NOT DESIGNATED FOR PUBLICATION

ROBERT L. LUCIEN, JR. AND GLORIA LUCIEN	*	**NO. 2001-CA-2245**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
AUTOMOTIVE CASUALTY INSURANCE CO. AND WILLIAM REED, JR.	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 90-20001, DIVISION "G-4"
Honorable Robin M. Giarrusso, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr., and Judge David S. Gorbaty)

Craig J. Hattier
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Madisonville, LA 70447
COUNSEL FOR INTERVENOR/APPELLANT

AFFIRMED

Mr. Craig J. Hattier, as intervenor, appeals the trial court's judgment, which dismissed his action on the grounds of abandonment. For the

following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 5, 1990, Mr. Craig Hattier ("Mr. Hattier") filed a petition on behalf of plaintiffs, Robert and Gloria Lucien, and against defendants Automotive Casualty Insurance Company, and William Reed, Jr. for damages incurred as a result of an auto accident. On November 8, 1990, the defendants filed an answer.

On November 14, 1996, Paul Deal and Walter Willard, filed a "Motion to Enroll" as counsel for defendants. The Motion further ordered that Rhett M. Powers and Steven A. Queyrouze be relieved as counsel for defendants.

On February 4, 1999, Mr. Hattier, counsel for plaintiffs, filed a "Motion to Withdraw as Counsel of Record."

On August 23, 1999, Mr. Hattier filed a Petition of Intervention, which alleges that Mr. Robert Lucien ("Mr. Lucien") breached an Employment Agreement contract he had with Mr. Hattier. Specifically, Mr. Hattier alleges that Mr. Lucien breached the employment contract by failing to forward documents necessary to proceed with the case.

On October 21, 1999, Mr. Lucien filed an "Answer to Petition on Intervention and Reconventional Demand." In the Answer and

Reconventional Demand, Mr. Lucien alleges that Mr. Hattier "fell below the standard of care for attorney's practicing in this community" when he failed to take legal action on his behalf for a period of more than three years. Thus, Mr. Lucien alleges that he has suffered damages because Mr. Hattier's inaction caused his lawsuit to be abandoned.

On December 16, 1999, Mr. Hattier filed "Exceptions to Reconventional Demand and Memorandum in Support Thereof."

On October 26, 2000, defendants filed a "Rule to Show Cause Why Case Should Not Be Deemed Abandoned." The defendants allege that pursuant to La. C.Civ. Pro. Art. 561, as amended, this case was abandoned as of July 1, 1998 because the last action taken in the lawsuit was a result of discovery on October 27, 1994.

On January 19, 2001, after a hearing, the trial court granted defendants' Motion to have the case abandoned. Thereafter, on February 5, 2001, the trial court signed a judgment, which ordered the case dismissed and deemed abandoned as of July 1, 1998.

On March 2, 2001, the trial court denied Mr. Hattier's Motion for a New Trial. Mr. Hattier now appeals this final judgment.

DISCUSSION

On appeal, Mr. Hattier briefed eight assignments of error, arguing that

the trial court erred in: (1) failing to find La. C.Civ. Pro. Art. 561 unconstitutional; (2) denying his Motion for a New Trial without setting a contradictory hearing; (3) denying his Motion for a New Trial because defendants November 14, 1996, Motion to Enroll was a "step in furtherance in the prosecution of the case to judgment;" (4) denying his Motion for a New Trial because the date of abandonment is November 14, 1999, and not July 1, 1998; (5) denying his Motion for a New Trial because the date of abandonment in the court's February 5, 2001, judgment is incorrect and should be changed to October 26, 1997, which is three years from the last action taken in the case; (6) denying his Motion for a New Trial because the date of abandonment in the court's February 5, 2001, judgment is incorrect because July 1, 1998 is not the hallmark date to determine when an action is abandoned; (7) amending the original judgment dated January 25, 2001; and (8) denying his Motion for a New Trial because plaintiff's Reconventional Demand was not dismissed along with the involuntary dismissal of the main demand.

The thrust of Mr. Hattier's arguments goes to the issue of whether this action was properly dismissed as abandoned pursuant to La. C.Civ. Pro. Art. 561. The 1997 La. Acts No. 1221, § 1 amended Article 561 by changing the abandonment period from five years to three years. By its specific language,

Act 1221 became effective on July 1, 1998, and applied to all pending actions. 1997 La. Acts No. 1221, § 2. Accordingly, all cases pending on July 1, 1998, are subject to the revisions to Article 561.

La.C.Civ. Pro. Art. 561 provides in pertinent part:

> A. (1) An action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years…
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> (2) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been taken for a period of three years in the prosecution or defense of the action, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The order shall be served on the plaintiff pursuant to Article 1313 or 1314, and the plaintiff shall have thirty days from date of service to move to set aside the dismissal. However, the trial court may direct that a contradictory hearing be held prior to dismissal.
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> B. Any formal discovery as authorized by this Code and served on all parties whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

This Court has held that, in determining whether a suit has been abandoned, Motions to withdraw or enroll as counsel or to substitute counsel are not formal steps before a court in prosecution of a suit. *Varnado v. Gentilly Medical Clinic for Women*, 98-0264 (La.App. 4 Cir. 12/23/98), 728 So.2d 479, 480, *writ denied by*, 99-0146 (La. 3/19/99), 740 So.2d 113. Further, this Court has held that the retroactive application of Article 561 is

constitutional and thus does not deprive a party of a vested cause of action without due process. *Alexander v. Liberty Terrace Subdivision, Inc*., 99-2171 (La. App. 4 Cir. 4/12/00), 761 So.2d 62, 64.

In this case, the record indicates that suit was filed against the defendants on October 5, 1990. Thus, this suit was pending on the effective date of the amendment to this article. Defendants filed an answer on November 8, 1990. Mr. Hattier alleges that he issued interrogatories to defendants on October 26, 1994. Thereafter, the record reflects that nothing occurred until November 14, 1996, when undersigned counsel enrolled as counsel for defendants; however, as previously stated, we do not find that a Motion to Enroll is a step in the prosecution of the case. See *Varnado*, *supra*. Consequently, because there is nothing in the record to show that any step or action in the prosecution of the case had occurred for over three years, we find that this case was properly dismissed as abandoned pursuant to Article 561.

Accordingly, we affirm the trial court's judgment, which dismissed this case as abandoned as of July 1, 1998.

AFFIRMED