

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0490

ISAIAH GAINES AND ALVIN GAINES

VERSUS

PAUL LEMOINE, ALLSTATE PROPERTY AND CASUALTY  
INSURANCE COMPANY, AND MISSISSIPPI FARM BUREAU  
CASUALTY INSURANCE COMPANY

***DATE OF JUDGMENT:***     **DEC 21 2018**

ON APPEAL FROM THE TWENTIETH JUDICIAL DISTRICT COURT  
NUMBER 22514, DIVISION A, PARISH OF WEST FELICIANA  
STATE OF LOUISIANA

HONORABLE KATHRYN E. JONES, JUDGE

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Chad A. Aguiard  
New Roads, Louisiana

Counsel for Plaintiffs-Appellants  
Isaiah Gaines and Alvin Gaines

Willie G. Johnson, Jr.  
Baton Rouge, Louisiana

Carey M. Nichols  
Baton Rouge, Louisiana

Counsel for Defendants-Appellees  
Allstate Property and Casualty  
Insurance Company and Paul Lemoine

Christopher W. Stidham  
Baton Rouge, Louisiana

David W. Hugenbruch  
San Diego, California

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

**Disposition: APPEAL DISMISSED AND REMANDED.**

**CHUTZ, J.**

Plaintiffs-appellants, Alvin and Isaiah Gaines, appeal a trial court judgment in favor of defendants in this personal injury case. For the following reasons, we dismiss this appeal.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 1, 2014, Alvin Gaines and his passenger, Isaiah Gaines, were involved in a vehicular accident with a vehicle driven by Paul Lemoine. The accident occurred in West Feliciana Parish at the intersection of Louisiana Highways 10 and 61, which is controlled by a traffic light. When the accident occurred, Alvin was driving southbound on Highway 61, while Paul was attempting to turn left onto Highway 10 from the northbound lane of Highway 61.

Subsequently, Alvin and Isaiah filed this suit seeking damages for injuries allegedly resulting from the accident. The petition named Paul and his insurer, Allstate Property and Casualty Insurance Company, as defendants.<sup>1</sup> Following trial, the trial court took the matter under advisement. On October 31, 2017, the trial court signed written reasons for judgment in which it concluded the accident was caused by Alvin running a “red light.” On that basis, the trial court found in favor of the defendants and against the plaintiffs, indicating a judgment would be signed accordingly. The written reasons for judgment were filed on November 2, 2017, and notice thereof was given to counsel that same date. Before a written judgment was signed, plaintiffs filed a motion for appeal on January 8, 2018, incorrectly stating a written judgment had been signed on November 2, 2017. The trial court signed an order granting a devolutive appeal “from the judgment rendered in the above cause.”

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<sup>1</sup> Alvin’s UM carrier, Mississippi Farm Bureau Casualty Insurance Company, was also a named defendant. Plaintiffs eventually settled their claims against Mississippi Farm Bureau and filed a motion and order to dismiss their claims, with prejudice. The trial court signed the order of dismissal on November 29, 2017.

After the appellate record was lodged, this court *ex proprio motu* issued a rule to show cause why the appeal should or should not be dismissed. The grounds for the show cause was that although the appeal purportedly was taken from a judgment rendered on November 2, 2017, the record contained no such judgment but only written reasons for judgment filed on that date. In response to the rule to show cause, the record was supplemented with a written judgment signed by the trial court on May 1, 2018, which found in favor of the defendants and against the plaintiffs. Additionally, the record was also supplemented with a motion and order for appeal filed by the plaintiffs from the May 1, 2018 judgment. Thereafter, a different panel of this court issued an interim order referring the rule to show cause to the panel to which this appeal was assigned.

