

**NOT DESIGNATED FOR PUBLICATION**  
STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 0331

DONNA MORRIS

VERSUS

ANTHONY T. ROBINSON AND ENTERGY LOUISIANA, LLC

CONSOLIDATED WITH

2021 CA 0332

NORTH OAKS HEALTH SYSTEM

VERSUS

DONNA MORRIS AND VANESSA R. WILLIAMS

Judgment Rendered: DEC 22 2021

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Appealed from the 21st Judicial District Court  
In and for the Parish of Tangipahoa  
State of Louisiana  
Case No. 2011-0000641  
Case No. 2013-0000421

The Honorable Brenda Bedsole Ricks, Judge Presiding

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Entergy Louisiana, LLC and Anthony T.  
Robinson

BEFORE: LANIER, WOLFE, AND BURRIS,<sup>1</sup> JJ.

Wolfe, J. concurs.

<sup>1</sup> The Honorable William J. Burris, retired, is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

**LANIER, J.**

The plaintiff, Donna Morris, appeals the January 29, 2021 judgment of the Twenty-First Judicial District Court, denying her motion to set aside the dismissal of her suit against the defendants Entergy Louisiana, LLC (Entergy) and Anthony T. Robinson with prejudice for abandonment. For the following reasons, we reverse the district court's denial of the motion to set aside the dismissal, vacate and set aside the August 12, 2020 order of dismissal, and remand for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

Ms. Morris filed a petition for damages on February 24, 2011, in which she alleged that on February 25, 2010, she was involved in a two-vehicle accident with Mr. Robinson, who was driving a vehicle owned by Entergy. Ms. Morris further alleged that she sustained injuries from the accident. She claimed Mr. Robinson was the at-fault driver and that he and Entergy were liable *in solido* for her damages. Ms. Morris also claimed that Mr. Robinson was in the course and scope of his employment with Entergy at the time of the accident.

Mr. Robinson and Entergy answered the petition on September 27, 2011.<sup>2</sup> Ms. Morris amended her petition on February 23, 2012, to add Louisiana Farm Bureau Casualty Insurance Company (Farm Bureau) as a defendant. Mr. Robinson and Entergy answered the amended petition on March 28, 2012.

On July 19, 2017, D. Steven Wanko, Jr., Chase T. Villeret, and the Wanko Law Firm, LLC (collectively Wanko) filed a petition of intervention in order to recover fees for legal services they rendered on behalf of Ms. Morris in connection with the suit. Wanko filed a motion to withdraw representation of Ms. Morris on the same date. Ms. Morris retained new counsel, who filed a motion to enroll on

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<sup>2</sup> Ms. Morris filed a motion for preliminary default against Entergy on June 20, 2011, which was not confirmed by the district court before Entergy filed its answer. See La. C.C.P. art. 1702(A).

her behalf on July 1, 2019. On January 10, 2020, Farm Bureau filed an answer to the amended petition for damages.

On July 31, 2020, Mr. Robinson and Entergy filed an *ex parte* motion to dismiss the suit for abandonment, alleging that the last action taken by any party in the litigation that moved its prosecution or defense forward took place on May 8, 2017, which they alleged was a letter to Ms. Morris's then counsel requesting to postpone a deposition. The district court signed the order to dismiss the instant case for abandonment on August 12, 2020.

Ms. Morris filed a motion to set aside the dismissal on November 16, 2020, arguing that when her new counsel enrolled, she was informed by counsel for the defense that discovery was still ongoing, to which counsel for Ms. Morris had no objection to continue the discovery process. Such was Ms. Morris's and her counsel's appreciation of the case at the time, until the motion for abandonment was filed.

The district court orally denied Ms. Morris's motion to set aside the dismissal in open court on January 4, 2021 and signed a judgment memorializing the ruling on January 29, 2021. Ms. Morris filed a motion to appeal this judgment on January 12, 2021.<sup>3</sup>

### **DISCUSSION**

Ms. Morris's sole assignment of error is that the district court erred in denying her motion to set aside the dismissal of her suit. Louisiana Code of Civil Procedure article 561 states that any party or interested person may file an *ex parte* motion with an affidavit attesting that no step has been timely taken in the prosecution or defense of the action for three years. See *Clark v. State Farm Mut.*

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<sup>3</sup> An appeal of an order of denial of a motion to set aside dismissal may be taken within sixty days of the date of the clerk's mailing of the order of denial. La. C.C.P. art. 561(A)(5). Such mailing was dated February 3, 2021. It is clear from the record that Ms. Morris filed the instant appeal in response to the denial that was rendered in open court on January 4, 2021, making this appeal timely.

*Auto. Ins. Co.*, 2000-3010 (La. 5/15/01), 785 So.2d 779, 782. Abandonment functions to relieve courts and parties of lingering claims by giving effect to the logical inference that a legislatively designated extended period of litigation inactivity establishes the intent to abandon such claims. The presumption of abandonment that arises under La. C.C.P. art. 561 as a result of three years of litigation inactivity, however, is not conclusive. Dismissal is the harshest of remedies and the general rule is that any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment. *Id.*, 786-87.

Article 561 has the procedural requirement that an *ex parte* motion for dismissal be supported by an affidavit stating that no step has been taken for a period of three years in the prosecution or defense of the action. Herein, Mr. Robinson and Entergy merely filed a motion to dismiss for abandonment without attaching an affidavit attesting that no step had been taken in the prosecution or defense of the instant suit for three years. While the motion states that no action had been taken since May 8, 2017, this does not satisfy the Article 561's requirement of an affidavit.

Due to the lack of an attached affidavit to the *ex parte* motion and the preference we must give to maintaining a suit as not abandoned, we conclude the instant suit is not ripe for abandonment. Therefore, we further conclude that the district court's grant of the *ex parte* motion for dismissal was procedurally improper. See *Wilson v. Koenig*, 1999-2979 (La. App. 1 Cir. 3/31/00), 764 So.2d 1025, 1026.

#### **DECREE**

For the foregoing reasons, the judgment denying the motion to set aside dismissal filed by the appellant, Donna Morris, is reversed, and the order of the Twenty-First Judicial District Court to dismissing the suit for abandonment is

vacated and set aside; the instant matter is remanded to the district court for further proceedings consistent with this opinion. Costs of this appeal are assessed to the appellees, Entergy Louisiana, LLC and Anthony T. Robinson.

**DENIAL OF MOTION TO SET ASIDE REVERSED; ORDER OF DISMISSAL VACATED AND SET ASIDE; REMANDED.**