

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 1112

O'NEAL BOSLEY D/B/A BOSLEY'S
DRIVING SCHOOL

VERSUS

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, OFFICE OF MOTOR VEHICLES AND
DIVISION OF ADMINISTRATION

Judgment Rendered: APR 20 2017

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Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 109891

Honorable Thomas J. Kliebert, Jr., Judge

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O'Neal Bosley
Donaldsonville, LA

Pro Se – Appellant
Plaintiff – O'Neal Bosley d/b/a
Bosley's Driving School

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

WELCH, J.

The plaintiff, O’Neal Bosley, appeals a partial judgment sustaining the peremptory exception raising the objection of no cause of action filed by the defendant, the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles (“OMV”), thereby dismissing Mr. Bosley’s claims set forth in an amended petition. Because the judgment appealed herein is a partial judgment that was not designated as a final judgment for purposes of an immediate appeal, we dismiss the appeal and issue this memorandum opinion in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

Much of the relevant background history of this case is set forth in a separate but related case, **Bosley’s Driving School v. Department of Public Safety and Corrections**, 2015-1398 (La. App. 1st Cir. 4/27/16) (*unpublished*). In sum, Mr. Bosley was the owner and operator of Bosley’s Driving School (“Bosley’s Driving”) in Ascension Parish, which had locations in Donaldsonville and Gonzales. **Bosley’s Driving School**, 2015-1398 at p.1. In Louisiana, there are two types of driver instruction courses for individuals seeking a driver’s license for the first time: (1) the fourteen-hour course, which consists of six-hours of classroom instruction and eight-hours of behind-the-wheel driving, for individuals over the age of eighteen and who have never been licensed;¹ and (2) the thirty-eight hour course, which consists of thirty-hours of classroom instruction and eight-hours of behind-the-wheel driving, for individuals under the age of eighteen who have never been licensed.² *Id.* Both Bosley’s Driving locations were licensed to instruct the fourteen-hour driver instruction course. In addition, Bosley’s Driving had contracted with OMV to be a third-party tester to administer the on-road driving skills test. *Id.*

¹ See La. R.S. 32:402.1(A)(2).

² See La. R.S. 32:402.1(A)(1)(a).

The licenses of Bosley's Driving to instruct the fourteen-hour driver instruction course and to be a third-party tester expired on December 31, 2014. *Id.* In October 2012, prior to the expiration of the licenses, Mr. Bosley applied for a license to instruct the thirty-eight hour driver instruction course; OMV denied Mr. Bosley's application to instruct the thirty-eight hour course in 2012, and again in 2013. *Id.* Even though Bosley's Driving had no license to instruct the thirty-eight hour driver instruction course, it issued certificates of successful completion to nine students in 2013 and 2014. *Id.*

Therefore, on March 26, 2014, OMV notified Mr. Bosley and Bosley's Driving to cease and desist operation as a driving school and third-party tester due to instructing the thirty-eight hour driver instruction course without an approved license. *Id.* On March 27, OMV notified Mr. Bosley and Bosley's Driving that the instructor, owner and examiner licenses, as well as the third-party tester agreements were being revoked at both the Donaldsonville and Gonzales locations of Bosley's Driving. *Id.* Bosley's Driving and Mr. Bosley appealed those revocations to the Division of Administrative Law in March of 2014 ("the administrative proceeding"). *Id.*

On April 25, 2014, Mr. Bosley commenced these proceedings in the 23rd Judicial District Court by filing a Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against the defendants, OMV and the Division of Administration. Therein, he sought to restrain and enjoin the defendants from "shutting down his business" during the pendency of the administrative proceeding. Mr. Bosley also alleged in his petition that the defendants' treatment of him violated the Louisiana Unfair Trade Practices Act, La. R.S. 51:1401, *et seq.* ("LUTPA"), and that pursuant to LUTPA, he was entitled to an award of attorney's fees and interest. A rule to show cause with respect to the injunctions was scheduled for May 12, 2014. On that date, Mr. Bosley and

OMV entered into a written stipulation, which granted a preliminary injunction to allow Bosley's Driving to remain open and conduct only the six-hour (in-classroom instruction) and the fourteen-hour courses, along with third-party testing at both the Donaldsonville and Gonzales locations. OMV and Mr. Bosley also agreed that the preliminary injunction would remain in effect during the pendency of the administrative proceeding and that OMV would be updated regarding this stipulation and Mr. Bosley's compliance. Approximately eight months later, in January 2015, Mr. Bosley submitted a judgment in accordance with the stipulation of the parties. OMV objected to the judgment and filed a motion to vacate the prior stipulation on the basis that it was moot because as of January 1, 2015, Bosley's Driving's licenses had expired. The trial court denied OMV's motion and signed a judgment on February 9, 2015, which provided that: (1) a preliminary injunction issue against OMV prohibiting OMV from closing Bosley's Driving; (2) Bosley's Driving be allowed to remain open and provide classes only in six-hour and fourteen-hour instruction at both Bosley's Driving locations; (3) Bosley's Driving be permitted to perform third-party testing at the Donaldsonville location only;³ (4) the order would remain in effect until the hearing in the administrative proceeding; and (5) OMV update the status of Bosley's Driving immediately to reflect the judgment.

