

TULANE LAW REVIEW ONLINE

VOL. 93

MAY 2019

Eaglin v. Eunice Police Department: The Louisiana Supreme Court Revisits and Restrains Prescription for False Imprisonment Claims

I. INTRODUCTION.....	51
II. BACKGROUND.....	53
III. COURT’S DECISION.....	57
IV. ANALYSIS.....	60
V. CONCLUSION.....	62

I. INTRODUCTION

The Eunice Police Department arrested and charged four individuals with second degree murder on May 4, 2015.¹ Although the victim’s girlfriend did not identify Marlon Eaglin or Paul Powell as perpetrators of the crime, the other two suspects, Deontrey Moten and David Little, implicated them as participants in the shooting.² The four men were arrested pursuant to arrest warrants and remained imprisoned until August 21, 2015.³ Eaglin filed a civil suit on April 29, 2016, against the Eunice Police Department and Chief Randy Fontenot alleging false arrest and imprisonment.⁴ On May 9, 2016, Eaglin filed an amended petition for damages to bring Powell into the suit as an additional party plaintiff.⁵ The defendants responded by filing an exception of prescription on the grounds that Powell’s claims

1. *Eaglin v. Eunice Police Dep’t*, 2017-1875, p. 1 (La. 6/27/2018); 2018 WL 3154744, at *1.

2. *Eaglin v. Eunice Police Dep’t*, 2017-127, p. 2 (La. App. 3 Cir. 10/4/17); 228 So. 3d 280, 282, *rev’d*, 2017-1875; 2018 WL 3154744.

3. *Id.*

4. *Eaglin*, 2017-1875 at p. 1; 2018 WL 3154744, at *1.

5. *Id.*

prescribed on May 4, 2016, one year after his arrest.⁶ Louisiana law provides that delictual actions are subject to a one-year prescriptive period, which commences to run on the day that injury or damage is sustained.⁷ Powell, however, opposed the exception, arguing first that his claim related back to Eaglin's timely petition and second that a false imprisonment claim did not begin to prescribe until the date he was released from prison on August 21, 2015, which made his May 9, 2016, claim timely.⁸

The district court granted the defendants' exception of prescription and dismissed Powell's claims with prejudice, finding that prescription for Powell's false imprisonment claim began to run on the day he was arrested, not the day he was released, and that his claims did not relate back to the date of the original petition.⁹ The Louisiana Third Circuit Court of Appeal reversed the district court's ruling on the ground that prescription began to run on Powell's date of release from prison.¹⁰ The Louisiana Supreme Court granted the defendants' writ of certiorari to consider whether the prescriptive period for a false arrest or imprisonment claim begins on the date of arrest or the date of release.¹¹ The Louisiana Supreme Court held that the prescriptive period for a false imprisonment claim begins to run on the date of arrest.¹²

The ruling is significant because it establishes a rule for the commencement of the prescriptive period for a false imprisonment claim in a way that is inconsistent with the court's own decisions on similar legal issues and the state's appellate rulings on the matter. Furthermore, the question of when prescription commences to run in a false imprisonment action has long been at issue and has been interpreted in a variety of ways.¹³ The Louisiana Supreme Court created a standard for the running of prescription in false imprisonment actions that is incompatible with United States Supreme Court precedent, prior judicial decisions in Louisiana, and historical traditions of justice.

6. *Id.*

7. LA. CIV. CODE art. 3492 (2018).

8. *Eaglin*, 2017-127 at p. 2; 228 So. 3d at 282.

9. *Id.* at pp. 2-3; 228 So. 3d at 282.

10. *Id.* at p. 7; 228 So. 3d at 285.

11. *Eaglin*, 2017-1875 at p. 1; 2018 WL 3154744, at *1.

