

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1969

CAROLYN ANN DUNCAN

VERSUS

**STATE OF LOUISIANA, THROUGH THE DEPARTMENT
OF HEALTH AND HOSPITALS**

Judgment Rendered: **JUN 27 2013**

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 582,008**

The Honorable Todd Hernandez, Judge Presiding

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Baton Rouge, Louisiana**

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Carolyn Ann Duncan**

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**Counsel for Defendant/Appellee
State of Louisiana, through the
Department of Health and
Hospitals**

BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

*WJC
6/1/13*

THERIOT, J.

This is an appeal of the Nineteenth Judicial District Court's denial of a motion to compel discovery filed by Carolyn Ann Duncan, plaintiff/appellant. For the following reasons, we dismiss Ms. Duncan's appeal.

FACTS AND PROCEDURAL HISTORY

On August 31, 2009, Ms. Duncan filed a petition for damages with interrogatories against the State of Louisiana, through the Department of Health and Hospitals ("DHH"), with whom she alleged was doing business with the responsibility of supervising and managing the Adult Protective Services in East Baton Rouge Parish. Ms. Duncan alleged in her petition that on June 1, 2008, she was issued a summons for simple battery of the infirm¹. She retained legal counsel the following day for defense against the charge. On February 3, 2009, the District Attorney for the 19th JDC ("the DA") dismissed the charge against Ms. Duncan.

According to Ms. Duncan's petition, the false accusation by DHH caused damage to her reputation, a loss in her income and earning capacity, mental anguish, pain and suffering, loss of consortium with her family, and forced her to incur attorney's fees. On September 25, 2009, DHH filed a peremptory exception raising the objection of prescription. The trial court granted the exception on February 1, 2010, dismissing Ms. Duncan's petition without prejudice. On the following day, Ms. Duncan filed a supplemental petition for damages against DHH for malicious prosecution. DHH filed a peremptory exception raising the objection of res judicata as to the second petition on October 25, 2011. The court denied that exception on January 9, 2012. On January 11, 2012, Ms. Duncan filed a second

¹ La. R.S. 14:35.2.

supplemental petition for damages, naming the DA as an additional defendant in the malicious prosecution petition. The DA filed a peremptory exception raising the objection of prescription on February 1, 2012, and DHH filed an exception raising the objection no cause of action on March 14, 2012. The DA's exception for prescription was granted by the trial court on April 2, 2012.

Ms. Duncan filed her motion to compel discovery on June 6, 2012, since her interrogatories from August 31, 2009 were still unanswered. DHH's exception of no cause of action was granted by the trial court on June 11, 2012, dismissing Ms. Duncan's petition with prejudice. Ms. Duncan's motion to compel discovery was denied by the trial court on August 13, 2012. Ms. Duncan's instant appeal on the denial of her motion to compel was filed on September 25, 2012.

DISCUSSION

La.C.C.P. art. 1841. Judgments, interlocutory and final.

A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. It may be interlocutory or final.

A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.

A judgment that determines the merits in whole or in part is a final judgment.

A final judgment is appealable in all causes in which appeals are given by law, and an interlocutory judgment is appealable only when expressly provided by law. La.C.C.P. art. 2083. In the instant case, Ms. Duncan's motion to compel discovery does not concern the merits of the case, and its disposition would not determine the merits of the case either in whole or in part. Since a motion to compel discovery does not result in a

final judgment, the proper remedy is therefore an application for supervisory writ. *Kreuger v. Chehadeh*, 563 So.2d 1358, 1359 (La. App. 4 Cir. 1990).

Discovery is a preliminary procedure that is normally disposed of prior to trial. Before this instant matter went to trial, the appellees filed several peremptory exceptions. The trial court granted DHH's exception of prescription on Ms. Duncan's original petition for damages, dismissing the petition without prejudice; however, Ms. Duncan has not refiled that petition. Rather, she filed a new action for malicious prosecution against DHH and the DA. The trial court granted the DA's exception of prescription and DHH's exception of no cause of action, dismissing both parties from the action with prejudice. All the exceptions were peremptory in nature. La.C.C.P. art. 927(A). Ms. Duncan's actions were therefore defeated prior to their proceeding to trial. Also, there is no applicable law which would allow Ms. Duncan to appeal the court's ruling in this circumstance. Ms. Duncan has no right to appeal the trial court's judgment on the motion to compel, and this instant appeal is improperly brought before this court.

CONCLUSION

Since the trial court's judgment in regard to Ms. Duncan's motion to compel is interlocutory, the appeal is not properly before this court. We therefore dismiss the appeal and assess costs in this matter to the appellant, Carolyn Ann Duncan.

APPEAL DISMISSED.