NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 1841

FLOYD MARSHALL

VERSUS

WEST BATON ROUGE PARISH FIRE PROTECTION DISTRICT NO. 1 AND THE CITY OF PORT ALLEN

Judgment rendered September 20, 2006.

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Appealed from the
18th Judicial District Court
in and for the Parish of West Baton Rouge, Louisiana
Trial Court No. 34,319
Honorable James J. Best, Judge

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FIRE PROTECTION DISTRICT
NO. 1

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CITY OF PORT ALLEN

* * * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Hughes, J., concurs with reasons

PETTIGREW, J.

In this case, plaintiff, Floyd Marshall, seeks review of the trial court's judgment granting an exception raising the objection of no cause of action and dismissing, with prejudice, his claims against defendant, the City of Port Allen ("the City"). For the reasons that follow, we affirm.

According to the record, Mr. Marshall was employed by the West Baton Rouge Parish Fire Protection District No. 1 ("Fire Protection District") as a fireman from March 15, 1985 through May 12, 2004, and was assigned to Subdistrict No. 3 (the City) throughout his employment. In September 2004, Mr. Marshall filed a petition seeking a writ of mandamus against the City and the Fire Protection District, alleging that his employment had been terminated but that he had never been afforded a hearing relative to his termination as required by La. R.S. 33:2561. Mr. Marshall alleged he had timely appealed his termination to the Fire Protection District's Civil Service Board and was subsequently notified he was an employee of the City and not a member of the Fire Protection District's classified civil service. Mr. Marshall further asserted that "at all times prior to his termination ... [the Fire Protection District] acknowledged that ... [he] was its employee, rather than an employee of the City." Mr. Marshall requested that the trial court issue a writ of mandamus ordering the City and the Fire Protection District to (1) appoint a civil service board as required by La. R.S. 33:2536; (2) provide him with a civil service hearing relative to the termination of his employment; and (3) conduct the civil service hearing in accordance with law.

In response to Mr. Marshall's petition, the City filed an exception raising the objection of no cause of action. The exception was argued before the trial court, at which time counsel for the City maintained that to the extent Mr. Marshall was entitled to a civil service hearing, it would be the responsibility of the Fire Protection District, not the City. After hearing from the parties and considering the applicable law, the trial court agreed with the City's argument and sustained the no cause of action exception. The trial court noted that based on the statutory makeup, the City could not be forced to impanel a civil service board. The trial court issued a "Ruling On Exception Of No Cause Of Action,"

granting the City's exception and indicating that a separate judgment and order of dismissal would be issued at a later date. The trial court subsequently signed a "Judgment And Order Of Dismissal," dismissing, with prejudice, all claims against the City. This appeal by Mr. Marshall followed.[1]

The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. **Ramey v. DeCaire**, 2003-1299, p. 7 (La. 3/19/04), 869 So.2d 114, 118. No evidence may be introduced to support or controvert the exception raising the objection of no cause of action. La. Code Civ. P. art. 931. In addition, all facts pled in the petition must be accepted as true. **Rebardi v. Crewboats, Inc.**, 2004-0641, p. 3 (La. App. 1 Cir. 2/11/05), 906 So.2d 455, 457. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Ramey**, 2003-1299 at 7, 869 So.2d at 118; **Rebardi**, 2004-0641 at 3, 906 So.2d at 457. In reviewing the petition to determine whether a cause of action has been stated, the court must, if possible, interpret it to maintain the cause of action. Any reasonable doubt concerning the sufficiency of the petition must be resolved in favor of finding that a cause of action has been stated. **Livingston Parish Sewer Dist. No. 2 v. Millers Mut. Fire Ins. Co. of Texas**, 99-1728, p. 5 (La. App 1 Cir. 9/22/00), 767 So.2d 949, 952, writ denied, 2000-2887 (La. 12/8/00), 776 So.2d 1175.