12. *Id.* at p. 8; 2018 WL 3154744, at *4. The court also noted its agreement with the decisions of both lower courts on the issue of whether or not Mr. Powell's claims could relate back to the date of Mr. Eaglin's timely filed petition. *Id.*

13. See *De Bouchel v. Koss Constr. Co.*, 149 So. 496, 497 (La. 1933).

This Note first discusses the Louisiana Supreme Court’s view on prescription as it relates to commencement of the prescriptive period, common law statutes of limitation, and claims relating back to timely filed petitions. Next, the Note examines how Louisiana courts have ruled on issues involving prescription of false imprisonment and false arrest claims, including the potential applicability of *contra non valentem* depending on the facts of any particular case. An application of these concepts to the court’s decision in the noted case follows. Finally, the Note addresses the workability of the holding in *Eaglin v. Eunice Police Department* and proposes two alternative methods of analysis for the issue at hand.

II. BACKGROUND

Under Louisiana law, liberative prescription functions to “afford a defendant economic and psychological security if no claim is made timely, and to protect him from stale claims and from the loss of non-preservation of relevant proof.”¹⁴ As opposed to “destroy[ing] the right itself,” a prescriptive period “merely prevents the enforcement of a right such that a natural obligation remains after prescription has run.”¹⁵ A civilian prescriptive period differs from a common law statute of limitation that “takes away a remedy” because prescription “confers a right,” namely, a natural obligation that can be acknowledged and subsequently enforced.¹⁶

For an action sounding in tort, “prescription commences to run from the day injury or damage is sustained.”¹⁷ The day injury or damage is sustained does not mean that the entirety of the harm must have occurred on that day, but only that “[a]ny appreciable and actual harm flowing from the . . . negligent conduct establishes a cause of action upon which the [plaintiff] may sue.”¹⁸ Further, there may exist “countervailing factors” that suspend or delay the commencement of

14. *Giroir v. S. La. Med. Ctr.*, 475 So. 2d 1040, 1045 (La. 1985).

15. *State v. McInnis Bros. Constr.*, 97-0742, p. 2 (La. 10/21/97); 701 So. 2d 937, 939; *see also Dufrene v. Video Co-op*, 2002-1147, p. 17 (La. 4/9/03); 843 So. 2d 1066, 1077 (“Liberative prescription merely prevents the enforcement of a right by action, whereas, in contrast, peremption destroys the right itself”).

16. 54 C.J.S. *Limitations of Actions* § 5 (2019); *see also La. Health Serv. & Indem. Co. v. McNamara*, 561 So. 2d 712, 718 (La. 1990) (stating that prescriptive periods “act to extinguish the civil obligation to which they apply,” while statutes of limitation are mere “procedural bars to the enforcement of obligations”).

17. LA. CIV. CODE art. 3492 (2018).

18. *Braud v. New England Ins. Co.*, 576 So. 2d 466, 468 (La. 1991).

the prescriptive period, such as an attorney's continuous representation of a client regarding the specific subject matter of a malpractice claim.¹⁹

In some instances, however, a claim that would prescribe on its own can be considered timely if filed as an amendment to a petition that was filed within the prescriptive period, by relation back to the date of filing of the original petition.²⁰ The Louisiana Supreme Court has established that four elements must be met in order for a plaintiff to bring an otherwise time-barred claim:

- (1) the amended claim arises out of the same conduct, transaction, or occurrence set forth in the original pleading;
- (2) the defendant either knew or should have known of the existence and involvement of the new plaintiff;
- (3) the new and the old plaintiffs are sufficiently related so that the added or substituted party is not wholly new or unrelated;
- (4) the defendant will not be prejudiced in preparing and conducting his defense.²¹

In *Giroir v. South Louisiana Medical Center*, the court held that “no essential protective purpose of the prescriptive statute” would be violated by allowing the relation back of a daughter's claim in a survival action where defendants were put on notice of the child's potential claim through the facts of the original petition and where the original and new plaintiffs shared “close, familial and legal relationships.”²² Although relation back is a useful and necessary tool of civil procedure, its scope is limited and inapplicable for most people seeking redress for injuries they have personally sustained.

