomont v. Bennett**, 2014-2483 (La. 6/30/15), 172 So.3d 620, 627. Of the possible constructions, the one that maintains enforcement of the claim or action, rather than the one that bars enforcement, should be adopted. **Lomont**, 172 So.3d at 627.

The objection of peremption is raised by peremptory exception. La. C.C.P. art. 927(A)(2). Peremption has been likened to prescription; thus, the rules governing the burden of proof as to prescription apply to peremption. **Lomont**, 172 So.3d at 626-27. Ordinarily, the exceptor bears the burden of proof at the trial of the peremptory exception. **Lomont**, 172 So.3d at 627. However, if peremption is evident on the face of the pleadings, the burden shifts to the plaintiff to show the

⁶ Notice of signing of judgment was mailed on August 28, 2025. Hendrickson filed a motion and order for devolutive appeal on October 3, 2025, and the district court signed an order granting an appeal on October 8, 2025.

⁷ Hendrickson includes the exception raising the objection of no cause of action in his issues presented on appeal. However, appellate courts generally will not consider issues that were not addressed by the district court. See Succession of Brown, 2023-1137 (La. App. 1 Cir. 6/4/24), 391 So.3d 703, 706.

action is not perempted. See Lomont, 172 So.3d at 627. Here, the face of the petition shows that it was not filed within a year of the alleged malpractice. Therefore, this suit is perempted on the face of the petition, and the burden of proof on the exception shifted to Hendrickson to establish that his claims are not perempted.

The standard of review of a judgment pertaining to an exception of peremption turns on whether evidence is introduced at the hearing on the exception. See Lomont, 172 So.3d at 627. Louisiana Code of Civil Procedure article 931 expressly allows evidence to be introduced to support or controvert a peremptory exception when the grounds thereof do not appear from the petition. If no evidence is submitted at the hearing, the exception must be decided upon the facts alleged in the petition with all of the allegations accepted as true. Lomont, 172 So.3d at 627. In that case, the reviewing court is simply assessing whether the district court was legally correct in its finding. However, when evidence is introduced at the hearing, such as here, a court need not accept the allegations of the petition as true, and the lower court's factual findings are to be reviewed under a manifest error—clearly wrong standard of review. Lomont, 172 So.3d at 627. A caveat to this rule is that, even when evidence is introduced, when there is no dispute regarding material facts, the reviewing court is to apply a *de novo* standard of review and give no deference to the district court's legal conclusions. **Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.**, 2021-00061 (La. 12/10/21), 333 So.3d 368, 373.

The applicable time limitation for filing suit depends on the nature of the cause of action. See Harris v. Board of Supervisors of Community and Technical Colleges, 2021-0844 (La. App. 1 Cir. 2/25/22), 340 So.3d 1121, 1125. The limitation period applicable to an action is determined by the character of the action disclosed in the pleadings. **Born v. City of Slidell**, 2015-0136 (La. 10/14/15), 180 So.3d 1227, 1232. After the appropriate limitation period is determined, the dispute

regarding timeliness hinges on when the limitation period began to run. **Mopsik v. Galjour**, 2024-0189 (La. App. 4 Cir. 9/25/24), 399 So.3d 811, 820.

CHARACTERIZATION OF HENDRICKSON’S CLAIMS

The Parties’ Arguments

The Arroyo Defendants alleged in their exception that “Hendrickson’s claim against [the Arroyo Defendants] is for legal malpractice arising out of Arroyo’s role in the filing of the purported Will in the Underlying Suit[,]” namely, Arroyo’s failure to recognize the defects in the will identified in Hendrickson’s motion to annul and to advise Fontenot of same. Accordingly, the Arroyo Defendants alleged Hendrickson’s claims are governed by La. R.S. 9:5605, which states, in pertinent part:

- A. No action for damages against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.

- B. The provisions of this Section are remedial and apply to all causes of action without regard to the date when the alleged act, omission, or neglect occurred. . . . The one-year and three-year periods of limitation provided in Subsection A of this Section are peremptive periods within the meaning of Civil Code Article 3458 and, in accordance with Civil Code Article 3461, may not be renounced, interrupted, or suspended.

- C. Notwithstanding any other law to the contrary, in all actions brought in this state against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional law corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, the prescriptive and peremptive period shall be governed exclusively by this Section.

* * *

E. The preemptive period provided in Subsection A of this Section shall not apply in cases of fraud, as defined in Civil Code Article 1953.

