**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1347

DONNA GLASS, WIFE OF DAVID LOUIS VOIRON

VERSUS

DAVID LOUIS VOIRON

consolidated with

NO. 2008 CA 1348

DONNA J. GLASS

VERSUS

DAVID LOUIS VOIRON

Judgment Rendered: March 27, 2009.

* * * * *

On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2000-001373 c/w 2003-000432

Honorable Bruce C. Bennett, Judge Presiding

* * * * *

Brett K. Duncan
Michael Bass
Hammond, LA

Attorneys for Defendant/Appellant,
David Louis Voiron

Karen Fulda
Ponchatoula, LA

Attorney for Plaintiff/Appellee,
Donna Glass Voiron

* * * * *

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

**CARTER, C. J.**

David Louis Voiron has appealed the trial court's judgment of January 11, 2008, which purports to be an amended version of a previous judgment partitioning community property that was rendered September 24, 2007.

## FACTUAL AND PROCEDURAL HISTORY

Donna Glass and David Voiron were divorced in November 2001.[1] In 2007, a trial was conducted on matters relating to the partition of the parties' community property. Mr. Voiron was not present at the trial on the matter, but was represented by a curator ad hoc. The trial court rendered a judgment partitioning the community property on September 26, 2007 (hereafter "Judgment I"). Thereafter, no motion for new trial was filed, and no appeal was taken.

Well after the new trial and appeal delays had run, counsel for Ms. Glass filed with the trial court an "Amended Judgment Regarding Partition of Community Property" ("Judgment II"). Judgment II contains the same introductory language as Judgment I, but adds:

> **Two items of relief granted by this Court were inadvertently omitted from the written judgment presented to this Court. Undersigned counsel respectfully requests this Court to allow her to amend the original judgment with the two (2) highlighted paragraphs at the end of this judgment, to-wit:**

Judgment II then repeats all of the content of Judgment I, with the following additions:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order granted in the original petition for divorce be and is hereby made**

---

[1] This is the third appeal this court has considered that arises from the divorce proceedings of Donna Glass and David Voiron. See **Glass v. Voiron**, 05-2559, 05-2560 (La. App. 1 Cir. 11/3/06) (unpublished); **Glass v. Voiron**, 03-2823 (La. App. 1 Cir. 12/17/04), 897 So.2d 697.

**preliminary and permanent, granting Donna J. Glass a permanent injunction, protecting her from David Louis Voiron.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Karen Crosby Fulda be and is hereby withdrawn as counsel of record in this matter.**

The trial judge signed Judgment II on January 11, 2008, apparently *ex parte*. Notice of judgment was mailed the same day. Mr. Voiron timely appealed Judgment II, raising multiple assignments of error that relate to rulings that were originally included in Judgment I.

## SUBJECT MATTER JURISDICTION

Judgment II purports to be a final judgment that amends Judgment I, which was rendered after the delays for appealing Judgment I had lapsed. If Judgment I was an interlocutory judgment, then it was subject to amendment at any time prior to rendition of a final judgment, *i.e.*, Judgment II. **Hughes v. Albertson's, Inc.**, 00-2542 (La. App. 1 Cir. 12/28/01), 803 So.2d 1150, 1153. Mr. Voiron's appeal was timely filed after Judgment II was rendered. Thus, if Judgment I was interlocutory and Judgment II is final, then this court now has subject matter jurisdiction to review the issues raised by Mr. Voiron.