On February 20, 2015, a hearing was held in the administrative proceeding. **Bosley's Driving School**, 2015-1398 at p.1. Thereafter, on March 20, 2015, the administrative law judge assigned to the administrative proceeding affirmed OMV's revocation of the licenses of Mr. Bosley and Bosley's Driving. *Id.* Mr. Bosley then sought review of that decision with the 19th Judicial District Court; the 19th Judicial District Court dismissed that action, and Mr. Bosley then appealed to

³ Although not pertinent to this appeal or our decision herein, we note that there is an unexplained discrepancy between the written stipulation, which permitted third-party testing at both the Donaldsonville and Gonzales locations, and the judgment, which permitted third-party testing at the Donaldsonville location only.

this Court. **Bosley's Driving School**, 2015-1398 at p.2. On April 27, 2016, this Court reversed the judgment of the 19th Judicial District Court and remanded the case with instructions. **Bosley's Driving School**, 2015-1398 at p.6.

While the appeal of the administrative proceeding was pending with this Court, on December 21, 2015, Mr. Bosley filed in this proceeding a "Motion to proceed in proper person, Motion to Amend, Motion to enforce previous court Order." Therein, Mr. Bosley stated that he wanted to amend his suit because OMV refused to renew his license and ignored the previous stipulated judgment providing that both locations of Bosley's Driving remain open during the pendency of the administrative proceeding. Mr. Bosley also claimed that he had suffered financially and emotionally and requested that the suit be amended to include claims relative to the OMV's refusal to renew his licenses. Mr. Bosley also asserted that Bosley's Driving needed to be compensated immediately so that it could be reopened. The trial court did not sign the order allowing the filing of the amended petition, but rather, set it for hearing on March 14, 2016.

In response to Mr. Bosley's amended petition, OMV filed a dilatory exception raising the objections of unauthorized use of summary proceedings and improper cumulation of actions, a peremptory exception raising the objection of no cause of action, and a declinatory exception raising the objection of *lis pendens*. The hearing on the exceptions was set for March 14, 2016, the same date as the hearing on the filing of Mr. Bosley's amended petition. At the hearing, the trial court sustained the objection of no cause of action and dismissed Mr. Bosley's amended suit. On April 6, 2016, the trial court signed a judgment in accordance with its oral ruling, sustaining OMV's peremptory exception raising the objection of no cause of action and "dismissing [Mr. Bosley's] 'Amended Petition.'" From this judgment, Mr. Bosley appealed.

On August 23, 2016, this Court issued a rule to show cause why Mr. Bosley's appeal should not be dismissed because the April 6, 2016 judgment appeared to be a partial judgment and did not contain the designation of finality as required by La. C.C.P. art. 1915(B). Specifically, this court noted that although the judgment sustained OMV's objection of no cause of action and dismissed Mr. Bosley's amended petition, it was unclear whether that judgment disposed of *all* of the claims asserted by Mr. Bosley against OMV.

OMV filed a response to the rule to show cause, arguing that the Amended Petition requested damages, which the April 6, 2016 judgment did not address. Accordingly, OMV asserted that the judgment was not a final judgment and therefore, was not appealable. Mr. Bosley filed several documents and pleadings in response to the show cause order; however, none of the documents or pleadings addressed the issue raised by the rule to show cause. On September 23, 2016, the trial court signed an Amended Judgment, which provided that OMV's peremptory exception raising the objection of no cause of action was sustained, "thereby dismissing [Mr. Bosley's] remaining claims against Defendant OMV, the 'Amended Petition,' with prejudice." On November 15, 2016, the rule to show cause why the appeal should not be dismissed was referred to the panel to which Mr. Bosley's appeal was assigned. See O'Neal Bosley D/B/A Bosley's Driving School v. Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles and Division of Administration, 2016-1112 (La. App. 1st Cir. 11/15/16) (*unpublished action*).