The Louisiana Supreme Court has held that La. R.S. 9:5605 provides three preemptive periods: (1) one year from the date of the act, neglect, or omission; (2) one year from the date of discovery; and (3) three years from the date of the act, neglect, or omission when the malpractice is discovered after the date of the act, neglect, or omission. See Jenkins v. Starns, 2011-1170 (La. 1/24/12), 85 So.3d 612, 626.

Hendrickson, on the other hand, argues that the preemptive period in La. R.S. 9:5605 is inapplicable pursuant to the fraud exception in La. R.S. 9:5605(E). Additionally, Hendrickson states that “[the Arroyo] Defendants were never [his] attorneys in this matter[,]” and therefore, the cause of action “does not arise out of an engagement to provide legal services[.]” Hendrickson characterizes his claims as sounding in the intentional tort of fraud by an attorney against a non-client. Under either scenario, Hendrickson asserts his claims are governed by the general one-year prescriptive period for tort actions contained in former La. C.C. art. 3492,⁸ which provided that delictual actions were subject to a one-year liberative prescription, commencing from the day the injury or damage was sustained.

Discussion

Hendrickson filed the petition in his individual capacity and in his capacity as the administrator of Decedent’s succession. The claims asserted against the Arroyo Defendants that Hendrickson asserts in his individual capacity do not arise out of an “engagement to provide legal services” between the Arroyo Defendants and Hendrickson. However, Fontenot, in his purported role as named executor of the succession, entered into an attorney-client relationship with the Arroyo Defendants.

⁸ See footnote 5, *supra*.

Nevertheless, we find all of Hendrickson's claims are governed by the preemptive periods in La. R.S. 9:5605.

Claims for legal malpractice generally require an attorney-client relationship. See Smith v. Zibilich, 2012-1123 (La. App. 1 Cir. 2/15/13), 2013 WL 595825, *3 (unpublished); **Broussard v. F.A. Richard & Associates, Inc.**, 98-1167 (La. App. 3 Cir. 3/17/99), 732 So.2d 578, 583, writ denied, 99-1048 (La. 6/4/99), 744 So.2d 625. Nevertheless, this court has held that, notwithstanding the lack of an attorney-client relationship, "non-client parties, whose interests as third-party beneficiaries of the attorney's actions are negatively affected by his substandard work, can have a negligence cause of action against the attorney." **Blanchard v. Blanchard**, 2012-0106 (La. App. 1 Cir. 12/31/12), 112 So.3d 243, 251, writ denied, 2013-0488 (La. 4/12/13), 111 So.3d 1013.

Thereafter, in **Breen v. Landry**, 2022-1132 (La. App. 1 Cir. 4/14/23), 366 So.3d 577, 580, writ denied, 2023-00873 (La. 10/10/23), 371 So.3d 455, this court was called upon to decide whether the preemptive periods for legal malpractice claims set forth in La. R.S. 9:5605 applied to the claims of an heir of the deceased against the succession administrator's attorney ("the attorney"). This court declared that they do. In so ruling, this court noted that the plaintiff brought the relevant claims in her capacity as an heir to the estate and that she alleged that the attorney was negligent and breached her duty to the heirs and the estate, thus harming the plaintiff as a third-party beneficiary to the estate. **Breen**, 366 So.3d at 584. After noting this court has previously applied La. R.S. 9:5605 and the preemptive periods set forth therein to third-party beneficiary claims, see Murphy v. MKS Plastics, L.L.C., 2019-1485 (La. App. 1 Cir. 9/21/20), 314 So.3d 65, 71-72, writ denied, 2020-01225 (La. 12/22/20), 307 So.3d 1041, this court concluded the district court did not err in doing the same or in its ultimate determination that those claims were preempted, see Breen, 366 So.3d at 584-85.

The facts of this case are similar to those in **Breen**. In his petition, Hendrickson asserted claims against a former attorney for the succession, the Arroyo Defendants, in his capacity as the heir, *i.e.*, third-party beneficiary, to Decedent's estate.⁹ Those claims, per **Breen**, are subject to the peremptive periods of La. R.S. 9:5605. Additionally, as the administrator of the succession, Hendrickson is the proper party to assert a right of the succession while the succession is under administration. See La. C.C.P. art. 685. If the succession has a cause of action against the Arroyo Defendants, which we assume for the purposes of the exception raising the objection of preemption,¹⁰ that cause of action is based in legal malpractice and is also governed by La. R.S. 9:5605. See **Anderson v. Collins**, 26,142 (La. App. 2 Cir. 1/6/95), 648 So.2d 1371, 1378-80 (noting the duty of an attorney representing the succession representative extends beyond the individual client to the succession on whose behalf the client is acting in a fiduciary capacity), writs denied, 95-0629, 95-0783 (La. 4/21/95), 653 So.2d 576.

