

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2025 CA 1015

GINA SHORT, HANNAH SHORT AND HAMPTON SHORT

VERSUS

JAMES KEITH SHORT

WKS

Judgment Rendered: MAR 25 2026

* * * * *

CHH

On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 708272 • Sec. 21

EW by CHH

Honorable Ronald R. Johnson, Judge Presiding

* * * * *

Lisa M. Prater Bailey
Baton Rouge, Louisiana
-and-
Michael A. Dalman
Lafayette, Louisiana

Counsel for Plaintiffs-Appellees,
Gina Short, Hannah Short and
Hampton Short

Marcus T. Foote
Baton Rouge, Louisiana
-and-
Janika D. Polk
New Orleans, Louisiana

Counsel for Defendant-Appellant,
James Keith Short

* * * * *

BEFORE: LANIER, WOLFE, AND HESTER, JJ.

HESTER, J.

Defendant, James Keith Short (“Keith”), appeals from the trial court judgment granting summary judgment in favor of his children, Hannah Short and Hampton Short, and his former wife, Gina Smith Short (collectively “plaintiffs”) under the Louisiana Uniform Transfers to Minors Act (“UTMA”), La. R.S. 9:751-773, and the trial court judgment denying his motion for new trial. For the following reasons, we vacate the portion of the summary judgment awarding expert witness fees and remand. In all other respects, the judgments are affirmed.

FACTS AND PROCEDURAL HISTORY

Gina, Hannah, and Hampton filed suit against Keith for breaching his duty as custodian for accounts established for Hannah and Hampton under the UTMA, for committing the torts of conversion and forgery, and for an accounting as provided for by the UTMA. According to their petition, six UTMA accounts were at issue:

1. Hannah’s Fidelity UTMA account opened by Keith in 1999 with Keith as the custodian (“Hannah’s Fidelity UTMA”)
2. Hannah’s Coca-Cola UTMA account opened by her maternal grandfather in 2004 with Gina as the custodian (“Hannah’s Coca-Cola UTMA”)
3. Hannah’s Oakmark Funds UTMA account opened by her maternal grandfather in 2004 with Keith as the custodian (“Hannah’s Oakmark UTMA”)
4. Hampton’s Fidelity UTMA account opened by Keith in 2003 with Keith as the custodian (“Hampton’s Fidelity UTMA”)
5. Hampton’s Coca-Cola UTMA account opened by his maternal grandfather in 2004 with Keith as the custodian (“Hampton’s Coca Cola UTMA”)
6. Hampton’s Oakmark Funds UTMA account opened by his maternal grandfather on January 30, 2004 with Keith as the custodian (“Hampton’s Oakmark UTMA”)

In their petition, plaintiffs contend that in violation of the UTMA, Keith moved the funds from the Oakmark and Coca-Cola UTMA accounts funded by their maternal grandfather into non-UTMA accounts. Specifically, they alleged he moved the funds into Fidelity 529 College plans in Keith’s name with Hannah and Hampton as beneficiaries, but no longer as owners of the funds. Plaintiffs further contend that Keith moved funds from their Fidelity UTMA accounts into his “Real Estate

Account” in 2015 in order to purchase a condominium near Louisiana State University in his and Gina’s names, and in 2020, moved funds from their Fidelity UTMA accounts into a community checking account. The petition alleges that Keith forged the signatures of Hannah, Hampton, and Gina to accomplish these transfers of funds.

Hannah and Hampton requested full compensation for what would have been the current value of their accounts had “[Keith] not converted the funds for his own use and such funds remained” in the accounts, as well as damages for breach of his obligation as custodian of the accounts and forgery. Gina sought damages for Keith usurping her duty as custodian of Hannah’s Coca-Cola UTMA and for forgery.

Thereafter, Hannah and Hampton filed a motion for partial summary judgment requesting that the remaining funds in their Fidelity UTMA accounts be transferred to them. A consent judgment was entered into by all parties ordering the immediate transfer of the funds in the Fidelity UTMA accounts to Hannah and Hampton. After this judgment, Keith’s attorney filed a motion to withdraw, and his attorney was allowed to withdraw on November 21, 2022.

