

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2021 CA 0566**

**WALTER HORRELL, ET AL.**

**VERSUS**

**JACK MARKS ALLTMONT, ET AL.**

*Judgment Rendered:* **DEC 22 2021**

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**Appealed from the 22nd Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Case No. 2017-15086**

**The Honorable Vincent Lobello, Judge Presiding**

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**Walter J. Horrell  
Covington, Louisiana**

**Counsel for Plaintiffs/Appellants  
Walter J. Horrell and Edna Horrell**

**Jack M. Alltmont  
New Orleans, Louisiana**

**Counsel for Defendants/Appellees  
Jack M. Alltmont, Eric M. Schorr, Gaye  
H. Coffey, Edward A. Horrell, Jr.,  
Michael J. Horrell and Marie Elise  
LeCour**

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

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

**LANIER, J.**

Plaintiffs, Walter J. Horrell and Edna R. Horrell, appeal from a district court judgment granting a motion for summary judgment in favor of defendants, Jack M. Alltmont, Eric M. Schorr, Gaye H. Coffey, Edward A. Horrell, Jr., Marie Elise LeCour, and Michael J. Horrell, and dismissing plaintiffs' claims with prejudice. For the reasons that follow, we affirm the judgment of the district court.

### **FACTS AND PROCEDURAL BACKGROUND**

This matter has been before this court and the Louisiana Fourth Circuit Court of Appeal on numerous occasions.<sup>2</sup> In one of the more recent cases, **Horrell v. Barrios**, 2016-1547 (La. App. 1 Cir. 3/15/18), 2018 WL 1373653, (unpublished), writ denied, 2018-0931 (La. 9/28/18), 253 So.3d 144 (**Horrell I**), this court discussed, in depth, the factual and procedural history of the parties and affirmed the dismissal of plaintiffs' possessory action.<sup>3</sup> We adopt by reference that which was set forth in **Horrell I** regarding the factual background and procedural history of this case.

Pertinent to the matter before us now, the record reveals that on November 2, 2017, plaintiffs filed an "Action for Damages, Possessory Actions, Relief by Ordinary Proceedings and Injunctive Relief" against defendants. Plaintiffs argued that they corporeally possessed the immovable property located at Square 1807 of

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<sup>2</sup> See e.g., **Horrell v. Barrios**, 2012-2054 (La. App. 1 Cir. 9/26/13), 2013 WL 5435792 (unpublished); **Horrell v. Barrios**, 2012-2055 (La. App. 1 Cir. 9/26/13), 2013 WL 5435803 (unpublished); **Horrell v. Matthews**, 2010-1694 (La. App. 1 Cir. 5/6/11), 2011 WL 1941588 (unpublished), writ denied, 2011-1848 (La. 11/4/11), 75 So.3d 925; **Horrell v. Barrios**, 2009-2199 (La. App. 1 Cir. 7/21/10), 2010 WL 2844342 (unpublished); **Matthews v. Horrell**, 2006-1973 (La. App. 1 Cir. 11/7/07), 977 So.2d 62; **Horrell v. Matthews**, 2006-1838 (La. App. 1 Cir. 8/15/07), 2007 WL 2318134 (unpublished); **Horrell v. Horrell**, 1999-1093 (La. App. 1 Cir. 10/6/00), 808 So.2d 363, writ denied, 2001-2546 (La. 12/7/01), 803 So.2d 971; **Succession of Horrell**, 2011-1577 (La. App. 4 Cir. 4/18/12), 89 So.3d 1267, writ denied, 2012-1348 (La. 9/28/12), 98 So.3d 846; **Succession of Horrell**, 2011-1574 (La. App. 4 Cir. 4/11/12), 102 So.3d 139; **Succession of Horrell**, 2011-0194 (La. App. 4 Cir. 11/30/11), 79 So.3d 1162, writ denied, 2012-0180 (La. 3/23/12), 85 So.3d 96; **Succession of Horrell**, 95-1598 (La. App. 4 Cir. 9/11/96), 680 So.2d 725, writ denied, 96-2841 (La. 1/31/97), 687 So.2d 403.