Nevertheless, Hendrickson contends that his claims are exempted from legal malpractice preemption pursuant to La. R.S. 9:5605(E).¹¹ Fraud is defined as “a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other” and can result from silence or inaction. **Lomont**, 172 So.3d at 629 (quoting La. C.C. art. 1953). There are two elements necessary to prove legal fraud: an intent to defraud¹² and a resulting damage. **Lomont**, 172 So.3d at 629. The fraud

⁹ Since the district court previously declared the will a nullity, Hendrickson, the only child of Hendrickson, would be an intestate heir of Decedent's estate. See La. C.C. arts. 880 & 1096.

¹⁰ See **Baxter v. State**, 2025-0731 (La. App. 1 Cir. 2/25/26), ___ So.3d ___, ___, 2026 WL 520424, *4 n.9 (citing **Harvey v. Dixie Graphics, Inc.**, 593 So.2d 351, 353 (La. 1992)).

¹¹ In cases where fraud is established pursuant to La. R.S. 9:5605(E), a legal malpractice claim is governed by the one-year prescriptive period set forth in former La. C.C. art. 3492. **Lomont**, 172 So.3d at 636.

¹² Specific intent to deceive is a necessary element of fraud, and fraud cannot be based on mistake or negligence, regardless of how great. **Lomont**, 172 So.3d at 634. Mere silence or inaction

exception to the peremptive period for acts of legal malpractice may be triggered by either a fraudulent act of malpractice by the attorney or a post-malpractice fraudulent concealment of the act. **Lomont**, 172 So.3d at 627-28. Because Hendrickson had the burden of proving his claim is not preempted, Hendrickson necessarily had the burden of proving the fraud exception contained in La. R.S. 9:5605(E) applies to his claims. See **Lomont**, 172 So.3d at 629.

Since Hendrickson did not introduce any evidence at the trial on the exception, we turn to the allegations of the petition. See **Lomont**, 172 So.3d at 627; **Williams v. Genuine Parts Co.**, 2014-0857 (La. App. 1 Cir. 1/8/15), 2015 WL 127974, *4 (unpublished) (noting that it is incumbent on the party on whom the burden of proof lies to introduce evidence to prove the facts to support their peremptory exceptions). In the petition, Hendrickson asserted that: (1) Fontenot retained the Arroyo Defendants on or about December 11, 2020, to file the petition for probate; (2) the Arroyo Defendants filed the petition for probate on or about December 21, 2020; (3) Arroyo knew Burris prior to the “occurrences” and Burris acted fraudulently in drafting and executing the will; and (4) Arroyo had ample opportunity and responsibility to inquire directly as to the “highly unusual facts and circumstances of the execution of the Will.” Hendrickson also stated that at the conclusion of the motion to annul hearing, the district court declared the will does not meet the requirements of La. C.C. arts. 1577 through 1579 and stated that fraud was “possibly” perpetrated.

Fraud must be pled with particularity. See La. C.C.P. art. 856. When pleading fraud, it is insufficient to plead merely that a defendant defrauded a plaintiff. **Moore v. Vauthier**, 2023-1046 (La. App. 1 Cir. 4/19/24), 389 So.3d 872, 880. After reviewing the petition, we find Hendrickson has not pled a fraud claim against the

without fraudulent intent does not constitute fraud. **Shekinah Glory Ministries v. One Way Deliverance Ministry**, 2022-1170 (La. App. 1 Cir. 4/20/23), 366 So.3d 1256, 1261.

Arroyo Defendants,¹³ nor did Hendrickson present any evidence that would tend to establish fraud on behalf of the Arroyo Defendants. The petition does not contain specific allegations that the Arroyo Defendants misrepresented or suppressed the truth with the intention either to obtain an unjust advantage or to cause a loss or inconvenience to the succession or Hendrickson individually. Accordingly, we find Hendrickson's fraud-based contention has no merit. As such, La. R.S. 9:5605(E) does not apply.

APPLICATION OF THE PEREMPTIVE PERIOD

Having determined that La. R.S. 9:5605 governs all of Hendrickson's claims, we must next determine whether Hendrickson's lawsuit was timely, which hinges on when the preemptive period began to run. See Mopsik, 399 So.3d at 820. The Louisiana Supreme Court has continually recognized that La. R.S. 9:5605 provides three preemptive periods: (1) a one-year preemptive period from the date of the act, neglect, or omission; (2) a one-year preemptive period from the date of discovering the act, neglect, or omission; (3) and a three-year preemptive period from the date of the act, neglect, or omission when the malpractice is discovered after the date of the act, neglect, or omission. Lomont, 172 So.3d at 636.