On October 11, 2022, plaintiffs filed a second motion for partial summary judgment (‘plaintiffs’ motion for summary judgment’) contending that no genuine issues of material fact remained regarding the financial harm Keith caused Hannah and Hampton, nor as to the damages sustained by plaintiffs. Plaintiffs attached several exhibits to their motion including, among other documents, the affidavit of CPA Gus Levy, outlining his findings regarding the UTMA accounts with several supporting attachments; the affidavits of Hannah, Hampton, and Gina; and Keith’s responses to discovery and the transcript of a portion of his video testimony.

In response, Keith, through his attorney of record at the time, Brant M. Mayer, filed an opposition to plaintiffs’ motion for summary judgment, contending that

plaintiffs' claims had prescribed. He did not file any attachments or make any arguments on the merits of plaintiffs' motion for summary judgment.

On January 19, 2023, plaintiffs' motion for partial summary judgment came before the court for a hearing. On that day, Keith filed a peremptory exception raising the objection of prescription. After the hearing, the trial court signed a judgment on February 1, 2023, granting plaintiffs' motion for summary judgment¹ as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there is no genuine issue of material fact as to the issues raised in Plaintiff's Second Motion for Partial Summary Judgment, that Plaintiffs are entitled to judgment as a matter of law as prayed for, and the Plaintiff's Second Motion for Partial Summary Judgment is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that **DAMAGES** in favor of Plaintiffs and against the Defendant, James Keith Short, are awarded as follows:

\$57,589.99 to **HANNAH SHORT** which represents \$44,950.82 (which would have been the value of her UTMA accounts on the date the Petition was filed, but for the actions of the Defendant), \$2,639.17 (judicial interest on \$44,950.82[]) and \$10,000 as damages for Defendant's two forgeries of her signature;

\$47,613.97 to **HAMPTON SHORT**, which represents \$30,805.32 (which would have been the value of his UTMA accounts on the date the Petition was filed, but for the actions of the Defendant), \$1,808.65 (judicial interest on \$44,950.82) and \$15,000 as damages for Defendant's three forgeries of his signature;

\$5,000.00 to **GINA SHORT**, which represents damages owed to her for Defendant's forgery of her signature.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment for Costs [is] entered in favor of Plaintiffs and against the Defendant, James Keith Short, in the amount of **\$12,506.12**, which represents \$922.87 in filing fees, \$875.50 in Subpoena costs, and \$10,707.75 for the accounting report prepared by Gus Levy, CPA.

On February 22, 2023, Keith, represented by a third attorney, filed a motion for new trial contending that pursuant to La. Code Civ. P. art. 1972, the February 1,

¹ The judgment was designated as a final appealable judgment and appears to resolve all remaining claims raised by plaintiffs in their petition.

2023 judgment was clearly contrary to the law and evidence because “through no fault of [Keith] prior defense counsel failed and neglected to file a timely response addressing [p]laintiffs’ evidence and submitting additional evidence” and plaintiffs materially misrepresented the evidence. Keith argued in the alternative that a new trial should be granted pursuant to La. Code Civ. P. art. 1973 in order to avoid the “substantial injustice of depriving [Keith] of his day in court through no fault of his own.”

On November 13, 2023, Keith’s motion for new trial came before the court for a hearing. Keith submitted into evidence four documents that were attached to his motion for new trial and supplemental briefing on the motion for new trial including, his affidavit; excerpts from a deposition of his former attorney, Mr. Mayer; and authentication of phone records between him and Mr. Mayer’s office. Plaintiffs also introduced several documents that were attached to their opposition to the motion for new trial as well as the full deposition of Mr. Mayer.