In addition to statutory interruptions or suspensions of prescription, Louisiana courts have recognized the doctrine of *contra non valentem agere nulla currit praescriptio*, which establishes that “prescription does not run against a party who is unable to act.”²³ Although the Louisiana Supreme Court has cited the doctrine as descending from both civilian and common law traditions, the idea “appears to have originated as a gloss” by medieval scholars who inferred the principle from a number of Roman rules.²⁴ The court has

19. *Id.*

20. *Giroir v. S. La. Med. Ctr.*, 475 So. 2d 1040, 1044 (La. 1985).

21. *Id.*

22. *Id.* at 1045. *But see* *Boquet ex rel. Billiot v. SWDI, L.L.C.*, 2007-0738, p. 9 (La. App. 1 Cir. 6/6/08); 992 So. 2d 1059, 1065 (finding that a stepmother's claim did not relate back to the date of the stepchild's original petition); *Delmore v. Hebert*, 99-2061, p. 7 (La. App. 1 Cir. 9/22/00); 768 So. 2d 251, 255 (holding that an aunt's claim did not relate back to that of her niece).

23. *Corsey v. State Dep't of Corr.*, 375 So. 2d 1319, 1321 (La. 1979).

24. Douglas Nichols, *Contra Non Valentem*, 56 LA. L. REV. 337, 338-39 (1995).

applied the doctrine in four situations: (1) where legal cause prevented the courts from taking notice or acting on plaintiff's claim; (2) when some condition connected to the proceedings prevented the plaintiff from action; (3) where the debtor has done something to prevent the creditor from acting upon his cause of action; and (4) where the cause of action is not known or reasonably knowable by the plaintiff, even when the defendant has not caused his ignorance.²⁵ Thus, when an individual fails to timely bring a claim due to one of the aforementioned reasons, *contra non valentem* can be used to "soften the . . . harshness of prescription statutes."²⁶

In particular, courts have struggled with whether or not to apply the doctrine of *contra non valentem* to claims for false arrest and imprisonment. Under Louisiana law, an individual alleging a cause of action for false arrest must show (1) the detention of that person and (2) the unlawfulness of the detention.²⁷ In *De Bouchel v. Koss Construction Co.*, the plaintiff had been arrested, imprisoned, charged, and released on the same day, June 5, 1931.²⁸ The plaintiff was subsequently acquitted at trial on July 7, 1931.²⁹ He then filed suit on July 5, 1932, alleging false imprisonment and malicious prosecution.³⁰ The Louisiana Supreme Court found that prescription for the false imprisonment cause of action began to run on June 5, 1931, the day that the plaintiff was falsely imprisoned and released.³¹

The Louisiana Supreme Court emphasized the fundamental distinction between malicious prosecution and false imprisonment, finding it significant that since malicious prosecution relies on the termination of the prosecution favorably to plaintiff, while false imprisonment stems from an arrest and detention, the former begins to prescribe on the date that the action is resolved, while the latter depends on the time of imprisonment.³² *De Bouchel* does not provide specific guidance as to whether prescription for false imprisonment commences to run on the date of arrest or the date of release because the plaintiff in question was arrested and released on the same day.³³

25. *Corsey*, 375 So. 2d at 1321-22.

26. *Bouterie v. Crane*, 616 So. 2d 657, 660 (La. 1993).

27. *Richard v. Richard*, 2011-0229, p. 5 (La. 10/25/11); 74 So. 3d 1156, 1159.

28. 149 So. 496, 497 (La. 1933).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *See id.*

The United States Supreme Court, however, has ruled directly on this issue. In a federal 42 U.S.C. § 1983 claim, the Court applied an Illinois statute of limitation and held that the limitation period begins to run when false imprisonment ends, meaning when the person becomes held under proper legal process.³⁴ After a person becomes legally held, they may still recover for wrongful imprisonment under the tort of malicious prosecution.³⁵ In *Wallace v. Kato*, the Court held that the statute of limitations of plaintiff's claim for false arrest had run because the limitations period began when he became detained pursuant to legal process.³⁶ The plaintiff in *Wallace* was arrested without probable cause and allegedly coerced into giving a confession.³⁷ In his suit for false imprisonment, Wallace argued that the statute of limitations began to run on the date of his release from custody, but the Court found that detention pursuant to legal process began when the magistrate bound him over for trial.³⁸ Justice Breyer, in his dissent, argued for application of the doctrine of equitable tolling, which applies when a plaintiff is unable to sue in time due to "disability, irremediable lack of information, or other circumstances beyond his control."³⁹