Appellate courts review a judgment sustaining a peremptory exception raising the objection of no cause of action *de novo*. This is because the exception raises a

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[1] On review of this record, we discovered a few problems that are noteworthy. In filing the instant appeal, Mr. Marshall referenced a judgment rendered on January 11, 2005 (the date of the hearing), and signed on January 24, 2005 (the date the trial court signed the "Ruling On Exception Of No Cause Of Action"). However, the actual "Judgment And Order Of Dismissal," which was rendered based on the trial court's January 24, 2005 ruling, was signed on February 1, 2005. Moreover, we note some minor deficiencies in the February 1, 2005 judgment. Although the judgment orders that all of the claims against the City are dismissed, the judgment does not name the party against whom it was rendered and could be considered fatally defective if not for the other language found therein. See **Johnson v. Mount Pilgrim Baptist Church**, 2005-0337, pp. 2-3 (La. App. 1 Cir. 3/24/06), 934 So.2d 66, 67. It is evident from a review of the February 1, 2005 judgment that the trial court sustained the no cause of action exception filed by the City and dismissed, with prejudice, all of the claims against the City filed by Mr. Marshall, the only plaintiff in the instant suit. Thus, the instant judgment is a valid final judgment to which this court's appellate jurisdiction extends. La. Code Civ. P. art. 2083; **Carter v. Williamson Eye Center**, 2001-2016, p. 3 (La. App. 1 Cir. 11/27/02), 837 So.2d 43, 44.

question of law, and the trial court's decision is based only on the sufficiency of the petition. **Ramey**, 2003-1299 at 7-8, 869 So.2d at 119; see also **Fink v. Bryant**, 2001-0987, p. 4 (La. 11/28/01), 801 So.2d 346, 349.

Pursuant to La. Const. art. 10, §16, a system of classified fire and police civil service was created and established for all municipalities having a population exceeding thirteen thousand and operating a regularly paid fire and municipal police department and for all parishes and fire protection districts operating a regularly paid fire department. However, the constitution is silent with regard to fire protection subdistricts. Likewise, the statutory civil service system provided for in La. R.S. 33:2531-2568 makes no mention of civil service obligations with regard to fire protection subdistricts.

It is well settled in Louisiana that when a law is clear and unambiguous, and its application does not result in absurd consequences, it shall be applied as written and no interpretation may be made in search of the legislature's intent. La. Civ. Code art. 9. Further, courts may not extend statutes to situations that the legislature never intended to be covered thereby. **Sanchez v. Georgia Gulf Corp.**, 2002-0904, pp. 8-9 (La. App. 1 Cir. 11/12/03), 860 So.2d 277, 283, writ denied, 2004-0185 (La. 4/2/04), 869 So.2d 877.

On appeal, Mr. Marshall argues that because the City chose to become a fire protection subdistrict of a fire protection district, it is subject to and bound by civil service law as provided by the Louisiana Constitution and La. R.S. 33:2531-2568. Thus, Mr. Marshall asserts, the City is required by law to appoint a civil service board and afford him a hearing regarding the appeal of his termination. We find no merit to Mr. Marshall's argument on appeal.

The Fire Protection District, which was legislatively created by La. R.S. 40:1503, has several fire protection subdistricts, including the City. In its capacity as a municipality, the City has fewer than thirteen thousand citizens. Thus, based on a plain reading of the constitution and applicable statutes, the City would not be required to grant Mr. Marshall a civil service hearing, either in its capacity as a subdistrict of the Fire Protection District or in its capacity as a municipality. Accepting all of the allegations in the petition as true,

and applying the legal principles for the exception raising the objection of no cause of action to the facts herein, we find the trial court properly granted the City's exception raising the objection of no cause of action. There are simply no factual allegations in Mr. Marshall's petition to support a cause of action against the City.

For the above and foregoing reasons, we affirm the judgment of the trial court and assess all costs associated with this appeal against plaintiff, Floyd Marshall. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.

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VERSUS

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HUGHES, J., concurring.

I respectfully concur. Plaintiff was hired by the Fire Protection District and the law requires it to provide a civil service hearing. The City of Port Allen is not so required.