NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1698

FREDRICK FRANKLIN

VERSUS

AIG CASUALTY COMPANY, CRST, INC.,
AND ORLANDO STANLEY

CONSOLIDATED WITH

NO. 2012 CA 1699

OLD REPUBLIC LIFE INSURANCE COMPANY

VERSUS

CRST VAN EXPEDITED, INC., ORLANDO L. STANLEY, AND AIG INSURANCE COMPANY

Judgment Rendered: JUN 07 2013

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Livingston,
State of Louisiana
Trial Court No. 125466
Consolidated With
Trial Court No. 125873

Honorable Ernest G. Drake, Jr., Judge Presiding

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Steven A. DeBosier
Jill LeBlanc Brady
Baton Rouge, LA

Attorneys for Plaintiff-Appellee,
Fredrick Franklin

Michael H. Rubin
Jamie D. Seymour
Brook L. Thibodeaux
Baton Rouge, LA

Paul A. Eckert
New Orleans, LA

Attorneys for Defendants-Appellants,
CRST International, Inc., Orlando Stanley,
and New Hampshire Ins. Co.

Willie G. Johnson, Jr.
Baton Rouge, LA

Attorney for Plaintiff-Intervenor-Appellee,
Old Republic Life Insurance Company

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

This action arises out of a parking lot collision that occurred at a truck stop in Denham Springs on October 12, 2008. The collision was between the tractor/cab portions of two eighteen-wheeler trucks. Because plaintiff, Fredrick Franklin, was injured in the collision and underwent extensive medical treatment that included two back surgeries, he filed suit against the other driver, Orlando Stanley, Mr. Stanley's employer, CRST International, Inc. ("CRST"), and CRST's liability insurer, New Hampshire Insurance Company ("New Hampshire"), defendants, hereafter collectively referred to as "Chartis."

In this memorandum opinion, we affirm a summary judgment that was granted against Chartis and in favor of intervenor, Old Republic Life Insurance Company ("Old Republic").[1] The summary judgment allowed Old Republic, the occupational accident insurer for Mr. Franklin, to recover $98,402.65 from Chartis on a subrogated claim for medical expenses and disability benefits paid to or on behalf of Mr. Franklin as a result of the accident. Because there are three appeals that have been filed in connection with this case, we refer to this particular appeal of the subrogation summary judgment as "**Franklin 1**."[2]

Chartis also appealed from another summary judgment, hereafter referred to as "**Franklin 2**," which was signed on the same day as the subrogation summary

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[1] On November 12, 2009, two cases arising out of the accident at issue were consolidated in the 21st Judicial District Court in Livingston Parish: *Fredrick Franklin v. AIG Casualty Company, CRST, Inc., and Orlando Stanley*, Trial Court Number 125466, was consolidated with *Old Republic Life Insurance Company v. CRST Van Expedited, Inc., Orlando L. Stanley, and AIG Insurance Company*, Trial Court Number 125873. This court declined to consolidate the three appeals that arose out of these related matters; however, the appeals were all assigned to the same panel for consideration on the same docket. See **Franklin v. AIG Casualty Company**, 2012-1698 c/w 2012-1699, 2013-0069 c/w 2013-0070, and 2013-0226 c/w 2013-0227 (La. App. 1st Cir. 2/15/13)(unpublished order). A full recitation of the factual and procedural background is contained in our opinion in one of the companion appeals, **Franklin v. AIG Casualty Company**, 2013-0226 c/w 2013-0227 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 3**").

[2] Citations for all three appeals are: **Franklin v. AIG Casualty Company**, 2012-1698 c/w 2012-1699 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 1**"); **Franklin v. AIG Casualty Company**, 2013-0069 c/w 2013-0070 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 2**"); and **Franklin v. AIG Casualty Company**, 2013-0226 c/w 2013-0227 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 3**").

judgment, in favor of Mr. Franklin on the issues of liability, causation, employee status, and insurance coverage. Essentially, the **Franklin 2** liability/causation summary judgment declared that: (1) Mr. Stanley was acting within the course and scope of his employment with CRST at the time of the accident; (2) Mr. Stanley was 100% at fault in causing the accident; and (3) CRST's liability insurer, New Hampshire, provided coverage for the negligent conduct of CRST's employee, Mr. Stanley. The liability/causation summary judgment further declared that the accident was the sole cause of Mr. Franklin's back and neck injuries and his subsequent medical treatment, including future lumbar fusion surgery which has been recommended by Mr. Franklin's treating physician.