Louisiana courts have, however, generally concluded that prescription begins to run on the date of imprisonment. The Louisiana Third Circuit found in *Murray v. Town of Mansura* that a plaintiff's action had prescribed when it was filed more than a year after his release from imprisonment.⁴⁰ The Louisiana Fifth Circuit Court of Appeal reached a similar conclusion in *Jackson v. Jefferson Parish Clerk of Court* when they held that a plaintiff who had been imprisoned for four years due to an erroneous minute entry that caused revocation of his parole could not bring suit because he had knowledge of the mistake and thus the action had prescribed.⁴¹

The general trend, however, is that regardless of specific prescriptive periods or fact patterns, *contra non valentem* does not apply simply because a plaintiff is imprisoned.⁴² In *Buvens v. Buvens*,

34. *Wallace v. Kato*, 549 U.S. 384, 389 (2007).

35. *Id.* at 390.

36. *Id.* at 397.

37. *Id.* at 386, 391.

38. *Id.* at 391.

39. *Id.* at 400 (Breyer, J., dissenting) (quoting *Miller v. Runyon*, 77 F.3d 189, 191 (7th Cir. 1996)).

40. 2006-355, p. 7 (La. App. 3 Cir. 9/27/06); 940 So. 2d 832, 838.

41. 07-963, pp. 2-3, 7 (La. App. 5 Cir. 4/15/08); 981 So. 2d 156, 158-59, 161.

42. *See* *Lloyd v. Howard*, 566 So. 2d 424, 425 (La. App. 3 Cir. 1990).

the Louisiana Third Circuit determined that the plaintiff's claim for false imprisonment while incarcerated and in a mental institution had prescribed because prescription began to run when he was arrested and there was no showing that *contra non valentem* applied.⁴³ The Louisiana Supreme Court subsequently decided in *Corsey v. State Department of Corrections*, however, that where a defendant had custody and control over a person who suffered from decreased mental facilities due to the defendant's neglect in his medical treatment, *contra non valentem* applied to suspend the prescriptive period until his release.⁴⁴ Since the prison's failure to provide medical care resulted in the plaintiff's decreased physical and mental capacity to the point where he "lacked any understanding of what had happened to him and of his possible legal remedies," prescription could not run against him until he regained awareness of the situation and his condition.⁴⁵

III. COURT'S DECISION

In the noted case, the Louisiana Supreme Court established a restrictive rule on prescription for false imprisonment claims by conflating the torts of false arrest and malicious prosecution and improperly distinguishing civilian and common law limitation periods. First, the court explained its previous decisions in cases dealing with prescription and false imprisonment. Then, it outlined the approaches taken by various Louisiana appellate courts.⁴⁶ The court pointed to *De Bouchel* as the last time it addressed this issue, but acknowledged *De Bouchel*'s limited applicability to the present matter.⁴⁷ The plaintiff in *De Bouchel*, unlike the present case, had been arrested, imprisoned, charged, and released on the same day.⁴⁸

In *De Bouchel*, the Louisiana Supreme Court held that prescription for both the false imprisonment and malicious prosecution causes of action began to run on the day the plaintiff was falsely imprisoned and released.⁴⁹ Using *De Bouchel*, the Louisiana Third Circuit in *Eaglin* determined that prescription began to run on the plaintiff's date of release, rather than the date on which his charges

43. 286 So. 2d 144, 145, 147 (La. App. 3 Cir. 1973).

44. 375 So. 2d 1319, 1323 (La. 1979).

45. *Id.* at 1320-21.

