

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

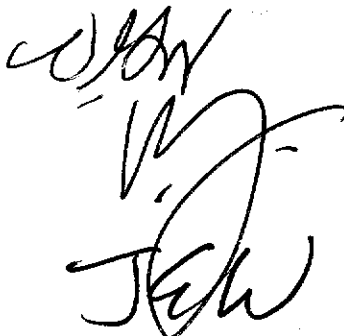
FIRST CIRCUIT

NO. 2013 CA 0187

BYARD EDWARDS, JR., ET AL.

VERSUS

LOUISIANA FARM BUREAU MUTUAL INSURANCE  
COMPANY, ET AL.



Judgment Rendered: DEC 27 2013

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On Appeal from  
21st Judicial District Court,  
In and for the Parish of Tangipahoa,  
State of Louisiana  
Trial Court No. 2007-0000750 "D"

The Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

**CRAIN, J.**

The defendant appeals a judgment denying its rule to fix costs. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Byard Edwards, Jr. instituted this proceeding against his uninsured motorist insurer, Louisiana Farm Bureau Mutual Insurance Company, seeking to recover damages for personal injuries arising out of an automobile accident and asserting a bad faith claim for penalties and attorney's fees pursuant to Louisiana Revised Statutes 22:1892 and 22:1973. The personal injury claim was tried before a jury and resulted in a verdict in favor of Edwards in the total amount of \$820,000.00, which included awards for general, special, and exemplary damages. The trial court adjudicated the bad faith claim for penalties and attorney's fees in a separate trial and ruled that Farm Bureau did not violate Section 1892 or 1973. A single judgment was signed that set forth the trial court's judgment on the jury verdict and its denial of the bad faith claim. After deduction of the amount of a pre-suit tender by Farm Bureau, the net amount of the judgment in favor of Edwards and against Farm Bureau was \$410,000.00, plus legal interest. The judgment further provided that court costs would be determined at a separate hearing by the court.

On a separate appeal of the judgment on the merits, this court reversed the judgment, in part, to vacate the award for exemplary damages based upon this court's finding that Farm Bureau's insurance policy did not provide coverage for those damages. In all other respects, the judgment was affirmed. *See Edwards v. Louisiana Farm Bureau Mutual Insurance Company*, 12-1495 (La. App. 1 Cir. 4/26/13), 2013 WL 1790996 (unpublished opinion), *writ denied*, 13-1175 (La. 8/30/13), \_\_\_ So. 3d \_\_\_\_.

While that appeal was pending, Edwards filed a Rule to Fix Costs in the trial court; and, following a hearing, the trial court entered a judgment awarding

Edwards the sum of \$27,748.54. Shortly thereafter, Farm Bureau filed a Rule to Tax Costs seeking recovery of the costs it incurred in defense of the bad faith claim, arguing that it prevailed at the separate trial of that claim and therefore should be entitled to recover those costs. The trial court entered an order that denied Farm Bureau's request, and that order is the subject of the present appeal by Farm Bureau.<sup>1</sup>

### LAW AND ANALYSIS

Except as otherwise provided by law, the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable. La. Code Civ. Pro. art. 1920. Pursuant to Article 1920, the trial court may cast costs among the parties in any equitable manner, and this article has been liberally interpreted as granting broad discretion to the trial court. *Gauthier v. Wilson*, 04-2527 (La. App. 1 Cir. 11/4/05), 927 So. 2d 383, 390, *writ denied*, 05-2402 (La. 3/31/06), 925 So. 2d 1258. Upon review, an appellate court will not disturb the trial court's fixing of costs absent an abuse of the sound discretion afforded the trial court. *Gauthier*, 927 So. 2d at 390.

Farm Bureau contends that the trial court erred by denying its Rule to Tax Costs for the bad faith claim because "Edwards was the prevailing party on the bodily injury claim only" and "there can be no legitimate argument that Edwards 'prevailed' on the issue of bad faith." However, our supreme court has recognized that when there are two distinct claims and demands, there is only one suit for purposes of the allocation of costs. See *Fegan v. Lykes Bros. S.S. Co.*, 196 La. 541, 553, 199 So. 635, 639 (1940). In *Fegan*, the court considered an appeal of a plaintiff's claim for damages under the Jones Act and a claim for maintenance and

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<sup>1</sup> Farm Bureau's appeal of the judgment awarding costs to Edwards is before this court on a separate appeal in *Edwards v. Louisiana Farm Bureau Mutual Insurance Company*, 2013 CA 0186.

cure arising out of his contract of employment under general maritime law.<sup>2</sup> The trial court awarded sums to the plaintiff for both claims, but the court of appeal reversed both awards and remanded the matter for further proof on the claim for maintenance and cure. The court of appeal also cast the plaintiff with all costs of court for the Jones Act claim and ordered that the cost for the maintenance and cure claim “should abide by the final determination of the suit.” *Fegan*, 199 So. at 636-637.

