NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1075

RICHARD E. FOURNET

VERSUS

CHRISTOPHER A. SMITH, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE AND C. R. KIRBY CONTRACTORS, INC.

DATE OF JUDGMENT: May 4, 2007

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 473,197 "J25"), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE CURTIS A. CALLOWAY, JUDGE

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

Disposition: APPEAL AND ANSWER DISMISSED.

Kuhn, J.

This appeal arises from a personal injury suit. Because the record does not contain a final judgment, this court lacks jurisdiction to address the issues presented in plaintiff-appellant's brief and in defendants-appellees' answer to the appeal. Thus, we dismiss both the appeal and the answer.

I. FACTUAL AND PROCEDURAL BACKGROUND

After a two-car intersectional collision occurred on June 12, 1999, plaintiff-appellant, Richard E. Fournet, filed suit against the following defendants: Christopher A. Smith, the driver of the other vehicle involved in the accident; State Farm Mutual Automobile Insurance Company ("State Farm"), as Smith's liability insurer[1]; the City of Baton Rouge/Parish of East Baton Rouge ("the City/Parish"); and C. R. Kirby Contractors, Inc. ("Kirby"), the general contractor allegedly hired by the City/Parish to perform construction at the intersection in question. Fournet's petition, filed June 8, 2000, asserted allegations of fault and negligence on the part of Smith, the City/Parish, and Kirby. State Farm and Smith answered, alleging the accident was caused by the fault of Kirby and the City/Parish, and further asserting the accident was solely or partially caused by Fournet and or third parties. The City/Parish admitted that the intersection where the accident had occurred was under construction at the time, but it also asserted that the accident was caused solely by Fournet's negligence. Kirby filed an answer that denied most of Fournet's allegations but admitted that Smith was negligent.

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[1] State Farm was also sued in its capacity as Fournet's insurer, but State Farm was later dismissed as a party in that capacity.

Thereafter, Seabuckle, Inc. ("Seabuckle") and Superior National Insurance Group filed a petition of intervention, wherein they asserted they had paid workers' compensation benefits and medical expenses to Fournet and sought reimbursement of these costs. The City/Parish also filed a third-party demand against Transportation Insurance Company ("Transportation"), alleging it had issued a policy to Kirby that provided commercial general liability coverage for any liability that the City/Parish might incur based on Fournet's allegations.

Counsel for Kirby and Transportation filed a stipulation into the record on April 18, 2002. It stated that Transportation and Kirby "agree to indemnify [the City/Parish]."

A jury trial began on June 20, 2005, and on that date, counsel for Fournet, Seabuckle, Smith, and State Farm were present in court. At the start of the proceedings, a stipulation was entered, whereby counsel for Fournet, Smith, State Farm, and Seabuckle recognized Seabuckle has paid $2,250 in worker's compensation benefits and was entitled to a lien and a "dollar for dollar credit or reimbursement from any amounts, if any, received by [Fournet] against the Defendants in connection with this litigation." Through the remaining days of trial, June 21-June 23, 2005, only counsel for Fournet and counsel for Smith and State Farm were present. The appellate briefs suggest that Fournet settled his claims against the City/Parish and Kirby, but no dismissal of Fournet's claims against these parties appears in the record. After the jury deliberated, it returned a jury verdict, which the trial court incorporated into its July 14, 2005 judgment, which provides in pertinent part as follows:

> The Jury, after hearing the evidence and the arguments of counsel, returned a verdict on June 23, 2005, as follows:

VERDICT FORM

1. Was Christopher A. Smith guilty of negligence that was a cause of the automobile accident of June 12, 1999?

X **Yes** _____ No

If you answered "Yes" to Question 1 above, answer the following question; if you answered "No" to Question 1 above, please skip the remaining questions and have the foreperson sign and date this form below and notify the bailiff.

2. Was the City of Baton Rouge/Paris (sic) of East Baton Rouge/C.R. Kirby Contractors, Inc., guilty of negligence that was a cause of the automobile accident of June 12, 1999?

X **Yes** _____ No

3. Was Richard E. Fournet guilty of Negligence that was a cause of the automobile accident of June 12, 1000?

X **Yes** _____ No

4. Indicate the percentage of negligence attributable to each party for whom you answered "yes"' in Questions 1,2 and 3 above; if you answered "No" for any party in Question 1,2, or 3 above, the percentage for that party is zero (0%).

