

NOT DESIGNATED FOR PUBLICATION

JEW
J

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 0963

WILLIE ZANDERS

VERSUS

SHELVEY DAVIS, BIANCA WESLEY-DAVIS,
ROBERT DAVIS AND CRYSTAL DAVIS

Judgment Rendered: DEC 21 2018

Appealed from the
18th Judicial District Court
In and for the Parish of Iberville, Louisiana
Trial Court Number 76,850

Honorable Alvin Batiste, Jr., Judge

Sharah Harris-Wallace
Plaquemine, LA

Attorney for Appellant
Plaintiff – Willie Zanders

Allen J. Myles
Plaquemine, LA

Attorney for Appellees
Defendants – Shelvey Davis, Robert
Davis, Bianca-Wesley Davis

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

JJP
Pettigrew, J. Concurs

WELCH, J.

In this suit on a promissory note, Willie Zanders appeals a judgment of the trial court awarding him the sum of \$12,055.00, plus attorney fees in the amount of 25% of the principal and interest and all court costs. For the following reasons, we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

On April 26, 2017, Willie Zanders filed a suit on promissory notes against the defendants, Shelvey Davis, Bianca Wesley-Davis, Robert Davis, and Crystal Davis. Therein, Willie Zanders alleged that the defendants were indebted to him in the total sum of \$13,450.00, together with 12% interest thereon from April 7, 2017, until paid, costs of this suit, and attorney fees in the amount of 33 1/3% of the principal and interest. More specifically, Willie Zanders alleged that he was the holder of several promissory notes—one in the principal amount of \$12,055.00 and the other in the principal amount of \$2,000.00—executed by the defendants on March 20, 2017, March 21, 2017, and March 23, 2017 respectively, which were made payable to Willie Zanders, with 12% per annum interest thereon from maturity until paid in full. Willie Zanders also alleged that no amounts had been paid on the note or since the first payment on the note became due on April 7, 2017. Willie Zanders further alleged that the note provided that in the event it was necessary to employ an attorney to enforce collection, the maker agreed to pay attorney fees in the amount of “33% of the amount then due[,] which includes principal and interest.” Attached to Willie Zanders’ petition was a promissory note executed by Shelvey Davis on March 21, 2017, in the principal amount of \$2,000.00, a promissory note executed by Shelvey Davis on March 21, 2017, in the principal amount of \$12,055.00, as well as bail bond indemnitor’s promises

executed by Shelvey Davis, Robert Davis, and Bianca Wesley-Davis, on March 20, 2017, and by Shelvey Davis on March 23, 2017.¹

On May 9, 2017, an answer was filed by the defendants Shelvey Davis, Bianca Wesley-Davis, Robert Davis, and Crystal Davis generally denying the allegations of the petition.² A trial was subsequently held on March 20, 2018, which consisted of the testimony of Willie Zanders. On June 14, 2018, the trial court signed a judgment, which entered a preliminary default against Crystal Davis³ and dismissed Willie Zanders' claims against Robert Davis, Bianca Wesley-Davis, and Crystal Davis since the note was signed only by Shelvey Davis. The June 14, 2018 judgment further provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiff, Willie Zanders, and against defendant, Shelvey Davis, only in the sum of \$12,055.00 plus attorney fees in the amount of 25% of the principal and interest and all court costs connected with these proceedings.

From this judgment, Willie Zanders has appealed, contending that the trial court erred in not finding Robert Davis and Bianca Wesley-Davis solidarily liable with Shelvey Davis for the amounts awarded in the judgment; in dismissing Willie Zanders' claim against Crystal Davis on the same day a preliminary default was

¹ Willie Zanders' petition does not have attached thereto (nor does the record contain) any document executed by Crystal Davis. Based on a review of Willie Zanders' appellate brief, he apparently claims that Crystal Davis, who is the spouse of Robert Davis, is liable for the sum owed pursuant to the laws of community property and the indemnitee's promise that Robert Davis signed, which Willie Zanders maintains is a community obligation.

² Included within the answer by the defendants was a peremptory exception raising the objections of no right of action and no cause of action. The defendants subsequently dismissed the objection of no cause of action and the trial court subsequently overruled the objection of no right of action.

Furthermore, we note that the pleading containing the answer and peremptory exception filed on behalf of the defendants was not signed by their attorney. However, because we find, for the reasons detailed herein, that this Court lacks appellate jurisdiction over this appeal, we decline to address the effect of the failure to sign this pleading. See La. C.C.P. arts. 863 and 1003.

³ The record is not clear as to why Willie Zanders moved for and the trial court entered a preliminary default against Crystal Davis, as the record reflects that she filed an answer on May 9, 2017. We do note, however, that the attorney who filed the (unsigned) answer on behalf of the defendants indicated at trial that he did not represent Crystal Davis. See footnote 2.

entered against her; and in awarding attorney fees in the amount of 25% of the principal and interest, as provided in the original promissory note rather than 33 1/3% of the principal and interest as provided in the bail bond indemnitor's agreement.

APPELLATE JURISDICTION

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," which are those that determine the merits in whole or in part. See La. C.C.P. arts. 1841 and 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 a judgment without reference to other documents in the record. **Laird**, 836 So.2d at 366. Stated differently, 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, 913-914. Thus, a judgment that does not contain decretal language cannot be considered as a final judgment for the purpose of an immediate 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, as previously noted, the June 14, 2018 judgment awarded Willie Zanders “only” the sum of \$12,055.00, “attorney fees in the amount of 25% of the principal and interest,” and all court costs. However, the exact amount of attorney fees cannot be determined from the June 14, 2018 judgment itself—the judgment merely indicates that the attorney fees are 25% of the principal and interest. More specifically, with respect to the “interest,” the judgment does not identify whether such interest is legal interest or some other interest, *i.e.* contractual interest pursuant to the note, and whether that interest is from judicial demand, the date the note was due, the date of judgment, or some other date. Furthermore, the judgment does not identify the amount of the principal—*i.e.*, it does not identify the sum of \$12,055.00 as the principal amount. Absent such necessary information, the June 14, 2018 judgment on appeal lacks precise and certain decretal language, is defective, and cannot be considered a final judgment for purposes of appeal. As such, this Court lacks appellate jurisdiction to review this matter and we must dismiss Willie Zanders’ appeal of the June 14, 2018 judgment.⁴

⁴ 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, particularly when an adequate remedy by appeal will exist upon the entry of a judgment containing the requisite precise, definite, and certain decretal language necessary for appellate review. This is because in the absence of precise, definite and certain 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 precise 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 all of the above and foregoing reasons, Willie Zanders' appeal of the June 14, 2018 judgment is dismissed. All costs of this appeal are assessed to the plaintiff/appellant, Willie Zanders.

APPEAL DISMISSED.