On December 12, 2023, the trial court signed a judgment denying Keith’s motion for new trial. Keith appealed from this judgment as well as the February 1, 2023 judgment granting plaintiffs’ motion for summary judgment raising several assignments of error including:

1. The Trial Court committed legal error when it failed to grant a new trial under La. Code of Civil Procedure 1972 because a custodian’s transfer of funds to a non-UTMA account is not a per se breach of fiduciary duty.
2. The Trial Court committed manifest error by finding Appellant guilty of forgery when intent to defraud did not exist because he had statutory authority to make the transfer.
3. The Trial Court committed legal error when it erroneously granted additional growth and interest of the damage award in violation of statute because of a misunderstanding of when the conversion occurred.
4. The Trial Court committed manifest error when it failed to find good grounds for a new trial under Code of Civil Procedure 1973, thereby denying Appellant substantial justice.

5. The Trial Court legally erred in awarding expert fees to Appellee without a hearing in violation of the mandatory requirements of La. R.S. 13:3666.
6. The Trial Court committed legal error when it failed to allow an evidentiary hearing and rule on the Exception of Prescription.
7. The Trial Court committed manifest error when it failed to dismiss all claims regarding Hannah Short based on the Exception of Prescription.

LAW AND ANALYSIS

A new trial shall be granted when the verdict or judgment appears clearly contrary to the law and the evidence. La. Code Civ. P. art. 1972. A new trial may be granted in any case if there is good ground therefor, except as otherwise provided by law. La. Code Civ. P. art. 1973. The applicable standard of review of a judgment on a motion for new trial is whether the trial court abused its discretion. **Guillory v. Lee**, 2009-0075 (La. 6/26/09), 16 So.3d 1104, 1131; **Landry v. Thomas**, 2012-1974 (La. App. 1st Cir. 5/31/13), 2013 WL 2395151, *4 (unpublished) writ denied, 2013-1552 (La. 7/10/13), 118 So.3d 1099.

Louisiana Code Civil Procedure article 966(B) provides in pertinent part:

Unless extended by the court and agreed to by all of the parties, a motion for summary judgment shall be filed, opposed, or replied to in accordance with the following provisions:

(1) ... [A] motion for summary judgment and all documents in support of the motion shall be filed and served on all parties in accordance with Article 1313(A)(4) not less than sixty-five days prior to the trial.

(2) ... [A]ny opposition to the motion and all documents in support of the opposition shall be filed and served in accordance with Article 1313(A)(4) not less than fifteen days prior to the hearing on the motion.

...

(5) The court shall not reconsider or revise the granting of a motion for partial summary judgment on motion of a party who failed to meet the deadlines imposed by this Paragraph, nor shall the court consider any documents filed after those deadlines. (Emphasis added.)

In his first assignment of error, Keith contends that the February 1, 2023 judgment was clearly contrary to the law and evidence because the transfer of funds from a UTMA account to a non-UTMA account is not a per se breach of his fiduciary duty. As noted, Keith did not timely introduce any documents in opposition to plaintiffs' motion for partial summary judgment. When a motion for a new trial is based on the contention that the judgment is clearly contrary to the law and evidence, no additional evidence may be presented at the hearing on the motion. **Rivet v. State, Dept of Transp. & Development**, 2001-0961 (La. 11/28/01), 800 So.2d 777, 781. In accordance with **Rivet** and La. Code Civ. P. art. 966(B), we reviewed only the evidence submitted by plaintiffs in support of their motion for summary judgment to determine if the trial court abused its discretion in finding that the February 1, 2023 judgment was not clearly contrary to the law and evidence.

Under the UTMA, La. R.S. 9:762 outlines the mandatory duties of the custodian and provides in pertinent part:

A. A custodian shall do all of the following:

- (1) Take control of custodial property.
- (2) Register or record title to custodial property if appropriate.
- (3) Collect, hold, manage, invest, and reinvest custodial property.

B. In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

...

D. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in name of the custodian, followed in substance

by the words: “as a custodian for _____ (name of minor) under the Louisiana Uniform Transfers to Minors Act”.

E. A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or a legal representative of the minor or by the minor, if the minor has attained the age of fourteen years.