<sup>3</sup> In **Horrell I**, this court denied plaintiffs' possessory action claim for the property at issue in the instant appeal and noted that defendants sold the immovable property to a third party. **Barrios**, 2018 WL 1373653, at \*8, n.5.

the New Covington Addition to the Town of Covington in St. Tammany Parish ("the Property") prior to being evicted on November 17, 2016, by defendants. Plaintiffs requested damages for the wrongful eviction and that the trial court recognize them as the possessors of the Property.<sup>4</sup>

On October 9, 2018, defendants filed a motion for summary judgment, requesting the dismissal of plaintiffs' claims because the basis of those claims had been adjudicated by the Twenty-Second Judicial District Court in prior litigation. Specifically, defendants argued that plaintiffs' claims were barred by *res judicata* and collateral estoppel because the Twenty-Second Judicial District Court previously rendered judgment dismissing plaintiffs' possessory action. In support of their motion, defendants filed a memorandum requesting the district court to take judicial notice of prior litigation from the Twenty-Second Judicial District Court, this court, and the Louisiana Supreme Court concerning the parties and property at issue. No supporting documents were attached to defendants' memorandum. Following a December 18, 2018 hearing on the motion for summary judgment, the district court signed a judgment on January 14, 2019, granting summary judgment in favor of defendants. Plaintiffs appealed.

In **Horrell v. Alltmont**, 2019-0945 (La. App. 1 Cir. 7/31/20), 309 So.3d 754, 761 (**Horrell II**), this court found that the district court erred in granting summary judgment in favor of defendants as defendants had failed to submit any evidence in support of their motion for summary judgment. Noting that without the appropriate supporting documentation in the record, there was nothing to review, this court vacated the district court's judgment and remanded the matter for further proceedings. **Horrell**, 309 So.3d at 761-762.

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<sup>4</sup> We note that plaintiffs also named Medstate, L.L.C., Lisa C. Matthews, and Don A. McMath as additional defendants in their petition. The motion for summary judgment that is at issue in this appeal was filed on behalf of Jack M. Alltmont, Eric M. Schorr, and "all members of the Horrell family who have been named as defendants in this case[.]" From the record, it does not appear that the motion was filed on behalf of these additional defendants.

On remand, defendants refiled the identical motion for summary judgment, this time attaching the affidavit of Jack M. Alltmont, attesting that he had "personal knowledge that Exhibits A through H filed with the supporting memorandum are true and correct copies of the court issued orders, judgments and opinions entered in the several matters captioned in those exhibits." In response, plaintiffs filed a memorandum in opposition to the motion for summary judgment, attaching their original memorandum in opposition, along with the original affidavit and documents that were attached to it. The matter proceeded to hearing on December 8, 2020, at which time the district court heard arguments from respective counsel. Thereafter, the district court entered judgment on January 8, 2021, granting the motion for summary judgment "filed by Jack M. Alltmont and others" and dismissing, with prejudice, plaintiffs' petition. Plaintiffs filed a timely motion for new trial, which was denied. This appeal by plaintiffs followed.

Once the appeal was lodged with this court, an interim order was issued on October 14, 2021, noting a possible issue with the decretal language in the judgment. The matter was remanded to the district court for the limited purpose of supplementing the record with an amended judgment that specified which defendants filed the motion for summary judgment and in which specific defendants' favor the motion was granted. See La. Code Civ. P. art. 1918(A), as amended by 2021 La. Acts 259.

Thereafter, on November 3, 2021, the district court signed an amended judgment, which included the following language:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the motion filed by Jack M. Alltmont, Eric M. Schorr, Gaye H. Coffey, Edward A. Horrell, Jr., Marie Elise LeCour and Michael J. Horrell is hereby **GRANTED**. Accordingly, the petition of Walter J. Horrell and Edna Horrell is hereby **DISMISSED WITH PREJUDICE** as to Jack M. Alltmont, Eric M. Schorr, Gaye H. Coffey, Edward A. Horrell, Jr., Marie Elise LeCour and Michael J. Horrell ....