The supreme court granted writs to review an evidentiary ruling by the court of appeal affecting the Jones Act claim and to determine whether the court of appeal “was justified in considering the plaintiff’s two demands as if they were two separate and independent suits, one for damages and the other for maintenance and cure, and in thus imposing upon the plaintiff the costs incident to his demand for damages, notwithstanding the suit was not disposed of finally, so far as the other demand was concerned.” *Fegan*, 199 So. at 637.

The supreme court reversed the court of appeal’s evidentiary ruling and remanded the Jones Act damage claim to that court for further consideration. The supreme court also concurred in the remand of the maintenance and cure claim to the trial court for further evidence. The court then addressed the cost allocation as follows:

With regard to the court costs, we do not see any good reason for undertaking to separate the costs that are incident to the demand for damages from the costs that are incident to the demand for maintenance and cure. In fact we do not see how the costs could be so separated with any degree of accuracy. Although there are two distinct claims or demands, there is only one suit; and the rule is that if a plaintiff wins any part of his suit he is entitled to recover the court costs. Code of Prac. art. 549. It is true that, by section 2 of Act No. 229 of 1910, an appellate court has authority to tax the court costs or any part thereof against any party to the suit, ‘as in its judgment may be deemed equitable.’ But we would not deem it equitable in this case to undertake to separate the costs incident to the demand for damages from the costs incident to the demand for maintenance and cure, and

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<sup>2</sup> The claim authorized by the Jones Act is now set forth at 46 U.S.C.A. § 30104.

to tax the plaintiff for the costs which are deemed incident to the demand for damages if the demand for maintenance should be allowed and if the demand for damages should not be allowed. Therefore, if the Court of Appeal adheres to its judgment rejecting the plaintiff's demand for damages, and remands the case to the civil district court to allow the plaintiff to offer more evidence in support of his demand for maintenance and support, the court should assess only the costs of appeal against the plaintiff, and let all other costs abide the final disposition of the case.

*Fegan*, 199 So. at 639-640.<sup>3</sup>

The court's recognition that although "there are two distinct claims or demands, there is only one suit" for purposes of assessing costs is applicable to this case. Edwards pursued one suit that included multiple claims against Farm Bureau, and he prevailed on most of those claims. The denial of his bad faith claim at a separate trial does not mandate a separate award of costs in favor of Farm Bureau with respect to that claim only. Article 1920 vests the trial court with broad discretion to cast costs in any equitable manner; and the trial court did not abuse that discretion by considering the suit in its entirety and denying an award of costs to Farm Bureau. *See Fegan*, 199 So. at 639-40. *See also* La. Code of Civ. Pro. art. 1920, Official Revision Comment (b) ("when there are two distinct claims and demands, there is only one suit"); *Hart v. Polizzotto*, 168 La. 356, 122 So. 64 (1929) (plaintiff who was successful on some but not all of his claims was entitled to costs); *Mitter v. Touro Infirmary*, 03-1608 (La. App. 4 Cir. 4/21/04), 874 So. 2d 265, 272 (trial court did not abuse its vast discretion in awarding costs to plaintiff who was successful on only one of three claims against the defendant). We find no abuse of the trial court's sound discretion in the casting of costs in this matter.

Accordingly, we affirm the trial court's order denying Farm Bureau's Rule to Tax Costs. All costs of this appeal are assessed to Farm Bureau.

**AFFIRMED.**

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<sup>3</sup> For the current version of former Louisiana Code of Civil Procedure article 549, cited in the quoted text from *Fegan*, see Louisiana Code of Civil Procedure article 1920, which differs only by also granting the trial court discretion to cast cost in any equitable manner. *See Succession of Franz*, 242 La. 875, 880, 139 So. 2d 216, 217, fn. 2 (1962).