The affidavit of plaintiffs’ expert, Mr. Levy, and the supporting documents attached revealed that in April 2014, Hannah and Hampton’s Coca-Cola and Oakmark accounts created pursuant to the UTMA were closed, and checks were issued in the name of the children and Keith on both Oakmark accounts and Hampton’s Coca-Cola account. The check on Hannah’s Coca-Cola UTMA was issued in the name of Gina and Hannah. Thereafter, the funds were deposited into non-UTMA Fidelity accounts in Keith’s name. The documents attached to Mr. Levy’s affidavit show that the funds were added to two existing Fidelity education accounts, one with Hannah as the beneficiary, and the other with Hampton as the beneficiary. Mr. Levy stated that he could find no checks or other transfer of funds to Hannah or Hampton from the Fidelity accounts where the funds were deposited.

Mr. Levy’s affidavit further revealed that in September 2015 and October 2015, Keith withdrew funds totaling \$12,000.00 from Hannah’s Fidelity UTMA and \$12,000.00 from Hampton’s Fidelity UTMA and placed the funds in a non-UTMA account in Keith’s name. The \$12,000.00 taken from Hannah’s Fidelity UTMA as well as the \$12,000.00 taken from Hampton’s Fidelity UTMA was applied toward a down payment for the purchase of a condominium at 3330 Willard Street. In 2020, Keith withdrew \$600.55 each from Hannah and Hampton’s Fidelity UTMA accounts and deposited the funds into his checking account. After determining when and how much funds were taken from Hannah and Hampton’s UTMA’s, Mr. Levy calculated the funds that would have been in each UTMA account if Keith had not

removed the money. He included these amounts in his affidavit. These amounts were awarded to Hannah and Hampton in the February 1, 2023 judgment.

Hampton in his affidavit stated that he never gave consent for Keith to withdraw funds from his UTMA's, he never received any funds withdrawn by Keith, the endorsement signatures of "Hampton P. Short" on the back of checks from the Coca-Cola Company, Oakmark Funds, and Fidelity Brokerage Services were not his signatures, and he did not attend LSU or live at the 3330 Willard Street condominium. Hannah in her affidavit stated that she never gave consent for Keith to withdraw funds from her UTMA's, she never received any funds withdrawn by Keith, the endorsements signatures of "Hannah Short" on the back of checks from the Coca-Cola Company and Oakmark funds were not her signatures, and she lived at the 3330 Willard Street condominium, but paid rent to Keith. In her affidavit, Gina stated the endorsement signature "Gina Short" on the back of a check issued by the Coca-Cola Company to Gina (as custodian of the account) and Hannah was not her signature. She further stated that Keith never asked for nor did she give him consent to spend any funds from Hannah's Coca-Cola UTMA account.

Plaintiffs also introduced Keith's responses to plaintiffs' requests for production of documents. When asked to produce all records relating to Hannah and Hampton's UTMA accounts, Keith noted that he provided several statements, but "no accounting was performed by [him]. He utilized the statements."

While Louisiana has limited law interpreting the UTMA, it is apparent that the overriding goal of the UTMA is preserving the property for the minor exclusively and expend funds for the use and benefit of the minor. See Chase, 11 La. Civ. L. Treatise, Trusts § 1:7 (3d ed.)." In **Hester**, the court made it clear that the funds under the act belong to the minor rather than the custodian stating, as follows, "Appellant fails to recognize that he is a defendant in this case ... because he is the custodian of a fund which he created under the Act. The money in the account does

not belong personally to him as he seems to believe.” **Hester v. Hester**, 97-2009 (La. App. 4th Cir. 6/3/98), 715 So.2d 43, 46 writ denied, 98-1797 (La. 9/18/98), 724 So.2d 759. Further, La. R.S. 9:761 provides that a transfer made pursuant to the UTMA is irrevocable, and the custodial property is **indefeasibly vested in the minor**, but the custodian has all the rights, powers, duties, and authority provided by the UTMA.

