

NOT DESIGNATED FOR PUBLICATION

CELINA STAFFORD	*	NO. 2000-CA-0564
ASHWOOD HINDS, INEZ		
STAFFORD PRIDE, NAOMI	*	COURT OF APPEAL
STAFFORD RUFFIN AND		
O DELIAH STAFFORD	*	FOURTH CIRCUIT
LEBLANC	*	STATE OF LOUISIANA
VERSUS		
	*	
JACK C. CALDWELL,		
SECRETARY OF THE	*	
DEPARTMENT OF NATURAL	*****	
RESOURCES, STATE OF		
LOUISIANA AND JAMES P.		
HUEY, PRESIDENT, BOARD		
OF LEVEE COMMISSIONERS		
OF THE ORLEANS LEVEE		
DISTRICT, STATE OF		
LOUISIANA		

APPEAL FROM
PLAQUEMINES 25TH JUDICIAL DISTRICT COURT
NO. 45-095, DIVISION "A"
Honorable Anthony Ragusa, Judge

Judge David S. Gorbaty

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

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JUDGMENT VACATED; REMANDED

In this appeal, defendant Jack C. Caldwell, Secretary of the Department of Natural Resources, State of Louisiana (“State”) contends that the trial court erred in denying its exception of improper venue. For the reasons set forth below, the judgment appealed from is vacated, and this matter is remanded.

FACTS AND PROCEDURAL HISTORY

On September 7, 1999, plaintiffs filed suit against the State and James P. Huey, President of the Board of Commissioners of the Orleans Levee District (“Levee District”) seeking to be recognized as the legal owners of Tract 195 in the Bohemia Spillway. On October 12, 1999, the State filed exceptions of improper venue and nonjoinder of essential parties. In its accompanying letter to the Clerk of Court, the State noted, “We have not submitted an order to set these exceptions for hearing at this time because the other defendant, Board of Commissioners for the Orleans Levee District, has yet to responded [sic] to the plaintiffs’ petition.”

On September 30, 1999, the Levee Board filed Exceptions of Prematurity, Failure to Exhaust Administrative Remedies, and No Cause of Action. The Levee Board attached an order for the exceptions to be set for hearing. The Judge Pro Tempore, Luke Petrovich, signed the order and assigned the date of November 8, 1999 for the hearing.

The minutes of court for November 8, 1999 state:

HONORABLE LUKE A PETROVICH, JUDGE
PROTEMPORE, DIVISION “A”

* * * * *

This matter was set for this day for hearing on Defendant’s

Exception of Prematurity, Exception of Failure to Exhaust Administrative Remedies and Exception of No Cause of Action.

PRESENT: Lyman Jones, Attorney for Plaintiffs
Defendant, Absent and Unrepresented

The Court and Mr. Jones agreed to continue the Levee Board's Exception of Prematurity and denied the Exception of Failure to Exhaust Administrative Remedies and Exception of No Cause of Action. Mr. Jones will prepare the judgment and will sign on presentation.

On December 6, 1999, Judge Anthony D. Ragusa, Jr., who replaced Judge Petrovich, signed the judgment submitted by Mr. Jones. The judgment provides:

This matter came before the court as duly scheduled on November 8, 1999.

* * *
*

Counsel for plaintiff having reported to the court that plaintiffs and the defendant, Board of Levee Commissioners of the Orleans Levee District having agreed to continue the exceptions filed on behalf of the Orleans Levee District, those exceptions were continued by the Court with leave to be refixed.

The Court having reviewed the exception of improper venue and non joinder of essential parties, as well as plaintiff's opposition to the said exceptions, filed by the defendant Secretary of the Department of Natural Resources.

IT IS ORDERED, ADJUDGED AND DECREED that the exceptions of improper venue and non joinder of essential parties filed by the Department of Natural Resources are without merit; and accordingly, they are hereby dismissed.

On December 9, 1999, the State filed a Motion and Order to Vacate the Judgment of December 6, 1999, contending that it had never requested

the exceptions be set for hearing; and, if it was counsel for the plaintiffs who requested that the State's exceptions be set for hearing on that date, then the State was never served with any notice of the hearing. Judge Ragusa denied the State's motion on December 9, 1999.

On December 16, 1999, the State filed a petition and order for appeal on the denial of its exception of improper venue. Judge Ragusa signed the order granting the appeal on December 17, 1999.

After the record in this case had been lodged in this court on March 10, 2000, the State received a copy of a judgment rendered by the trial court on March 14, 2000 sustaining its exception of improper venue and transferring the case to the Ninteenth Judicial District Court for the Parish of East Baton Rouge. The judgment of March 14, 2000 reflects that the exceptions filed by both the State and the Levee Board came for hearing on February 7, 2000.

DISCUSSION

Louisiana Code of Civil Procedure Article 2088 provides, in pertinent part, "The jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal... Thereafter, the trial court

has jurisdiction in the case only over those matters not reviewable under the appeal...” The trial court’s order granting the State an appeal on December 17, 1999 divested it of jurisdiction over all matters reviewable under the appeal. Therefore, the subsequent judgment of the trial court on March 14, 2000 sustaining the State’s exception of improper venue is of no effect.

La. R.S. 4209 is entitled, “Decisions by successor judge.” Subsection B (1) provides: “In cases which are heard and in which judgment is rendered, but not signed...if the judge who rendered the judgment dies, resigns, or is removed from office, or if his term expires before signing the judgment in the case, his successor in office shall have the authority to sign a judgment which conforms with the judgment rendered.” An examination of the record reveals that the judgment signed by Judge Ragusa on December 6, 1999 does not conform with the oral ruling of Judge Petrovich on November 8, 1999. The State’s exceptions were not set for that date, nor did Judge Petrovich even consider them, according to the court minutes. The judgment prepared by Mr. Jones and presented to Judge Ragusa did not accurately reflect the ruling of the court. As such, it does not comply with the requirements set forth in La. R.S. 4209 (B)(1) and is thus invalid.

CONCLUSION

Accordingly, for the foregoing reasons, the judgment appealed from is declared to be void and of no effect, and this matter is remanded for further proceedings consistent with this opinion and the laws of this state.

JUDGMENT VACATED; REMANDED