If, however, Judgment I was a final judgment and the amended judgment was rendered without recourse to the proper procedure, then Judgment II is an absolute nullity. **Frisard v. Autin**, 98-2637 (La. App. 1 Cir. 12/28/99), 747 So.2d 813, 819, writ denied, 00-0126 (La. 3/17/00), 756 So.2d 1145. This court lacks subject matter jurisdiction to review absolutely null judgments. See **Starnes v. Asplundh Tree Expert Co.**, 94-1647 (La. App. 1 Cir. 10/6/95), 670 So.2d 1242, 1246. The usual remedy applied by an appellate court that finds an amendment to a final judgment to be an

absolute nullity is to set aside the second amending judgment and reinstate the original judgment. **McGee v. Wilkinson**, 03-1178 (La. App. 1 Cir. 4/2/04), 878 So.2d 552, 554-555. In this case, the delays for appealing Judgment I have long since lapsed; therefore, if Judgment I is reinstated, then appellate review of the issues raised by Mr. Voiron is foreclosed.

It is the duty of a reviewing court to examine subject matter jurisdiction *sua sponte,* even if the issue is not raised by the parties. **State ex rel. K.S.**, 07-1045 (La. App. 1 Cir. 11/2/07), 977 So.2d 35, 39. Resolution of the jurisdictional question depends on the initial determination of the nature of Judgment I, *i.e.*, whether Judgment I was interlocutory or final.

A final judgment is one that determines the merits of a controversy, in whole or in part. In contrast, an interlocutory judgment does not determine the merits, but only preliminary matters in the course of an action. LSA-C.C.P. art. 1841. Judgment I determines the merits of the parties' community property dispute and is not limited to preliminary matters in the course of the parties' divorce action. Considering this, we conclude that Judgment I was not an interlocutory judgment under LSA-C.C.P. art. 1841.

Even when a judgment is rendered on the merits, there are instances in which the judgment will not be considered a final judgment. Louisiana Code of Civil Procedure article 1915B provides that a partial judgment as to one or more but less than all of the claims, demands, issues, or theories, shall not constitute a final judgment unless so designated by the trial court. Judgment I did not include a ruling on Ms. Glass's request for injunction and was not designated as final by the trial court; therefore, an argument could be made that Judgment I was not a final judgment under Article 1915B.

In general, when a judgment is silent as to any part of a demand or any issue that was litigated, that issue or demand is deemed rejected. **City of Baton Rouge v. State, Department of Social Services**, 07-0005 (La. App. 1 Cir. 9/14/07), 970 So.2d 985, 990. In this instance, the trial transcript reveals that the trial judge stated he would grant the injunction. This evidences that the issue was litigated; however, the trial court's oral ruling is not reflected in the written judgment.

A judgment and reasons for judgment are separate and distinct. LSA-C.C.P. art. 1918. Where there is a discrepancy between the judgment and the reasons for judgment, the judgment prevails. **Perkins v. Willie**, 01-0821 (La. App. 1 Cir. 2/27/02), 818 So.2d 167, 170-171. The trial court's written judgment is controlling, even if the trial court may have intended otherwise. **McGee v. Wilkinson**, 03-1178 (La. App. 1 Cir. 4/2/04), 878 So.2d 552, 554. See also **Greater New Orleans Expressway Com'n v. Olivier**, 02-2795 (La. 11/18/03), 860 So.2d 22, 24 (holding that the supreme court lacked appellate jurisdiction pursuant to LSA-Const. art. V, §5(D), because the judgment appealed did not declare the statute unconstitutional, although the trial court opined that the statute was unconstitutional in its reasons). A judgment is and should be accorded sanctity under the law. **Preston Oil Co. v. Transcontinental Gas Pipe Line Corp.**, 594 So.2d 908, 913 (La. App. 1 Cir. 1991).

Despite the trial court's oral statement, Judgment I must be construed to reject Ms. Glass's request for injunction.[2] Compare **City of Baton Rouge**, 970 So.2d at 989-990. Considering this, Judgment I did dispose of all issues and there is no issue under Article 1915B. Judgment I was a final judgment.

Having determined that Judgment I was a final judgment, we now turn to the issue of whether the amendment was one allowed by Louisiana law.

Louisiana Code of Civil Procedure article 1951 provides:

> A final judgment may be amended by the trial court at any time, with or without notice, on its own motion or on motion of any party:
> (1) To alter the phraseology of the judgment, but not the substance; or
> (2) To correct errors of calculation.