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. **Motorola, Inc. v. Associated Indemnity Corporation**, 2002-0716 (La. App. 1st Cir. 4/30/03), 867 So.2d 715, 717. This Court's appellate jurisdiction extends to "final judgments." A final judgment is a judgment that determines the merits in whole or in part; a judgment

that does not determine the merits, but only preliminary matters in the course of an action, is an interlocutory judgment. La. C.C.P. art. 1841. A final judgment is appealable in all causes in which appeals are given by law; an interlocutory judgment is appealable only when expressly provided by law. La. C.C.P. art. 2083.

Louisiana Code of Civil Procedure article 1915 provides:

A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

(1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.

(2) Grants a motion for judgment on the pleadings, as provided by [La. C.C.P. arts.] 965, 968, and 969.

(3) Grants a motion for summary judgment, as provided by [La. C.C.P. arts.] 966 through 969, but not including a summary judgment granted pursuant to [La. C.C.P. art.] 966(E).

(4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by [La. C.C.P. art.] 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.

(6) Imposes sanctions or disciplinary action pursuant to [La. C.C.P. art.] 191, 863, or 864 or [La. C.E. art.] 510(G).

B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

C. If an appeal is taken from any judgment rendered under the provisions of this Article, the trial court shall retain jurisdiction to adjudicate the remaining issues in the case.

In this case, the amended judgment dismisses Mr. Bosley's "remaining claims against Defendant OMV, the 'Amended Petition,' with prejudice." Although OMV argued, in response to this Court's rule to show cause, that the judgment did not address Mr. Bosley's damage claim asserted in the amended petition, the language of the amended judgment clearly dismissed all claims of Mr. Bosley's that were set forth in the amended petition. However, while the amended judgment refers to the dismissal of Mr. Bosley's "remaining claims," we note that the judgment then limits the dismissal of claims to Mr. Bosley's "Amended Petition." Notably, Mr. Bosley's original petition also asserted claims for OMV's alleged violation of LUTPA and pursuant to LUTPA, he also sought an award of attorney's fees and interest. Mr. Bosley's claims against OMV pursuant to LUTPA were not at issue at the hearing on the injunction, were not adjudicated or addressed in either the written stipulation of the parties or the subsequent February 9, 2015 judgment in accordance with that stipulation, were not at issue at the hearing on the exceptions, and were not adjudicated or addressed by the judgment on appeal herein.⁴ As such, there are claims from Mr. Bosley's original petition that have not yet been adjudicated, thereby rendering the judgment at issue herein (the April 6, 2016 judgment of the trial court as amended by the trial court on September 23, 2016), a partial judgment. Further, this partial judgment contains no designation that it is a final judgment for the purpose of an immediate appeal. See La. C.C.P. art. 1915(B). As such, this Court lacks appellate jurisdiction to review the partial judgment appealed herein. Accordingly, this appeal is hereby

⁴ Ordinarily, where a judgment is silent as to any part of a demand or any issue that was litigated, that issue or demand is deemed rejected. **Erich Sternberg Realty Company, Inc. v. Louisiana Tax Commission**, 560 So.2d 868, 876 n.7 (La. App. 1st Cir.), writ denied, 567 So.2d 107 (La. 1990). However, in this case, Mr. Bosley's claims based on LUTPA in its original petition were never litigated at a hearing or trial herein.

dismissed.⁵ All costs of this appeal are assessed to the plaintiff/appellant, O'Neal Bosley d/b/a Bosley's Driving School.

APPEAL DISMISSED.

⁵ We note that although this Court has discretion to convert an appeal to an application for supervisory writs, it may only do so if the appeal would have been timely had it been filed as a supervisory writ application. **KAS Properties, LLC v. Louisiana Board of Supervisors for Louisiana State University**, 2014-0566 (La. App. 1st Cir. 4/21/15), 167 So.3d 1007, 1010; **Lake Villas No. II Homeowners' Association, Inc. v. LaMartina**, 2015-0244 (La. App. 1st Cir. 12/23/15) (*unpublished*), writ denied, 2016-0149 (La. App. 1st Cir. 3/14/16), 189 So.3d 1070, 1010. A party intending to apply to this court for a supervisory writ shall give notice of such intention by requesting a return date to be set by the trial court, which shall not exceed thirty days from the date of the notice of judgment. See Uniform Rules—Courts of Appeal, Rules 4-2 and 4-3; La. C.C.P. art. 1914; **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. In this case, notice of the April 6, 2016 judgment was forwarded to the parties on April 12, 2016, and Mr. Bosley's motion for appeal was filed on June 6, 2016. Because Mr. Bosley's appeal was not filed within thirty days of the notice of judgment, the motion for appeal cannot be considered a timely filed application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4-3. Accordingly, we decline to convert Mr. Bosley's appeal to an application for supervisory writs.