

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

DAVID M. GANDY

NO. 2021 CW 1067

VERSUS

ROBERT M. ZACARY AND STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

DECEMBER 6, 2021

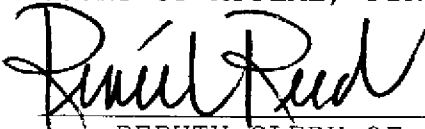
In Re: Robert M. Zacary and State Farm Mutual Automobile Insurance Company, applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 202012443.

BEFORE: McDONALD, LANIER, AND WOLFE, JJ.

WRIT GRANTED. The district court's July 29, 2021 judgment dismissing the peremptory exception of prescription filed by the defendants, Robert M. Zacary and State Farm Mutual Automobile Insurance Company, is reversed. The original petition asserted that plaintiff, David M. Gandy ("Gandy"), was the owner of the alleged damaged vehicle, and the damage occurred on June 14, 2019. However, the evidence submitted to the district court affirmatively proved that Redline Motorsports, LLC was the owner of the vehicle at issue, and it did not assert its claim until the supplemental and amending petition was filed on March 18, 2021, more than one year after the alleged damage. While Gandy attempted to assert the claim in the amended petition "as an agent" of Redline Motorsports, LLC, a member of a limited liability company "is not a proper party to a proceeding by or against a limited liability company," and "[a] member shall have no interest in limited liability company property." La. R.S. 12:1320(C); La. R.S. 12:1329; see also **Northeast Realty, L.L.C. v. Misty Bayou, L.L.C.**, 40,573 (La. App. 2d Cir. 1/25/06), 920 So.2d 938. The original petition provided no indication that any person or entity other than Gandy had claims against the defendants, and the addition of a limited liability company added a wholly new plaintiff by a party with no right of action to file the suit originally, and therefore, we find the factors for relation back set forth in **Giroir v. So. Louisiana Med. Ctr., Div. Of Hospitals**, 475 So.2d 1040, 1044 (La. 1985), have not been met, and relation back of the amended petition does not apply. See **Ahmed v. Downman Development, L.L.C.**, 2017-0114 (La. App. 4th Cir. 12/28/17), 234 So.3d 1111. Thus, the proper plaintiff, Redline Motorsports, LLC, failed to file suit within one year of the alleged tort damage. See La. Civ. Code art. 3492. Accordingly, the exception of prescription is granted, and the plaintiff's claims are dismissed.

JMM
WIL
EW

COURT OF APPEAL, FIRST CIRCUIT



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