46. *Eaglin v. Eunice Police Dep't*, 2017-1875, pp. 3-5 (La. 6/27/2018); 2018 WL 3154744, at *2-3.

47. *Id.* at pp. 3-4; 2018 WL 3154744, at *2 (citing 149 So. 496, 497 (La. 1933)).

48. *Id.* (citing 149 So. at 497).

49. 149 So. at 497.

were dismissed.⁵⁰ In contrast, the Louisiana Supreme Court relied upon the “well-settled concept that prescription commences to run from the day injury or damage is sustained” in establishing that Powell’s injuries were sustained on the day he was arrested; therefore, prescription began to run on that date.⁵¹

Next, the court declined to apply United States Supreme Court precedent, which established that under “general common law principles,” the statute of limitations in a false imprisonment case begins to run when the false imprisonment ends.⁵² The Louisiana Supreme Court reasoned that because common law statutes of limitation and civil law prescriptive periods are distinct from one another, the ruling was not persuasive in the present case.⁵³ The distinction, the court alleges, stems from the idea that “civilian prescriptive periods act to extinguish the civil [i.e., legal] obligation to which they apply,” while “statutes of limitations at common law . . . are merely procedural bars to the enforcement of obligations.”⁵⁴

Further distinguishing civil law prescription from common law statutes of limitations, the court evaluated the doctrine of *contra non valentem* as an alternate means of achieving justice for an individual who has been injured by false imprisonment.⁵⁵ While the United States Supreme Court in *Wallace* established a clear rule for delaying the commencement of the limitations period under the theory that “the victim may not be able to sue while he is still imprisoned,”⁵⁶ the Louisiana court contended that such concerns are already addressed through the doctrine of *contra non valentem*.⁵⁷ The doctrine of *contra non valentem*, which provides for the suspension of prescription for a plaintiff who is unable to exercise his cause of action, serves to “ameliorate the harshness which would result from the strict application of prescription in certain situations.”⁵⁸ Louisiana courts

50. 2017-127, pp. 6-7 (La. App. 3 Cir. 10/4/17); 228 So. 3d 280, 284-85, *rev'd*, 2017-1875; 2018 WL 3154744.

51. *Eaglin*, 2017-1875 at p. 6; 2018 WL 3154744, at *3.

52. *Id.* at pp. 6-7; 2018 WL 3154744, at *3-4 (citing *Wallace v. Kato*, 549 U.S. 384, 389 (2007)).

53. *Id.* at p. 7; 2018 WL 3154744, at *4.

54. *Id.* (quoting *La. Health Serv. & Indem. Co. v. McNamara*, 561 So. 2d 712, 718 (La. 1990)).

55. *See id.*

56. 549 U.S. at 389.

57. *Eaglin*, 2017-1875 at p. 6; 2018 WL 3154744, at *4.

58. *Id.* (citing *State v. McInnis Bros. Constr.*, 97-0742, p. 3 (La. 10/21/97); 701 So. 2d 937, 940).

agree that “the mere fact that [a] Plaintiff [is] in prison is not an excuse for failing to file suit timely.”⁵⁹

Under certain circumstances, however, plaintiffs have been allowed to invoke *contra non valentem* when some specific condition prevented their awareness of the injury sustained or kept them from filing timely. The court distinguished *Corsey*, where a plaintiff was incapable of understanding what had happened and prescription was suspended under *contra non valentem*, from the present case, where merely the imprisonment itself impeded the plaintiff’s filing of his suit.⁶⁰ The court also recognized, however, that the circuit courts have often declined to apply the doctrine in false imprisonment cases.⁶¹ Since Powell did not allege any specific condition or reason for not filing his suit timely, the court declined to apply the theory to the present case, although it noted that the doctrine may be applicable to “false arrest and imprisonment claims under an appropriate set of facts.”⁶²