A. **10%** Richard E. Fournet

B. **45%** City of Baton Rouge/Parish of East Baton Rouge/C.R. Kirby Contractors, Inc.

C. **45%** Christopher A. Smith

The total of A., B., and C. Must equal 100%.

5. Did the automobile accident of June 12, 1999, cause injury and damages to Richard E. Fournet?

X **Yes** _____ No

If you answered "No" to Question 5, please skip the remaining question and have the foreperson sign and date this form below and notify the bailiff.

6. What amount, expressed in dollars, will reasonably compensate Richard Fournet for the damages he sustained as a result of the accident of June 12, 1999? In expressing these dollars, do not alter or reduce the amount based upon percentages of fault given above. The Court will make any necessary reductions.

A. Past and Future Pain and Suffering	**$25,000**
B. Past and Future Mental Anguish and Anxiety	**$ - 0 –**
C. Past and Future Health and Medical Expenses	**$141,717**
D. Past and Future Lost Wages and Diminished	**$50,000**
E. Damages for Loss of Enjoyment of Life	**$ - 0 –**

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the verdict be and it is hereby made the Judgment of this Court.

Thereafter, Fournet filed a motion for judgment notwithstanding the verdict and, alternatively, sought a new trial. The trial court denied the requested relief in a judgment dated October 5, 2005. Fournet has appealed the trial court's judgments, and Smith and State Farm have answered the appeal.

II. ANALYSIS

Upon our examination of the appellate record, we find that it does not contain a valid, final judgment, and this court lacks appellate jurisdiction. The trial court's July 14, 2005 judgment does not identify the defendant or defendants who are cast in judgment. The failure to name the defendant or defendants against whom the judgment is rendered in a case with multiple defendants makes the judgment fatally defective, because one cannot discern from its face against whom it may be enforced. ***Jenkins v. Recovery Technology Investors***, 02-1788, p. 3

(La. App. 1st Cir. 6/27/03), 858 So.2d 598, 600.[2] A valid judgment must be precise, definite and certain. ***Laird v. St. Tammany Parish Safe Harbor***, 02-0045, p. 3 (La. App. 1st Cir. 12/20/02), 836 So.2d 364, 365. A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. ***Carter v. Williamson Eye Center***, 02-2016, p. 2 (La. App. 1st Cir. 11/27/02), 837 So.2d 43, 44.

In the instant case, the trial court's July 14, 2005 judgment incorporated the jury verdict, which found all defendants guilty of negligence and assigned the percentage of negligence attributable to the various defendants, but the judgment neither identifies the defendants who are cast in judgment nor does it order any of the defendants to make a payment of money to Fournet.[3]

Further, the denial of a motion for new trial is a non-appealable interlocutory judgment. La. C.C.P. art. 2083. However, the court may consider interlocutory judgments as part of an unrestricted appeal from a final judgment. ***Bailey v. Robert V. Neuhoff Ltd. Partnership***, 95-0616, pp. 3-4 (La. App. 1st Cir. 11/9/95), 665 So.2d 16, 18, ***writ denied***, 95-2962 (La. 2/9/96), 667 So.2d 534.

Since this court lacks jurisdiction in the absence of a final appealable judgment, this appeal is dismissed. Once a valid judgment has been signed, a new

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[2] Only judgments are made executory in Louisiana courts. La. C.C.P. art. 2781 *et seq*. Thus, to be legally enforceable as a valid judgment, a third person should be able to determine from the judgment the party cast and the amount owed without reference to other documents in the record. ***See Vanderbrook v. Coachmen Industries, Inc.***, 01-0809, p. 12 (La. App. 1st Cir. 5/10/02), 818 So.2d 906, 913-14.

[3] In allocating fault under Louisiana Civil Code article 2323, a court is required to consider the fault of all responsible parties and non-parties.

appeal may be filed. Although in the normal course of events, this would generally entail considerable delay, we hereby authorize any party to request that this case be placed on the first available docket once the record of the new appeal is lodged and briefs are filed.

APPEAL AND ANSWER DISMISSED.