Article 1951 limits amendments of a final judgment to the correction of clerical errors and prohibits substantive amendments that add to, subtract from, or in any way affect the substance of the judgment. **Bourgeois v. Kost**, 02-2785 (La. 5/20/03), 846 So.2d 692, 695; **Frisard**, 747 So.2d at 818. As a general rule, when a substantive error is contained in a final judgment, that error may be corrected by way of a timely motion for a new trial, an action for nullity, or by appeal. **Caldwell v. Leche**, 08-0790, 08-

---

[2] After the supreme court determined it lacked appellate jurisdiction in **Greater New Orleans Expressway Com'n**, the matter was remanded to the Fifth Circuit Court of Appeal. On remand, the Fifth Circuit determined it did have appellate jurisdiction, but, based on "the unique procedural posture of [the] case," justice dictated that the procedurally correct resolution was to remand the matter to the trial court for it to render judgment on the constitutional issue. **Greater New Orleans Expressway Com'n v. Olivier**, 04-79 (La. App. 5 Cir. 5/26/04), 875 So.2d 876, 878. The court acknowledged the general rule of silence in a judgment being construed as a denial, but stated, "That is not the case here as reasons for judgment evidence otherwise." **Id.** at 878 n.5. After the trial court rendered a new judgment, a second appeal was taken to the Louisiana Supreme Court. In its opinion, the Court stated that the Fifth Circuit had remanded the case and noted that it expressed no opinion concerning the correctness of the Fifth Circuit's reasoning. **Greater New Orleans Expressway Com'n v. Olivier**, 04-2147 (La. 1/19/05), 892 So.2d 570, 573 n.4.

We find that the procedural posture of this case as well as the surrounding facts mandate application of the general rule that silence in a judgment as to a party's claim is to be construed as a denial of that claim.

0791, 08-0792 (La. App. 1 Cir. 9/23/08), 994 So.2d 679, 682 n.8. Our jurisprudence also recognizes that, in certain circumstances, a substantive change to a final judgment may be effected by consent of the parties. **LaBove v. Theriot**, 597 So.2d 1007, 1010 (La. 1992).

Ms. Glass argues that Judgment II's amendments to Judgment I are not substantive because they formed part of the trial court's *oral* ruling. The Louisiana Supreme Court considered and rejected a similar argument in **Hebert v. Hebert**, 351 So.2d 1199, 1200 (La. 1977), reasoning:

> [W]e think that [in enacting LSA-C.C.P. art. 1951,] the legislature intended to prohibit alterations in the substance of the **written** judgment after it has been signed by the judge and not alterations in the judge's oral statements from the bench. Otherwise, inadvertent but substantive misstatements once uttered by the trial judge could not be changed except for their phraseology or for corrections of errors in calculation. This result would be unreasonable. . . . Moreover, the notion that the substance of the judge's oral remarks should govern instead of the substance of the written judgment could not have been the legislative intent because it would destroy the integrity of written judgments as evidence and public record of the court's decree.

Accordingly, we reject Ms. Glass's argument.

For reasons set forth herein, we construe Judgment I's silence with regard to Ms. Glass's request for injunction to be a rejection of that request.[3] An amendment to Judgment I that grants an injunction is a substantive amendment. The second paragraph added by Judgment II permits Ms. Glass's attorney to withdraw, which is also a substantive amendment to Judgment I.

Generally, substantive amendments to judgments made without recourse to the proper procedures are absolute nullities. **Wooley v. AmCare**

---

[3] Ms. Glass has also advanced the argument that both Judgments I and II are valid final judgments, but that Mr. Voiron's appeal is limited to those rulings added by Judgment II. Considering our analysis of Judgment I's finality and its rejection of Ms. Glass's claims, we find no merit to this argument.