In managing custodial property under the UTMA, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another, should at all times keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor, and shall keep records of all transactions with respect to custodial property. See La. R.S. 9:762.

In reviewing the evidence presented on plaintiffs’ motion for summary judgment, we cannot say that the trial court abused its discretion in its determination that the February 1, 2023 judgment was not clearly contrary to the law and evidence. While we agree that the transfer of funds from a UTMA account to a non-UTMA account is not a per se breach of Keith’s fiduciary duty under the act, the evidence on summary judgment was more extensive than that. Plaintiffs proved that Keith forged their signatures on several checks, moved funds from UTMA accounts to non-UTMA accounts in his name, did not keep the funds separate and distinct by adding funds to accounts with existing balances, and by using it to purchase a condominium where Hampton never resided, and Hannah paid rent to reside. Additionally, Keith was unable to provide any accounting or custodial records for the funds when requested in plaintiffs’ requests for production of documents, and Mr. Levy could find no checks or transfer of funds to Hannah or Hampton from the non-UTMA Fidelity accounts. Given this evidence, in order to show genuine issues of material facts remained Keith at a minimum had the burden to show some

evidence that the UTMA funds were used for the minors' benefit, that the funds were kept separate and distinct, and that he kept records with respect to the custodial property sufficient to identify it clearly as custodial property of the minors. For these reasons, we find no merit to Keith's first assignment of error.

In his second and third assignments of error, Keith raised issues regarding the burden of proving forgery and the damages awarded for conversion. As a general rule, appellate courts will not consider issues that were not raised in the pleadings, were not addressed by the trial court, or are raised for the first time on appeal. Pursuant to article 5, § 10 of the Louisiana Constitution, courts of appeal have broad supervisory jurisdiction; however, even with such broad power, this court will not act on the merits of a claim not yet acted upon by the lower tribunal, unless the interest of justice requires otherwise. **Burniac v. Costner**, 2018-1709 (La. App. 1st Cir. 5/31/19), 277 So. 3d 1204, 1210; see also Uniform Rules –Courts of Appeal, Rule 1-3. These issues were not raised in Keith's motion for new trial, and at no point did he raise these issues in the trial court. Therefore, this court declines to address these claims on appeal, and we pretermitt these assignments of error.

In his fourth assignment of error, Keith contends that the trial court committed manifest error when it failed to find good grounds for a new trial under La. Code Civ. P. art. 1973, thereby denying him substantial justice. Article 1973 allows a trial court to use its discretion to order a new trial whenever it is convinced by its examination of the facts that the judgment would result in a miscarriage of justice. **Horton v. Mayeaux**, 2005-1704 (La.5/30/06), 931 So.2d 338, 344. In this assignment of error, Keith contends that "good grounds" exist to warrant the granting of a new trial because through no fault of his own, his previous attorney's failure to file any documents in opposition to the motion for summary judgment prevented him from saying or doing anything in his defense. Keith cites three cases

where courts have granted a mistrial under La. Code Civ. P. art. 1973 based on the error of the attorney.

In **Hardy**, the supreme court held that good grounds existed under Article 1973 for the granting of a new trial after a default judgment was entered against the defendant, where the defendant's attorney was solely at fault in failing to provide an answer to the plaintiff's petition and failing to present an available and absolute defense of bankruptcy on the defendant's behalf. In its analysis, the Court stated that the modern trend of the jurisprudence is to render justice upon the merits of the controversy, rather than defeat justice upon technicalities. **Hardy v. Kidder**, 292 So.2d 575, 579 (La.1973).

In **Lamb**, the supreme court recognized that a default judgment entered because the litigant's former attorney failed to file an answer constituted a miscarriage of justice that should be corrected with a new trial. The supreme court noted that the defendant had no knowledge that the plaintiff's petition had not been answered nor was she provided with prior notice by the plaintiff's counsel of his intention to take a default judgment, even though the plaintiff's counsel was aware that the defendant had fired her attorney. As a result, the supreme court reasoned that a miscarriage of justice would result by depriving the defendant of the opportunity to defend her case on the merits all the while she had been victimized by the neglect of her attorney, and the overzealous actions of the plaintiff's counsel; to allow this judgment to stand would be to permit technical pleading rules to triumph over actual justice. **Lamb v. Lamb**, 430 So.2d 51, 53-54 (La.1983).