The appeal record was supplemented with this amended judgment on November 9, 2021.<sup>5</sup>

## LAW AND DISCUSSION

### *Motion to Substitute Parties*

During the pendency of this appeal, we learned that two defendants, Edward A. Horrell, Jr. and Gaye H. Coffey, had passed away. Since then, defendants' counsel filed two separate motions to substitute with this court seeking to have parties substituted for the deceased defendants. A judgment rendered for or against a deceased person is a nullity. **Rainey v. Entergy Gulf States, Inc.**, 2001-2414 (La. App. 1 Cir. 6/25/04), 885 So.2d 1193, 1197, writs denied, 2004-1878, 1883, and 1884 (La. 11/15/04), 887 So.2d 478 and 479. However, as an appellate court, we do have the authority to substitute a party when a party dies during the pendency of an appeal, if a motion is properly filed. **Benware v. Means**, 98-0203R (La. App. 1 Cir. 5/12/00), 760 So.2d 641, 645, writ denied, 2000-2215 (La. 10/27/00), 772 So.2d 650; La. Code Civ. P. art. 821.<sup>6</sup> The Uniform Rules for the Louisiana Courts of Appeal provide that "[t]he rules and procedures for substitution of parties provided in [La. Code Civ. P. arts.] 801-807 shall regulate the substitution of parties." Uniform Rules, Courts of Appeal, Rule 2-9.

Louisiana Code of Civil Procedure article 801 provides that:

When a party dies during the pendency of an action which is not extinguished by his death, his legal successor may have himself substituted for the deceased party, on ex parte written motion supported by proof of his quality.

As used in Articles 801 through 804, "legal successor" means:

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<sup>5</sup> In assignment of error number six, plaintiffs argue on appeal that the district court "erred in dismissing 'the petition' without any reservation about the parties who did not appear and who Mr. Allmont does not represent." With the November 3, 2021 amended judgment now in the record and before us on review, this argument is moot and does not warrant further discussion.

<sup>6</sup> Louisiana Code of Civil Procedure article 821 provides, in pertinent part, "The substitution of parties in an action pending in the supreme court or in a court of appeal is governed by the rules of the appellate court."

(1) The survivors designated in Article 2315.1 of the Civil Code, if the action survives in their favor; and

(2) Otherwise, it means the succession representative of the deceased appointed by a court of this state, if the succession is under administration therein; or the heirs and legatees of the deceased, if the deceased's succession is not under administration therein.

With regard to the motion to substitute Edward Allen Horrell, III and Kim E. Horrell Lemoine in place of their deceased father Edward A. Horrell, Jr., attached to the motion is a Judgment of Possession dated December 10, 2021, indicating that Edward and Kim were sent into possession of an undivided one-half (1/2) interest each in and to all of the property of which Edward A. Horrell, Jr. died possessed. Concerning the motion to substitute Cole Timothy Coffey in place of his deceased mother Gaye H. Coffey, the motion indicates that the succession was opened and that Cole was appointed succession representative. Attached to the motion is a signed "Letters of Independent Administration" dated November 3, 2021, reflecting that Cole was appointed independent administrator of the succession and had fulfilled "all of the rights, powers, authorities, privileges and duties of a succession representative." Based on these documents, we are satisfied that Edward Allen Horrell, III, Kim E. Horrell Lemoine, and Cole Timothy Coffey are the legal successors to their deceased parents. The motions to substitute are granted.

***Plaintiffs' Request for Written Reasons for Judgment  
Assignment of Error Number Five***

Plaintiffs argue on appeal that they requested written reasons for judgment "both in their filings and as part of their request for a new trial." Based on our review of the record, the only reference to a request for written reasons for judgment appears in plaintiffs' motion for new trial. Moreover, the district court provided written reasons for judgment following the hearing on the original motion

for summary judgment hearing. Nonetheless, we are not persuaded by plaintiffs' argument on this issue.

As set forth in La. Code Civ. P. art. 966(C)(4), "In all cases, the court shall state on the record or in writing the reasons for granting or denying the motion. If an appealable judgment is rendered, a party may request written reasons for judgment as provided in Article 1917."<sup>7</sup> However, as this matter comes before us on review of a summary judgment, we must consider the matter *de novo*. Thus, we note that even if written reasons had been provided by the district court, no deference would have been given to the findings or reasoning of the district court. **King v. Allen Court Apartments II**, 2015-0858 (La. App. 1 Cir. 12/23/15), 185 So.3d 835, 838-839, writ denied, 2016-0148 (La. 3/14/16), 189 So.3d 1069.