Additionally, Chartis filed a third appeal from the final judgment, hereafter referred to as "**Franklin 3**," which was rendered after a jury trial on the merits regarding the only remaining issue concerning quantum for Mr. Franklin's personal injury damages. One day after the summary judgments were rendered by the trial court, a two-day jury trial took place. At the conclusion of the trial, the jury entered a verdict in favor of Mr. Franklin and against Chartis, awarding Mr. Franklin a total amount of $1,557,079.10 for damages arising out of the accident. Chartis filed three separate appeals – two appeals concerned the pretrial summary judgments and one appeal related to the jury verdict. Chartis raised and briefed the same three assignments of error in each appeal, all concerning the amounts awarded by the jury to Mr. Franklin for damages relating to his past and future lost wages and loss of earning capacity. Absolutely no assignments of error or arguments contained in any of Chartis's briefs pertain to either of the summary judgments rendered prior to trial.

Because Chartis did not assign, brief, or argue any errors concerning the subrogation summary judgment at issue in this **Franklin 1** appeal, any potential

issues or errors related to that summary judgment are hereby deemed abandoned.[3] Uniform Rules – Courts of Appeal, Rules 1-3 and 2-12.4; **Herbert v. Placid Refining Co.**, 564 So.2d 371, 372 n.2 (La. App. 1st Cir.), writ denied, 469 So.2d 981 (La. 1990); **Juneau v. Louisiana Bd. of Elementary and Secondary Educ., on Behalf of Louisiana Special Educ. Center**, 506 So.2d 756, 757 n.1 (La. App. 1st Cir. 1987); **Stuart v. City of Morgan City**, 504 So.2d 934, 936-937 (La. App. 1st Cir. 1987); **McGowan v. Ramey**, 484 So.2d 785, 788 (La. App. 1st Cir. 1986); **Vining v. Bardwell**, 482 So.2d 685, 694 (La. App. 1st Cir. 1985), writ denied, 487 So.2d 439 (La. 1986); **Ketcher v. Illinois Central Gulf R. Co.**, 440 So.2d 805, 808 (La. App. 1st Cir. 1983), writs denied, 444 So.2d 1220, 1222 (La. 1984). Therefore, since Chartis has not pointed out any error in the trial court's action of granting the **Franklin 1** subrogation summary judgment, we conclude that it must be affirmed.[4]

Furthermore, in its appellate brief, the intervenor, Old Republic, raised an issue asserting that the trial court erred in rendering the subrogation summary judgment subject to Mr. Franklin's request for recovery of attorney's fees. However, the law is clear that if an appellee desires to have a judgment modified, revised, or reversed in part, an answer to the appeal must be filed. See La. Code

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[3] We are mindful of the supreme court's decision in **Nicholas v. Allstate Ins. Co.**, 99-2522 (La. 8/31/00), 765 So.2d 1017, 1022-1023, where it was emphasized that assignments of error are necessary as required by Uniform Rules - Courts of Appeal, Rule 1-3, "*unless the interest of justice clearly requires otherwise*[,]" and that La. Code Civ. P. art. 2129 provides that an assignment of errors is not necessary in any appeal. However, we find that this case is distinguishable from those where an appellate court considers issues not specified or assigned as error when the "interest of justice clearly requires otherwise." *Absolutely no argument* is made or implied in any of the Chartis briefs or at oral argument regarding the summary judgments that were basically uncontested in the trial court. Thus, even liberally construing Chartis' arguments on quantum made in its briefs in each appeal, we do not find that this is one of those instances where the interest of justice clearly requires or compels us to review the propriety of the trial court's actions regarding the summary judgments.

[4] A rule uniformly established in an old line of jurisprudence is that a trial court judgment is presumptively correct, and it is the appellant's duty to point out any error in the judgment appealed; otherwise, the appellate court may rely upon the presumption and affirm. See **State Through Dept. of Highways v. Metropolitan Life Ins. Co.**, 168 So.2d 889, 891 (La. App. 2d Cir. 1964).

Civ. P. art. 2133. See also **Augustus v. St. Mary Parish School Bd.**, 95-2498 (La. App. 1st Cir. 6/28/96), 676 So.2d 1144, 1156. Old Republic did not file a written answer to any of Chartis's appeals, nor did it properly move for and file its own appeal of the subrogation summary judgment, in accordance with La. Code Civ. P. arts. 2133 and 2121. Thus, we are precluded from addressing the issue of the propriety of the subrogation summary judgment award made subject to Mr. Franklin's request for attorney's fees.

Accordingly, we hereby affirm the subrogation summary judgment dated July 16, 2012, and we issue this memorandum opinion pursuant to Uniform Rules – Courts of Appeal, Rule 2-16.1(B). All costs of this appeal are assessed to defendants-appellants, Orlando Stanley, CRST International, Inc., and New Hampshire Insurance Company.

AFFIRMED.