

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

CHARLOTTE BROWN

NO. 2013 CW 0222

VERSUS

JAMES BOOTH, II,
INDIVIDUALLY AND AS THE
PARENT OF ZOE BOOTH, ZOE
BOOTH AND USAA CASUALTY
INSURANCE COMPANY

APR 22 2013


In Re: USAA Casualty Insurance Company and Zoe Booth,
applying for supervisory writs, 19th Judicial
District Court, Parish of East Baton Rouge, No.
607526.

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

WRIT GRANTED; JUDGMENT VACATED. The judgment of the trial court dated December 20, 2012, is hereby vacated. This matter is remanded to the 19th Judicial District Court for the Parish of East Baton Rouge for a hearing and ruling on the merits of the defendants' declinatory exception raising the objection of prescription. Louisiana Civil Code Article 3462 provides that "[i]f a suit is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period." Herein, none of the defendants were served within the one year prescriptive period for delictual actions, as provided by Louisiana Civil Code article 3492. Thus, in determining whether this suit was timely initiated, the 19th Judicial District Court must make a determination of whether venue was proper in Orleans Parish, where the suit was originally filed. See **Land v. Vidrine**, 2010-1342 (La. 3/15/11), 62 So.3d 36, 42; see also **Phillips v. Patterson Ins. Co.**, 97-2748 (La. 1/9/98), 704 So.2d 246, rehearing denied, 97-2748 (La. 2/20/98), 709 So.2d 788.

VGW
PMc
TMH

COURT OF APPEAL, FIRST CIRCUIT


DEPUTY CLERK OF COURT
FOR THE COURT