#### **RULE TO SHOW CAUSE**

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. *Texas Gas Exploration Corp. v. Lafourche Realty Co., Inc.*, 2011-0520 (La. App. 1st Cir. 11/9/11), 79 So.3d 1054, 1059, writ denied, 2012-0360 (La. 4/9/12), 85 So.3d 698. This Court's appellate jurisdiction extends to "final judgments." See La. C.C.P. art. 2083. A valid judgment must be "precise, definite, and certain." *Laird v. St. Tammany Parish Safe Harbor*, 2002-0045 (La. App. 1st Cir. 12/20/02), 836 So.2d 364, 365. Moreover, a final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. See *Carter v. Williamson Eye Center*, 2001-2016 (La. App. 1st Cir. 11/27/02), 837 So.2d 43, 44. These determinations should be evident from the language of the judgment without reference to other documents in the record. *Laird*, 836 So.2d at 366. In other words, a judgment cannot require reference to extrinsic documents or pleadings in order to discern the court's ruling. *Vanderbrook v. Coachmen Industries, Inc.*,

2001-0809 (La. App. 1st Cir. 5/10/02), 818 So.2d 906, 913. Thus, a judgment that does not contain proper decretal language cannot be considered a final judgment for the purpose of an appeal, and this court lacks jurisdiction to review such a judgment. See *Johnson v. Mount Pilgrim Baptist Church*, 2005-0337 (La. App. 1st Cir. 3/24/06), 934 So.2d 66, 67.

In this case, the May 1, 2018 judgment appealed by the plaintiffs provides that the trial court “finds, after consideration of the law and the evidence, in favor of Paul Lemoine and Allstate Property and Casualty Insurance Company and against Alvin Gaines and Isaiah Gaines.” While the judgment specified that the trial court found in favor of the defendants and against the plaintiffs, it did not specify clearly or precisely what relief was being granted or denied, and it did not dismiss any claims or the petition. See *In Interest of Lopez-Sanchez*, 2018-0318, p. 2 (La. App. 1st Cir. 6/1/18) (unpublished). In the absence of appropriate decretal language, the May 1, 2018 judgment is defective and cannot be considered a final judgment for purposes of appeal. *Johnson*, 934 So.2d at 67. Thus, this court lacks appellate jurisdiction to review this matter, and the appeal must be dismissed without prejudice.<sup>2</sup>

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<sup>2</sup> We recognize that this court has discretion to convert an appeal of a non-appealable judgment to an application for supervisory writs. See *Stelluto v. Stelluto*, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. Generally, appellate courts have exercised that discretion when the motion for appeal was filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Rule 4-3 of the Uniform Rules, Courts of Appeal, and where reversal of the district court’s decision would terminate the litigation, or where clear error in the district court’s judgment, if not corrected, will create a grave injustice. However, when the jurisdictional defect lies in the non-finality of a judgment (as opposed to an appeal from an interlocutory judgment), an appellate court will generally refrain from the exercise of its supervisory jurisdiction when an adequate remedy exists by appeal. In such cases, an adequate remedy by appeal will exist upon the entry of the requisite precise, definite, and certain decretal language necessary for appellate review. This is because in the absence of proper decretal language, the judgment is defective, and this court lacks jurisdiction to review the merits, even if we were to convert the matter to an application for supervisory writs. Accordingly, we decline to exercise our discretion to convert this appeal of a judgment that is not final for lack of decretal language to an application for supervisory writs. See *Boyd Louisiana Racing, Inc. v. Bridges*, 2015-0393, pp. 2-4 (La. App. 1st Cir. 12/23/15) (unpublished).

## **CONCLUSION**

For the reasons assigned, the appeal taken from the May 1, 2018 judgment finding in favor of defendants, Paul Lemoine and Allstate Property and Casualty Insurance Company, and against plaintiffs, Alvin Gaines and Isaiah Gaines, is dismissed for lack of appellate jurisdiction. This matter is remanded to the trial court for further proceedings consistent with this opinion. All costs of this matter are assessed to Alvin and Isaiah Gaines.

**APPEAL DISMISSED AND REMANDED.**