In **Smith**, the third circuit held that the workers' compensation judge abused his discretion in failing to grant a new trial to the plaintiff on discretionary grounds under Article 1973 where the defendant filed a motion for summary judgment and the motion was set for hearing, and on the date of the hearing, the plaintiff realized that her attorney had failed to submit an opposition brief or any documentation

opposing the defendant's motion for summary judgment. The court noted that the plaintiff expressed her intention to defend against the motion and appeared at the hearing prepared to testify on her behalf with her travel diary that she maintained and her husband who was also prepared to testify. The court noted that unfortunately, the plaintiff had been ill-advised as to the admissibility of her testimony; but determined that "her appearance in court and her willingness to participate in her defense [was] relevant to [their] view of the injustice that ultimately transpired." The court further took note that it was the attorneys "unilateral error" and that the plaintiff presented facts that supported the denial of the motion for summary judgment. The court applied the holdings of **Hardy** and **Lamb** reasoning that a proper application of Article 1973 necessitates a careful examination of the facts and circumstances of each case to prevent the miscarriage of justice when a party is prejudiced by their attorney's error. **Smith v. Alliance Compressors**, 2005-855, (La. App. 3 Cir. 2/1/06), 922 So.2d 674, 680-681. These cases collectively illustrate the court's reluctance to allow technical pleading rules to triumph over actual justice when unilateral error by the attorney prejudices a party's ability to present its case on the merits.

In support of his motion for new trial, Keith introduced his affidavit, which stated that he was prepared to provide an affidavit and documentary evidence in opposition to plaintiffs' motion for summary judgment, but "Mr. Mayer advised [him] that the evidence was not needed." Mr. Mayer's full deposition was attached to plaintiffs' opposition to the motion for new trial. In his deposition, Mr. Mayer said that he was hired around November 21, 2022, and the next day attended a status conference on the case with the trial court judge where he and Keith discussed opposing the plaintiffs' motion for summary judgment. The call log between Mr. Mayer's office and Keith showed a one minute and twenty-six second call on December 29, 2022, where Mr. Mayer said he spoke with Keith about the need for

information or documentation for the opposition. Mr. Mayer said he believed there were conversations with others in his office. Also attached to Keith's supplemental memorandum in support of his motion for new trial was a transcript of a December 29, 2022 voice message left by Mr. Mayer's paralegal to Keith stating that they needed to schedule an appointment the next day to get the opposition to the motion for summary judgment filed and for Keith to call her back. It does not appear from the evidence that Keith returned the phone call.

Mr. Mayer stated, "...this is my recollection of it. I think we had been attempting to contact Mr. Short. He had promised us some information, and we hadn't received it. And then...we ran out of time. We had to file the ...Memorandum in Opposition." He said it was sometime after that Keith offered to provide him with some information. Mr. Mayer said it was at that point that he told Keith it was too late. He said he never told Keith that evidence was not needed. Mr. Mayer stated that on January 4, 2023, he filed an opposition to plaintiffs' motion for summary judgment based on prescription with no evidence attached.

Under our manifest error review, considering the facts presented, we find it was within the trial court's discretion to deny the motion for new trial. Keith's assertion that no documents were filed in opposition to plaintiffs' motion for summary judgment through no fault of his own is disputed by Mr. Mayer's deposition as well as the transcript of the voicemail left by Mr. Mayer's paralegal. The record demonstrates that Keith bore at least partial responsibility for not communicating with his attorney. This is distinguishable from the cases cited herein where the courts found a miscarriage of justice based on the unilateral error of the attorney.