The Parties' Arguments

In support of their exception, the Arroyo Defendants relied on the second preemptive period—one year from the date of discovery¹⁴—and asserted Hendrickson discovered the alleged malpractice, at the latest, on January 26, 2021, the date on which he filed the motion to annul. Therefore, they argue Hendrickson

¹³ To the extent Hendrickson argues that he attempted to amend the petition by way of filing the motion for leave to file his third amended petition and that this supports the existence of a fraud claim in this case, we find this is not supported by the record. See footnote 4, *supra*.

¹⁴ We note that regardless of the classification of Hendrickson's claims as tort versus legal malpractice claims, the notice rules for determining whether the appropriate limitation period commences are the same. Under both former La. C.C. art. 3492 (the tort provision) and La. R.S. 9:5605 (the legal malpractice provision), the limitation period commences to run when a plaintiff has sufficient information to put him on guard. See Mopsik, 399 So.3d at 823.

had one year from that date to file the petition under La. R.S. 9:5605(A). Since the petition was not filed until over one year later on November 22, 2022, the Arroyo Defendants asserted Hendrickson's claims are perempted.

Hendrickson argued that the date of discovery was November 23, 2021, the date of the hearing and the district court's ruling on the motion to annul, which is also allegedly the date on which he discovered new facts "which proved to be crucial to the cause of action for intentional tort." Since the petition was filed less than one year later on November 22, 2022, Hendrickson maintains his claims are timely.

Discussion

The date of discovery from which a peremptive period begins to run is the date on which a reasonable man in the position of the plaintiff has, or should have, either actual or constructive knowledge of the damage, the delict, and a relationship between them sufficient to indicate to a reasonable person he is the victim of a tort and to state a cause of action against the defendant. **Murray v. Ward**, 2018-1371 (La. App. 1 Cir. 6/10/19), 280 So.3d 625, 630, writ denied sub nom., **Murray v. Samuel C. Ward, Jr. & Assocs., LLC**, 2019-01149 (La. 10/21/19), 280 So.3d 1166. Put more simply, the date of discovery is the date the negligence was discovered or should have been discovered by a reasonable person in the plaintiff's position. **Murray**, 280 So.3d at 630.

The Louisiana Supreme Court has consistently held that peremption commences to run in legal malpractice cases when a claimant knew or should have known of the existence of facts that would have enabled him to state a cause of action for legal malpractice. **Satterfield & Pontikes Construction, Inc. v. Breazeale Sachse & Wilson, LLP**, 2015-1355 (La. App. 1 Cir. 1/10/17), 212 So.3d 554, 559, writ denied, 2017-0268 (La. 3/31/17), 217 So.3d 363. Furthermore, the supreme court has held that a claimant's mere apprehension that something may be wrong is insufficient to commence the running of peremption unless the claimant knew or

should have known through the exercise of reasonable diligence that his problem may have been caused by acts of malpractice. **Satterfield & Pontikes Constr.**, 212 So.3d at 559.

The standard imposed is that of a reasonable person. **Satterfield & Pontikes Constr.**, 212 So.3d at 559. Any plaintiff who had knowledge of facts that would place a reasonable person on notice that malpractice may have been committed shall be held to have been subject to the commencement of peremption by virtue of such knowledge even though he asserts a limited ability to comprehend and evaluate the facts. The focus is on the appropriateness of the claimant's actions or inactions, and therefore, the inquiry becomes when would a reasonable person have been on notice that malpractice may have been committed. **Satterfield & Pontikes Constr.**, 212 So.3d at 559. Thus, for all claims asserted by Hendrickson, the relevant question when determining the date of discovery is when Hendrickson knew or should have known of the alleged acts leading to his claims.