**Health Plans of Louisiana, Inc.**, 06-1146 through 06-1154 (La. App. 1 Cir. 1/17/07), 952 So.2d 720, 730. The amendments at issue were substantive. If Judgment I contained substantive errors by omitting the rulings added by Judgment II, then those errors could have been corrected by way of a timely motion for new trial or by appeal. **LaBove**, 597 So.2d at 1010. In certain circumstances, Louisiana courts have also recognized that a final judgment can be substantively changed by consent of the parties. **Id.**

The Louisiana Supreme Court explained in **Brazan v. Brazan**, 95-0593 (La. 4/28/95), 653 So.2d 581:

> A subsequent substantive amendment to a final judgment made with the consent of both parties and signed prior to the lapse of the delay provided for taking an appeal may be considered to have the effect of creating a new final judgment from which the delay period for taking an appeal commences to run anew. *Villaume v. Villaume*, 363 So.2d 448 (La. 1978).

Mr. Voiron takes the position that Ms. Glass's presentation of Judgment II to the trial court, combined with his silence with regard to the amendment, amounts to consent to the amended judgment, thus creating a new final judgment. Of course, if Judgment II amounts to a new final judgment with new appeal delays, then Mr. Voiron's appeal is timely and he achieves his goal of appellate review over all rulings contained in Judgment II.

In considering this argument, we first note that there is no evidence in the record to show that Mr. Voiron consented to substantively amend Judgment I. The Louisiana Supreme Court has expressed that an assertion of amendment of a final judgment by consent must be supported by competent evidence. **LaBove**, 597 So.2d at 1011. In considering the issue in **LaBove**, the Court noted that the record contained no depositions, affidavits or testimony of the parties as to their participation in, or consent

to, the amended judgment, or on the question of whether they even knew such a judgment existed. **LaBove**, 597 So.2d at 1010. No such evidence appears in the record in this case either. In fact, it appears that Judgment II was submitted to the trial court *ex parte* by Ms. Glass's counsel. Contrast **Villaume v. Villaume**, 363 So.2d 448, 449 n.2 & 451 (La. 1978) (finding that a substantive amendment was validly made by consent of the parties when the amended judgment was submitted upon *joint motion* of the parties). A trial court cannot substantively alter a judgment on the ex parte motion of a party. See **Alliance For Good Government v. Jefferson Alliance For Good Government, Inc.**, 96-309 (La. App. 5 Cir. 10/16/96), 683 So.2d 836, 839. Such must be true in this case under the particular circumstances of Mr. Voiron not being present at trial and participating in the proceedings only by virtue of a court-appointed curator ad hoc. Mr. Voiron's silence as to the amendment cannot be considered competent evidence of his consent.[4]

Considering the foregoing, we conclude that Judgment II, signed January 11, 2008, is an absolute nullity. See LSA-C.C.P. art. 2002. There is no valid basis for an appeal of an absolutely null judgment, and we lack subject matter jurisdiction to review it. See **Starnes**, 670 So.2d at 1246.

## CONCLUSION

For the foregoing reasons, we vacate and set aside the January 11, 2008 judgment and reinstate the original September 24, 2007 judgment. The

---

[4] On appeal, Mr. Voiron does not complain about the fact that Judgment II was signed by the judge. He takes the position that the judgment was amended by consent because if this court finds that to be the case, the Judgment II amounted to a new final judgment from which new appeal delays ran, allowing him to gain appellate review of the rulings set forth in Judgment I. Mr. Voiron has not, however, expressed his consent to the substance of the amendments contained in Judgment II and is not asserting that Judgment II amounts to any type of compromise agreement.

appeal of the January 11, 2008 judgment is hereby dismissed. Costs of appeal are assessed equally to David Louis Voiron and Donna Glass.

**JUDGMENT OF JANUARY 11, 2008 VACATED; JUDGMENT OF SEPTEMBER 24, 2007 REINSTATED; APPEAL DISMISSED.**