

LISA BROOKS COOPER

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NO. 2001-CA-2274

VERSUS

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COURT OF APPEAL

**FUN SERVICES LOUISIANA,
INC.; THE AUDUBON
INSTITUTE, INC.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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MURRAY, J., DISSENTS WITH REASONS

The Legislature expressly addressed the effective date of its 1999 amendment to La. C. Civ. Pro. art. 1915, which deleted the term “parties” from Article 1915(B)(1), by stating that this amendment “shall become effective on January 1, 2000, and *shall apply to all actions filed on or after January 1, 2000.*” La. Acts 1999, No. 1263, §3 (emphasis supplied). The majority construes the highlighted portion of the Legislature’s statement to preclude applying that amendment to a summary judgment rendered *after* January 1, 2000 that dismisses one party in a multi-party case filed *before* January 1, 2000. I disagree.

The Legislature’s intent in amending La. C. Civ. Pro. art. 1915(B)(1), a procedural provision, was to clarify an ambiguity and to make that clarification cover all summary judgments rendered on or after the effective

date of that Act. That construction is supported by the Legislature's statement that "[t]he provisions of this Act shall become effective on January 1, 2000." La. Acts 1999, No. 1263 §3. This construction is further supported by the general principle that an appellate court "shall render any judgment which is just, legal, and proper upon the record on appeal." La. C.Civ. Pro. art. 2164. The judgment appealed from in this case, rendered *after* January 1, 2000, thus should be construed as governed by the amended version of La. C. Civ. Pro. art. 1915(B)(1), and thus as a final, appealable judgment.

The procedural posture of this case is distinguishable from that presented in *Roberts v. Orpheum Corp.*, 98-1941 (La. App. 4 Cir. 2/2/2000), 753 So. 2d 916. In *Roberts*, the trial court granted summary judgment on March 2, 1998 in favor of Orpheum Corporation, one of multiple defendants. In dismissing the appeal of that partial summary judgment, we concluded that La. Acts. 1999, No. 1263, §3 precluded our applying the amendment to Article 1915(B)(1) retroactively to the trial court's judgment rendered *before* the effective date of the Act. In this case, however, the trial court's judgment was rendered *after* the effective date of the Act, and it is illogical not to apply the amendment. For that reason, I dissent from the dismissal of this appeal. This court can and should reach the merits.