Unlike the majority, Chief Justice Johnson found the United States Supreme Court’s decision in *Wallace* applicable and persuasive in this situation.⁶³ In the interest of justice and judicial efficiency, she recommended following the rule set forth by the Supreme Court in order to establish an absolute rule that does not “particularize prescription limitations for those incarcerated.”⁶⁴ Chief Justice Johnson, therefore, supports a prescriptive period for false imprisonment that commences when imprisonment ends. Under such a rule, the incarcerated person no longer bears the burden of showing why they were unable to timely file suit, which “effectively shortens the prescriptive period for this category of litigants.”⁶⁵ In her view, prescription for Powell’s claim should have begun to run the day he was released, making the present cause of action timely.⁶⁶

In his dissent, Justice Hughes relied on political commentary as well as the distinction between false arrest and malicious prosecution

59. *Id.* at p. 5; 2018 WL 3154744, at *3 (emphasis omitted).

60. *Id.* at p. 6; 2018 WL 3154744, at *3 (citing 375 So. 2d 1319, 1324 (La. 1979)).

61. *Id.* at pp. 4, 6; 2018 WL 3154744, at *2-3 (citing *Buvens v. Buvens*, 286 So. 2d 144 (La. App. 3 Cir. 1973)).

62. *Id.* at p. 8; 2018 WL 3154744, at *4. The court also affirmed the lower court’s decision to disallow relation back in this instance.

63. *Id.* at p. 1; 2018 WL 3154744, at *5 (Johnson, C.J., dissenting).

64. *Id.* at p. 2; 2018 WL 3154744, at *5.

65. *Id.*

66. *Id.*

to support his position.⁶⁷ Since the plaintiff in a false arrest suit seeks recovery for the time they spent unlawfully confined, Justice Hughes explained that “every day that a person is falsely imprisoned is a harm to that person.”⁶⁸ Since the harmful act continues to cause injury to the individual until he is released, the most logical approach would be to commence the running of prescription once the tortious behavior has ceased.⁶⁹ To this end, Justice Hughes remarked, “I realize that in today’s world Dumas and Voltaire are not as fashionable as once they were, and the freedom of some may be considered worth more than that of others, but every day taken is worth something until the false imprisonment is ended.”⁷⁰

IV. ANALYSIS

Both Chief Justice Johnson and Justice Hughes provide valid critiques of the majority opinion. Based on their policy considerations and practical concerns, two alternative approaches provide a more workable and fair result. Further building off of the distinction between malicious prosecution and false arrest, the Louisiana Supreme Court has held that where an action is “continuous on an almost daily basis, by the same actor, of the same nature, and the conduct becomes tortious and actionable because of its continuous, cumulative, synergistic nature, then prescription does not commence until the last act occurs or the conduct is abated.”⁷¹

The Eastern District of Louisiana, interpreting Louisiana civil procedure under a federal § 1983 action, held that false imprisonment constituted a continuing tort. Therefore, the action was still valid, but the plaintiff could only recover limited damages due to a Louisiana rule that “confine[s] the plaintiff’s recovery to those damages incurred during the year immediately preceding the commencement of his action.”⁷² As Justice Hughes concluded in *Eaglin*, “every day taken is worth something until the false imprisonment is ended.”⁷³ Voltaire,

67. *See id.* at p. 1; 2018 WL 315474, at *6 (Hughes, J., dissenting).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Bustamento v. Tucker*, 607 So. 2d 532, 542 (La. 1992). *But see In re Med. Review Panel ex rel. Moses*, 2000-2643, pp. 2, 23 (La. 5/25/01); 788 So. 2d 1173, 1175, 1187 (finding that a doctor failing to remove stitches from a patient was not a continuing tort).

72. *Whitsell v. Rodrigues*, 351 F. Supp. 1042, 1045 (E.D. La. 1972) (citing *Parro v. Fifteen Oil Co.*, 26 So. 2d 30, 33 (La. App. 1 Cir. 1946)).