As previously noted, Hendrickson has the burden of proving his claims are not preempted. Since he did not offer evidence into the record during the hearing, we must only consider the facts alleged in the petition and all such allegations must be accepted as true. **Lomont**, 172 So.3d at 627; **Williams**, 2015 WL 127974 at *4. In this case, Hendrickson alleged in the petition that the Arroyo Defendants were liable to him for: (1) failing to advise Fontenot, on behalf of the succession, that the form of the will was invalid under Louisiana law; (2) failing to advise Fontenot, on behalf of the succession, that the execution of the will was invalid under Louisiana law; (3) failing to properly investigate and inquire as to "the highly unusual facts and circumstances" of the execution of the will that rendered it invalid; (4) failing to provide competent legal representation under the circumstances; (5) filing the petition for probate when they knew or should have known that the will was invalid due to multiple defects; (6) violating La. C.C.P. art. 863 by signing the petition for

probate when they knew or should have known the will was invalid due to multiple defects; (7) failing to provide the standard of care required of a lawyer under the circumstances; (8) breaching the contract with the succession representative to provide competent legal representation to the succession by the actions and omissions described; and (9) any and all other intentional or negligent acts that may be proven at trial. All of these actions occurred on or before the filing of the petition for probate on December 21, 2020.

Hendrickson specifically alleged in the petition that the motion to annul filed on January 26, 2021, “asserted the nullity of the Will due to defects in form, lack of capacity[,] and undue influence[.]” The petition also includes details from the November 23, 2021 hearing on the motion to annul. Therein, Hendrickson stated that Burris and the two witnesses to the will testified at the hearing and that the district court found Burris’s testimony as to the day and date of the execution to be “inconsistent and incorrect.” In addition, Hendrickson alleged that the district court made the following factual findings at the conclusion of the hearing: (1) at the time of the execution of the will, Decedent was unable to sign his name, to read the will, or to speak; (2) there was no direct evidence that Decedent understood what was occurring; (3) someone “physically assist[ed]” Decedent by “hold[ing] his arm to the document to make his mark”; and (4) the totality of the circumstances of the execution of the will demonstrate that it is a possibility that a fraud could have been perpetrated.

Although the petition does not specifically allege facts demonstrating when Hendrickson learned of “the damage, the delict, and a relationship between them sufficient to indicate to a reasonable person he is the victim of a tort and to state a cause of action against the [Arroyo Defendants,]” we find that a reasonable person in Hendrickson’s position would have discovered the identity of the attorneys responsible for filing the petition to probate the defective will and/or advising

Fontenot regarding the validity of the will on or before January 25, 2021, the date Hendrickson filed the motion to annul in the succession proceeding, which was instituted by the Arroyo Defendants.¹⁵ In other words, we find Hendrickson either knew or should have known through the exercise of reasonable diligence that his problem may have been caused by acts of malpractice on or before January 26, 2021. See Satterfield & Pontikes Constr., 212 So.3d at 559.

Since we determined the date of discovery in this case is on or before January 26, 2021, Hendrickson had one year from that date to assert his claims against the Arroyo Defendants. Hendrickson did not file the petition until November 22, 2022, well over one year from January 26, 2021. Therefore, his claims against the Arroyo Defendants are preempted, and there is no error in the district court's ruling dismissing Hendrickson's claims against them with prejudice.¹⁶

¹⁵ The facts of this case suggest an even earlier date may be appropriate, since it is unclear when Hendrickson first learned of the alleged actions/inactions leading to him to file the petition.

¹⁶ We reject Hendrickson's claim that the continuing tort doctrine suspended prescription since we determined the preemptive periods of La. R.S. 9:5605 applied to all of Hendrickson's claims against the Arroyo Defendants. See La. C.C. art. 3461 ("Except as otherwise provided by law, preemption may not be renounced, interrupted, or suspended.").

We also acknowledge Hendrickson's argument that he lacked procedural capacity to file suit on behalf of the Estate until he was appointed administrator of the succession in April 2022. Nevertheless, as we previously noted, there is no evidence or allegations of the Arroyo Defendants engaging in fraudulent conduct that prevented the Estate from filing suit sooner, which would therefore implicate the fraud exception of La. R.S. 9:5605(E). Accordingly, we are constrained to find that Hendrickson's claims against the Arroyo Defendants in his capacity as the administrator of the succession could not be suspended from the date of discovery and therefore are preempted. See Mopsik, 399 So.3d at 826; Murray, 280 So.3d at 631-32.

DECREE

For the above and foregoing reasons, the district court's August 20, 2025 judgment sustaining the exception raising the objection of peremption in favor of Defendants, Myrna E. Arroyo and Myrna E. Arroyo, LLC d/b/a Progeny Law Firm, and dismissing all claims asserted by Plaintiff, Lawrence Hendrickson, individually and in his capacity as administrator of the succession of Kent L. Hendrickson, against them is affirmed. All costs of this appeal are assessed to Appellant.

JUDGMENT AFFIRMED.