***Ex Parte Motion/Service  
Assignment of Error Number Four***

Plaintiffs further assert that the district court erred in "granting an *ex parte* order to allow service of process on [them] by means other than that provided by law." Defendants respond by alleging that any complaint in this regard is absent any possible prejudice, as the evidence shows that Walter was served with notice of all necessary court appearances and appeared in court to contest each ruling. We agree with defendants. According to the record, Walter was present at both the December 18, 2018 hearing and the December 8, 2020 hearing and has acted as counsel for himself and Edna throughout these proceedings. This argument is without merit.

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<sup>7</sup> Louisiana Code of Civil Procedure article 1917 provides, in pertinent part:

A. In all appealable contested cases, other than those tried by a jury, the court when requested to do so by a party shall give in writing its findings of fact and reasons for judgment, provided the request is made not later than ten days after the mailing of the notice of the signing of the judgment.

***Summary Judgment***  
***Assignment of Errors Numbers One, Two, Three, and Seven***

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Georgia-Pacific Consumer Operations, LLC v. City of Baton Rouge**, 2017-1553 (La. App. 1 Cir. 7/18/18), 255 So.3d 16, 21, writ denied, 2018-1397 (La. 12/3/18), 257 So.3d 194. The Code of Civil Procedure places the initial burden of proof on the party filing a motion for summary judgment. La. Code Civ. P. art. 966(D)(1). The mover can meet its burden by filing supporting documentary evidence consisting of pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions with its motion for summary judgment. La. Code Civ. P. art. 966(A)(4). Because the applicable substantive law determines materiality, whether a particular fact in dispute is material must be viewed in light of the substantive law applicable to the case. **Bryant v. Premium Food Concepts, Inc.**, 2016-0770 (La. App. 1 Cir. 4/26/17), 220 So.3d 79, 82, writ denied, 2017-0873 (La. 9/29/17), 227 So.3d 288.

If the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover need only point out to the court, through its supporting documents, the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. La. Code Civ. P. art. 966(D)(1). See also La. Code Civ. P. art. 966, Comments—2015, Comment (j). Once the motion for summary judgment has been properly supported by the moving party, *i.e.*, the mover has established the material facts through its supporting documents and the mover has made a *prima facie* showing that the motion should be granted, the burden then shifts to the non-moving party to produce factual support, through the use of supporting documents in opposition to the motion, of the existence of a genuine issue of material fact or that the mover



is not entitled to judgment as a matter of law. La. Code Civ. P. art. 966(D)(1). If the non-moving party fails to produce factual support in its opposition sufficient to establish this burden, the motion should be granted. See Babin v. Winn-Dixie Louisiana, Inc., 2000-0078 (La. 6/30/00), 764 So.2d 37, 40.

Appellate courts review evidence *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Thus, appellate courts ask the same questions: whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. **Georgia-Pacific Consumer Operations, LLC**, 255 So.3d at 22. A "genuine" issue is a "triable issue," which means an issue on which reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. **Kasem v. State Farm Fire and Casualty Company**, 2016-0217 (La. App. 1 Cir. 2/10/17), 212 So.3d 6, 13.

In support of their motion for summary judgment, defendants submitted the affidavit<sup>8</sup> of Jack M. Allmont, attesting to the authenticity of the documents attached to the memorandum, which included the following: (1) a copy of the Judgment of Possession dated April 19, 2011, from the Civil District Court for the Parish of Orleans ("CDC"), in the case of Succession of Edward A. Horrell, Sr., Docket No. 93-11275 c/w 93-11701; (2) a copy of **Succession of Horrell**, 2011-1574 (La. App. 4 Cir. 4/11/12), 102 So.3d 139, which affirmed the CDC judgment; (3) a copy of the Judgment dated July 22, 2016, from the Twenty-Second Judicial

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<sup>8</sup> Because Mr. Allmont's affidavit was submitted along with defendants' supplemental memorandum, which was not filed until December 1, 2020, plaintiffs objected to defendants' exhibits at the hearing on the motion. See La. Code Civ. P. art. 966(B)(3). After hearing arguments from both sides regarding defendants' exhibits, the district court noted the objection for the record, denied same, and considered defendants' exhibits in its ruling on the motion for summary judgment. We find no abuse of discretion in the district court's ruling and will likewise consider defendants' exhibits in our review. See Emery v. Owens-Corporation, 2000-2144 (La. App. 1 Cir. 11/9/01), 813 So.2d 441, 449, writ denied, 2002-0635 (La. 5/10/02), 815 So.2d 842.

