

**IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI
TWENTIETH CIRCUIT COURT DISTRICT**

Michael D. Land

Plaintiff,

v.

McRae Law Firm, PLLC; Chuck McRae;
and Drew Martin

Defendants.

Civil Action No. 2021-008 (Arthur)

**RESPONSE IN OPPOSITION TO [MEC DOC. NO. 17] DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

THE PLAINTIFF, Michael Land, files this Response in Opposition to the Defendants' [17] Motion for Summary Judgment, and shows as follows in opposition to the dismissal of his case under M.R.C.P. 56:

PRELIMINARY STATEMENT

This is a case about the McRae Law Firm, and attorneys, Chuck McRae and Drew Martin, being retained to file what *should have been* a meritorious alienation of affection lawsuit against the person we now know to be Paul Bertucci on July 14, 2017, several months before the applicable statute of limitations on the AOA claim ran (this filing-deadline being October 31, 2017).

However, despite executing a client retention agreement with the Plaintiff, Michael Land, to file an AOA suit on his behalf in July 2017, the Defendants did not file anything, at all; ever. Instead, the Defendants simply permitted the statute of limitations on Michael Land's valid AOA claim against Paul Bertucci to lapse – for years. Michael Land found this out the hard way, unfortunately, when he hired new counsel to file the AOA suit against

Paul Bertucci in late 2019, after growing suspicious about the inaction from McRae Law Firm. This underlying lawsuit, filed in January 2020, was dismissed by Judge John Emfinger on summary judgment for being filed past the October 31, 2017, filing deadline.

The Defendants in this case agreed to take on an “alienation of affection” scope of representation for Michael Land on July 14, 2017, several months before the applicable statute of limitation ran. This is an undisputed fact. Even accepting the representations about not knowing the identity of Paul Bertucci in July 2017 as true, the Defendants could have easily filed a John Doe complaint against the “beer distributor on the Coast” that Michael Land had identified to them as the proper Defendant in the underlying AOA action. This would have preserved the statute of limitations until the identity of Paul Bertucci was discovered during a deposition in the Lands’ divorce litigation on February 18, 2018. At that time, Paul Bertucci could have been substituted as the proper party-Defendant for the John Doe placeholder. This is done all the time to preserve claims when the statute of limitations is running. It is not complicated or uncommon in litigation to have to file suit against a presently unidentified party and then to substitute parties once the identity is discovered. (See M.R.C.P. 9(h)).

Second, Theresa Land left the marital home, and unsuccessfully filed for divorce against her husband, Michael Land, on fabricated grounds, with the motive of starting a new life with her wealthy paramour, Paul Bertucci. Theresa Land is not to be taken at her word on this. It is awfully convenient that the Defendants in this action, who previously agreed to represent Michael Land on his AOA claim, now take the self-serving word of Theresa Land as the gospel truth as to why, and when, she started her extra-martial affair with Paul

Bertucci. Michael Land would have won the “case within this case”, if the underlying case had merely been filed, and pursued, prior to the statute of limitation running on the AOA claim against Paul Bertucci.

At a minimum, genuine issues of material fact exist on both issues identified in the Movants’ [17] Motion for Summary Judgment: (1) whether the Defendants in this action could have filed a complaint for Michael Land to preserve the statute of limitations on his AOA claim against Paul Bertucci by the October 31, 2017, filing-deadline; and (2) whether Michael Land would have prevailed on his AOA and emotional distress claims against Paul Bertucci had the Defendants timely filed the underlying action. The Defendants’ [17] Motion for Summary Judgment seeks to pass off what are, in fact, disputed **trial defenses** for the jury to decide as undisputed facts that warrant the granting of summary judgment in this case. The Court must deny the Defendants’ [17] Motion for Summary Judgment under the familiar Rule 56 standard of review.

STANDARD OF REVIEW

The normal Rule 56 standard of review applies to the Defendants’/Movants’ [17] Motion for Summary Judgment. Additionally, the Plaintiff/Respondent does not object to any of the citations to the case law contained in the [18] Memorandum of Law in Support of [17] Motion for Summary Judgment. The Plaintiff/Respondent does object, vociferously, to the assertion that there are no disputed issues of material fact in this case as to whether the Defendants should have filed a complaint prior to the running of the statute of limitations on October 31, 2017, or to whether the wrongful actions of Paul Bertucci caused the dissolution of the Lands’ marriage.