73. 2017-1875 at p. 1; 2018 WL 3154744, at *6.

commenting on practices of English courts, said, “[N]ot only is false imprisonment in ordinary cases punished by heavy damages and severe penalties, but if an illegal imprisonment has been ordered . . . under color of royal authority, that minister may be condemned to pay damages corresponding to the imprisonment.”⁷⁴ Similarly, in his novel critiquing the justice system and condemning false imprisonment, Alexandre Dumas says of his main character, “Dantès passed through all the stages of torture natural to prisoners in suspense.”⁷⁵ The injury sustained to a falsely imprisoned individual does not occur on the date of arrest. While the damage may commence at that time, it continues to accrue as time progresses. The nature of the injury is wholly unlike an automobile accident, where one act causes continuing pain and inconvenience.⁷⁶ Each day is a continuation and compounding of the injury that the falsely imprisoned individual has suffered. The longer the imprisonment occurs, the higher the risk of losing employment or housing, or suffering irreparable damage to one’s reputation.

On the other hand, if the court views false imprisonment as a singular event occurring only on the date of arrest, an approach similar to the discovery rule of *contra non valentem* may be appropriate. Historically, imprisonment has been deemed a condition that stops the running of the time of limitation.⁷⁷ This may be because a person is physically unable to file suit, or because they are discouraged or disadvantaged because of their specific circumstances. Similar to suits between a parent and minor child, which are suspended during minority,⁷⁸ one under the “custody and control” of another cannot—and should not—be expected to file suit while the custodial relationship exists.⁷⁹

Even though under current precedent the individual may show circumstances indicating an actual inability to file suit, they are still at a disadvantage due to the situation they have been put in by the

74. 4 VOLTAIRE, A PHILOSOPHICAL DICTIONARY 21 (William F. Fleming trans., 1901).

75. ALEXANDRE DUMAS, THE COUNT OF MONTE CRISTO 91 (Wordsworth Editions Ltd. 1997) (1844).

76. *But see* *Buvens v. Buvens*, 286 So. 2d 144, 147 (La. App. 3 Cir. 1973) (finding that damages suffered due to false imprisonment were “analogous . . . to injuries received in an accident which results in physical injury to the person” because “[a]lthough he was committed during this period of time, the events which caused his damage were his arrest, and the commitment to the hospital for treatment”).

77. Allain D. Favrot, Comment, *The Scope of the Maxim Contra Non Valentem in Louisiana*, 12 TUL. L. REV. 244, 245 n.12 (1938).

78. LA. CIV. CODE art. 3469 (2018).

79. *Corsey v. State Dep’t of Corr.*, 375 So. 2d 1319, 1324 (La. 1979).

defendant. A fair medium between prison serving as a universal excuse to avoid prescription and those who have been harmed by a defendant bearing the burden of proving that they were prevented from exercising their rights may come in the form of a presumption of *contra non valentem* during the period of imprisonment for those who have been falsely imprisoned. None of the specified purposes for instituting prescriptive periods apply.⁸⁰ A person keeping another falsely imprisoned is certainly on notice that they are doing so and may face liability. Furthermore, a plaintiff would still be limited to a prescriptive period of one year after their release, so evidentiary preservation would not cause complications.

V. CONCLUSION

The Louisiana Supreme Court established a precedent for the prescription of false imprisonment claims that stands in opposition to public policy and conceptions of justice. For a false imprisonment claim, a necessary element of which is the unlawfulness of a person's detention, the person being held should receive the benefit of the doubt when it comes to prescription. While an individual may be able to file suit while imprisoned, if the detention is unlawful and they seek to recover from the person causing the imprisonment, they should be given a reasonable opportunity to do so. By classifying false imprisonment as a continuous tort or allowing a presumption of *contra non valentem*, those who have been injured by the tortious conduct of another can be made whole, as the law requires.

Gabrielle A. Ball*

80. See *supra* text accompanying note 14.

* © 2019 Gabrielle A. Ball. J.D. candidate 2020, Tulane University Law School; B.A. 2018, Tulane University. Thank you to the editors and staff of the *Tulane Law Review* for their support and feedback. This Recent Development is dedicated to my parents who provide me with endless love and encouragement.