Furthermore, while Louisiana courts have considered circumstances where a party asserts that the conduct of an attorney has created a miscarriage of justice warranting a new trial, appellate courts have also considered whether a new trial

would likely have a different result. See **Caceres v. United Auto. Ins. Co.**, 2014-0418 (La. App. 4th Cir. 11/5/14), 154 So.3d 584, 590. Keith provided an affidavit stating that in response to plaintiffs' motion for summary judgment his "affidavit would have stated that the withdrawn funds at issue in this litigation were re-invested as permitted by applicable law" and that the "the custodial funds in question were re-invested for the benefit of [Hannah] and [Hampton], ultimately in a condominium at 3330 Willard Street." His assertion in an affidavit alone without some supporting documentary evidence fails to show that the outcome would have likely been different had he opposed the motion for summary judgment. We find no merit to Keith's fourth assignment of error.

In his fifth assignment of error, Keith contends that the trial court erred in awarding expert fees to Appellee without a hearing in violation of the mandatory requirements of La. R.S. 13:3666. In their brief, plaintiffs consent to a remand for a contradictory hearing on their expert, Gus Levy's fees. Therefore, we vacate the portion of the judgment awarding plaintiffs' expert's fees and remand that matter to the trial court to conduct a hearing in accordance with La. R.S. 13:3666.

In his sixth and seventh assignments of error, Keith contends that the trial court committed legal error when it failed to allow an evidentiary hearing and rule on Keith's exception of prescription, and committed manifest error when it failed to dismiss all claims regarding Hannah based on the exception of prescription. In response to these assignments of error, plaintiffs filed a motion for dismissal requesting that these assignments of error be dismissed because they were not included in Keith's La. Code Civ. P. art. 2129 designation of the appeal. In response, Keith filed an answer to plaintiffs' motion to dismiss and filed a peremptory exception of prescription with this court. Keith's exception contends that Hannah's claims are prescribed because prescription began to run when she turned eighteen on June 30, 2015, and the petition was not filed until June 3, 2021.

In the petition, Hannah alleged that she learned about the forgery of her signature “for the first time in 2021, when Fidelity produced documents in response to a subpoena request in [her parent divorce proceeding]” and “Defendant kept [Hannah’s] Fidelity UTMA Accounts a secret” and Hannah did not know that the Fidelity UTMA’s existed until 2021, when Fidelity responded to a subpoena request in the divorce proceedings. Additionally, Hannah included in her petition the transcript of a phone conversation with Keith where he stated that he set up the account for tax reasons “that [Hannah] wouldn’t even be aware of without [her] mom...digging into whatever she can.”

Prescription commences when a plaintiff obtains actual or constructive knowledge of facts indicating to a reasonable person that he or she is the victim of a tort. **Campo v. Correa**, 2001-2707 (La. 6/21/02), 828 So. 2d 502, 510. In her petition, Hannah alleged with particularity that she did not discover Keith’s actions with regard to her UTMA accounts until 2021 when Fidelity responded to a subpoena in her parents’ divorce proceeding. With this, we find the burden of proof was on Keith to show that Hannah’s claims had prescribed. See **Theriot v. Physicians Medical Center, LLC**, 2021-1468 (La. App. 1st Cir. 10/27/22) 2022 WL 15161590 *4-5. Keith offered no evidence with his prescription exception filed with this court, and Hannah’s claims were not prescribed on the face of the petition. Keith’s sixth and seventh assignment of error are without merit.

CONCLUSION

For the foregoing reasons, the portion of the February 1, 2023 judgment awarding expert witness fees in the amount of \$10,707.75 is vacated and remanded to the trial court for a hearing in accordance with La. R.S. 13:3666. In all other respects, the February 1, 2023 summary judgment, as well as the December 12, 2023 judgment denying Keith’s motion for new trial are affirmed. All costs of this appeal are assessed to defendant-appellant, James Keith Short.

**FEBRUARY 1, 2023 JUDGMENT AFFIRMED IN PART: VACATED
IN PART AND REMANDED. DECEMBER 12, 2023 JUDGMENT
AFFIRMED.**