ARGUMENT

- A. The Defendants in this case could have easily filed a John Doe complaint under M.R.C.P. 9(h) against the “beer distributor on the Coast” that Michael Land had identified to them as the proper Defendant in the underlying AOA action before October 31, 2017.**

The Defendants in this action now claim that they did not have sufficient information to file an AOA lawsuit for Michael Land prior to the October 31, 2017, filing-deadline expiring. Yet, in contradiction to this assertion, they agreed to take on Michael Land as a client, with the scope of the representation being listed as “alienation of affection”, on July 14, 2017. (See Retention Agreement, Exhibit “1”). If the Defendants lacked necessary information for them to take on the representation of Michael Land on July 17, 2017, as they now claim, then it makes no sense as to why they would take on Michael Land’s alienation of affection claim, on a contingent fee basis no less, in July 2017. This fact, alone, creates genuine issues of material fact on this point that defeat the Defendants’ [17] Motion for Summary Judgment.

Further, the fact that the Defendants in this case never disengaged from their legal representation of Michael Land, and the fact that the Defendants never informed Michael Land of the applicable statute of limitations on his AOA claim against Paul Bertucci, are not in dispute.

Merely because the identity of the “beer distributor on the Coast”, Paul Bertucci, may not have been discovered until February 2018 does not mean that the attorney and law firm Defendants in this case have a silver bullet defense. They do not. The Defendants could have, and they should have, filed a placeholder lawsuit laying out the known facts of Theresa Land’s affair with the “beer distributor on the Coast” that had been identified to them in

July 2017. Then, in February 2018, they could have substituted Paul Bertucci in as the named-Defendants in the underlying AOA case.

Rule 9(h) of the Mississippi Rules of Civil Procedure provides:

“Fictitious Parties. When a party is ignorant of the name of an opposing party and so alleges in his pleading, the opposing party may be designated by any name, and when his true name is discovered the process and all pleadings and proceedings in the action may be amended by substituting the true name and giving proper notice to the opposing party. (M.R.C.P. 9(h)).”

B. Genuine fact disputes exist as to whether Paul Bertucci caused the permanent alienation of Theresa Land’s marital affections for her husband, Michael Land, or whether something else did.

Although the Defendants/Movants admittedly have defenses to make to the jury, at trial, on the causation element of the torts of AOA and intentional infliction of emotional distress pleaded in the underlying (dismissed) case, there are legitimate and genuine disputes on whether Theresa Land is telling the truth on this front. Theresa Land testified in the underlying case that she “loves” Paul Bertucci. Quite frankly, Theresa Land has every reason to lie about when her affair with Paul Bertucci began and whether that affair caused the downfall of the Lands’ marriage, as opposed to something else. Theresa Land lying about these facts in her deposition protected Paul Bertucci from potential financial liability and the moral culpability of destroying the Lands’ marriage of many years in the underlying case. Similarly, lying about these facts also protected Theresa Land in her on-going divorce litigation with Michael Land and it helped Theresa Land deny her moral responsibility for

destroying her marriage, and harming her family, in connection with her years-long, on-going, extra-marital affair with Paul Bertucci.

Suddenly, now that her self-serving testimony helps the position of the Defendants in this case, Theresa Land has become an angel who tells nothing but the truth, according to the Defendants motion for summary judgment. This position of the Defendants in this case – taking the word of Theresa Land as the gospel truth, now – is as convenient and self-serving as for the Movants in this action as it was for Paul Bertucci in the underlying action. The Court must see through this pivot on the part of the Defendants in this action.

The following deposition transcript excerpts from the deposition of Theresa Land, taken during the underlying AOA and intentional infliction of emotional distress suit brought against Paul Bertucci (but dismissed on summary judgment due to untimely filing), demonstrate the existence of genuine disputes of material facts on the question of whether Paul Bertucci permanently alienated the marital affections of Theresa Land for Michael Land:

1. Theresa Land admits that she has known Paul Bertucci since the 1980's.

Q. How did you meet Paul Bertucci?

A. How did I meet him? I've known Paul Bertucci since 1980 something. That's how I met him. I met him at a fund-raiser for the American Diabetes Association in 1987 or 8 or 9.