District Court, in the case of Horrell v. Barrios, Docket No. 2005-12893, c/w Horrell v. Coffey, et al., Docket No. 2016-10267; (4) a copy of the written reasons for the judgment dated July 22, 2016; (5) a copy of **Horrell I**; (6) a copy of the writ denial relative to **Horrell I**; (7) a copy of plaintiffs' Action for Damages, Possessory Actions, Relief by Ordinary Proceedings and Injunctive Relief filed November 2, 2017, in the instant suit; and (8) a copy of the Judgment dated January 14, 2019, from the Twenty-Second Judicial District Court in this suit that was vacated by this court in **Horrell II**.

In opposition to the motion for summary judgment, plaintiffs submitted a memorandum, along with a copy of **Matthews v. Horrell**, 2006-1973 (La. App. 1 Cir. 11/7/07), 977 So.2d 62, and a supplemental affidavit of Walter J. Horrell dated November 17, 2020. In addition, plaintiffs attached a copy of their opposition to the original motion for summary judgment and its attachments, which included an affidavit by Walter J. Horrell and Edna R. Horrell dated November 27, 2018, and various documents attached thereto. Plaintiffs argued that this court's 2007 decision in **Matthews** recognized that Walter J. Horrell had an ownership interest in the Property, had the right to possess it, and could not be evicted therefrom. They further asserted that once the **Matthews** case acquired *res judicata* status in 2007, no court had subject matter jurisdiction to change the ruling. These arguments are without merit.

In **Matthews**, during the administration of the succession of Edward Horrell, the provisional administratrix, Lisa Matthews, filed a petition to evict plaintiffs from the Property, alleging that they were occupying premises "owned" by the succession. The district court granted the eviction, and plaintiffs appealed. **Matthews**, 977 So.2d at 70-71. On appeal, this court found that as an heir to his father, Walter J. Horrell did in fact have an ownership interest in the Property "unless and until it is disposed of during the administration of the succession or

thereafter." *Id.* at 73. Because there was no evidence in the record that the Property had been alienated, this court concluded that Ms. Matthews failed to prove that the purpose of Walter's occupancy has ceased. Thus, the judgment of eviction was reversed. *Id.* at 77. However, plaintiffs' position that the **Matthews** case bars any subsequent actions regarding possession and eviction is without merit.

Based on our *de novo* review of the evidence submitted on the motion for summary judgment, we find that defendants carried their burden of proof on the motion. *Res judicata* is governed by La. R.S. 13:4231, which provides, in pertinent part:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

....

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

It is clear from the record that the prior final judgments of the Twenty-Second Judicial District Court, this court, and the Louisiana Supreme Court held that plaintiffs have no ownership or possessory rights to the Property. Thus, plaintiffs' current action is barred as it has already been litigated and determined amongst the parties. Plaintiffs failed to come forward with any opposition evidence establishing that there is a genuine issue of material fact; therefore, we find no error in the district court's ruling. Accordingly, we conclude that summary judgment in favor of defendants was appropriate.

### CONCLUSION

For the above and foregoing reasons, Edward Allen Horrell, III and Kim E. Horrell Lemoine are substituted as party defendants as the legal successors of Edward A. Horrell, Jr., and Cole Timothy Coffey is substituted as party defendant

as the legal successor of and Gaye H. Coffey. We affirm the November 3, 2021 judgment of the district court, granting summary judgment in favor of defendants and dismissing, with prejudice, the petition of Walter J. Horrell and Edna Horrell against defendants. We assess all costs of this appeal against plaintiffs/appellants, Walter J. Horrell and Edna Horrell.

**MOTIONS TO SUBSTITUTE GRANTED; AFFIRMED.**