(Theresa Land Deposition Transcript, Exhibit "2" to this Response Brief, at Page 11, Lines 20-24).

2. Theresa Land claims that she did not communicate with other men during her marriage with Michael Land (until, presumably, re-engaging communication with Paul Bertucci in 2014).

Q. My question is, why would you stop

communicating with Paul Bertucci when you got married to Mike Land? What was the reason?

A. Because I got married, and I didn't communicate with other people, other men.

Q. I mean, certainly you communicate -- you ceased all friendships with all males when you got married to Mike Land?

A. Just about. As far as communicating with them, yeah. I mean, we had friends, but I didn't have a relationship or a conversation with them or hang out with them. I was married.

(Theresa Land Deposition Transcript, Exhibit "2" to this Response Brief, at Page 13, Lines 3-14).

3. Theresa Land identifies her "platonic relationship" with Paul Bertucci ending when she re-engaged Bertucci by email in 2014, coincidentally, right around when Theresa Land decided to move out of the Lands' marital home.

Q. When did that change?

A. When did my platonic relationship with Paul Bertucci change?

Q. Yeah. When did -- when did that relationship --

A. I didn't have any communications with Paul Bertucci after the '90s until 2014.

Q. How -- what was the first communication in 2014 between you and Paul Bertucci?

A. I sent him an e-mail.

Q. How did you have his e-mail address?

A. Because I knew the company he owned, and I saw it on the website.

Q. So you looked up Paul Bertucci's e-mail address on the company website?

A. I did.

(Theresa Land Deposition Transcript, Exhibit "2" to this Response Brief, at Page 14, Lines 4-19).

4. Theresa Land admits that she began a "romantic" relationship with Paul Bertucci in December 2014 -- a mere four months before she files for divorce against Michael Land.

Q. When did your feelings for Paul Bertucci

start to change into more than a friend?

A. We were not romantic until December of that year, 2014.

(Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 15, Lines 16-19).

5. Theresa Land testifies that, at least for her, she has been in an “exclusive” relationship with Paul Bertucci for the “last couple of years.”

Q. How long have you and Paul Bertucci been exclusive?

A. I can't answer on his part. In the last couple of years, it's become exclusive.

(Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 18, Lines 3-6).

6. Theresa Land admits that she loves Paul Bertucci and cannot marry him because she is still married to Michael Land.

Q. Do you love Paul Bertucci?

A. Yes, I do.

Q. If given the opportunity, would you marry Paul Bertucci?

A. That has not come up. I can't have that opportunity. I'm still married.

(Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 21, Lines 9-14).

7. Theresa Land, reluctantly, admits to many gifts¹ and lavish vacations that Paul Bertucci has provided her during her extra-marital affair with him.

Q. What gifts has Paul Bertucci bought you?

A. Specifically?

Q. Yes.

A. He's bought me a purse.

Q. What type of purse?

A. A Louis Vuitton purse.

¹ Michael Land believes that there are many more gifts and payments than those to which Theresa Land has testified in the underlying case. The gifts and vacations about which Theresa Land has testified are the floor (the minimum) and not the ceiling, upon the information and belief of Michael Land. Michael Land also has testified that to his belief that Paul Bertucci has, directly or indirectly, financed the divorce litigation of Theresa Land.

(Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 26, Lines 18-23).

...

4 Q. What other gifts has Paul Bertucci

5 bought you?

6 A. He's bought me a Mini iPad for work.

(Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 27, Lines 4-6).

...

Other significant gifts from Paul Bertucci to Theresa Land, as admitted to by Theresa Land in her deposition in the underlying case: dresses for Theresa Land and her two daughters from Canal Street shopping excursion during New Orleans trip in 2014²; All expense paid “trips” to New York City, Chicago, and Las Vegas³; hotel stays in the finest parts of these cities, like near Central Park in Manhattan, and dinners at the cities’ finest restaurants, like The Palm steakhouse⁴; tickets to see the Rockettes and a Broadway show “with the girls”⁵; Two trips to Colorado to visit Theresa Land’s brother⁶; Five or six separate trips to Destin and at least one trip to Fairhope, Alabama⁷; A European vacation to Germany, Italy, Austria, and Switzerland⁸ that involved driving a Porsche fast on the Autobahn highway⁹ (it has no speed limit).

² (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 28, Lines 2-11).

³ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 30, Lines 19-21).

⁴ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 32, Lines 6-22).

⁵ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 34, Lines 7-11) (“**I didn’t pay for anything**”).

⁶ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 42, Lines 16-18).

⁷ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 43, Lines 8-9).

⁸ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 43, Lines 19-23).

⁹ (Theresa Land Deposition Transcript, Exhibit “2” to this Response Brief, at Page 45, Lines 3-19).

7. Theresa Land, in deposition, admits that she started sleeping with Paul Bertucci three to four months before she filed for divorce against Michael Land.

Q. Which came first, your filing for divorce against Mike Land or your sleeping with Paul Bertucci?

A. Filing -- take that back. I left in October '14. I was with Paul in December, and then I filed in 2015.

Q. Just so -- you did seep with Paul Bertucci before you filed for divorce from Mike Land?

A. Yes, I'm pretty sure that's been established. I left him in October of 2014. I was with Paul in December, and I filed in March.

Q. Of '15?

A. Of '15.

(Theresa Land Deposition Transcript, Exhibit "2" to this Response Brief, at Page 47, Lines 6-19).

It is clear from the record evidence in this case there exist genuine, and good faith, disputes about whether Paul Bertucci permanently alienated the marital affections of Theresa Land for Michael Land. The record in this case is full of evidence of gifts and a lavish lifestyle that Paul Bertucci, an old friend, started providing to Theresa Land a mere few months before she happened to file for divorce against Michael Land. Paul Bertucci caused Theresa Land to file for divorce against Michael Land in March of 2015. This is why Theresa Land **concealed** her affair with Paul Bertucci for years. This is why Paul Bertucci's identity as the paramour "beer distributor on the Coast" was not confirmed until February 2018, in the deposition of Danny Gray.

The Plaintiff/Respondent does not deny that the Defendants in this case have defenses to bring forward to the jury at trial. That is a fact. However, it is also a fact that these issues are in legitimate dispute. Only the finder of fact can answer these genuinely

disputed, material fact questions, in this case. This case must not be dismissed under the Rule 56 standard of review.

CONCLUSION

In summary, Michael Land retained the Defendants – a retention to which the Defendants agreed – to file an “alienation of affection” lawsuit on July 14, 2017. But the Defendants never filed anything, for years. This includes the simple filing a John Doe fictitious name complaint under M.R.C.P. 9(h) against the “beer distributor on the Coast” prior to the statute of limitation running on October 31, 2017. This failure to file anything prior to the running of the applicable statute of limitations constitutes legal malpractice and it caused Michael Land’s eventual lawsuit against Paul Bertucci to be dismissed on summary judgment by Judge Emfinger based upon the statute of limitations.

Second, but for the untimely filing of the underlying AOA and intentional infliction of emotional distress lawsuit against Paul Bertucci, itself solely caused by the negligence of the Defendants in this action, Michael Land would have prevailed on his tort claims against Paul Bertucci.

Nonetheless, and at a minimum, genuine issues of material fact exist as to whether McRae Law Firm, Chuck McRae, and Drew Martin breached the duty of care that they owed to their client, Michael Land, and as to whether Michael Land would have prevailed in the “case within the case” if the Defendants had timely filed, and pursued, the underlying lawsuit against Paul Bertucci. These fact issues preclude the granting of summary judgment in this case. The Defendants’ [17] Motion for Summary Judgment must be denied.

MICHAEL LAND

The Plaintiff

By: /s/ Macy D. Hanson

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Certificate of Service

I, Macy D. Hanson, certify that on this, the 9th day of February, 2022, that a true and correct copy of the previous document was electronically filed with the Clerk of Court using the MEC System, which sent notification of the filing to all counsel of record.

/s/ Macy D. Hanson

Macy D. Hanson (MSB# 104197)