WENDY K. WOODHAM, WIFE OF/AND GARRY SCOTT WOODHAM, PLAINTIFFS	*	**NO. 2002-CA-0768**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
SANDRA BRAUD, CHARLES F. SAMPEY, CONWAY HERZOG, INTERSTATE INSURANCE COMPANY INC., PROGRESSIVE INSURANCE COMPANY, INC., DEFENDANTS	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 98-13262, DIVISION "J-6"
Honorable Nadine M. Ramsey, Judge
* * * * * *

JOAN BERNARD ARMSTRONG

JUDGE

* * * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge Max N. Tobias, Jr.)

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APPEAL DISMISSED WITHOUT PREJUDICE

This case arises out of an automobile accident that took place on August 20, 1997. The accident occurred on La. Highway 90B and involved three vehicles. According to plaintiffs' petition, Gary Scott Woodham, who was operating the first vehicle, was rear-ended by a second vehicle being operated by Charles F. Sampey, Jr. Subsequently, the Sampey vehicle was rear-ended by a vehicle being operated by Sandra Braud and again propelled into Mr. Woodham's vehicle. As a result of the accident, plaintiffs filed suit on July 29, 1998 against Braud, her alleged insurer Interstate Insurance Company, Inc. (Interstate), Sampey, and his alleged insurer Progressive Insurance Company, Inc. (Progressive). Plaintiffs also named as a defendant Conway Herzog, Sampey's employer, alleging that Herzog owned the vehicle that Sampey was operating at the time of the accident and that Sampey was on a mission for him when the accident occurred.

Plaintiffs filed a Motion for Partial Summary Judgment on the Issue of Liability seeking a ruling from the trial court (1) that Sampey was

negligent and that said negligence was a cause in fact of the accident at issue, (2) that Herzog was vicariously liable for Sampey's actions, and (3) that both plaintiffs suffered injuries as a result of the accident.

In response, Herzog filed a Motion for Summary Judgment seeking to be dismissed from plaintiffs' action on the grounds that (1) the facts do not support plaintiffs' theory that he negligently entrusted his vehicle to Sampey, (2) even if Sampey was in the course and scope of his employment when the accident occurred, Herzog Automotive, Inc., rather than Conway Herzog individually, was his employer, and (3) Louisiana law does not support a cause of action under which he could be held vicariously liable for the fault of his son-in-law, Sampey, where Sampey was gratuitously performing a family service, i.e. dropping off his brother-in-law's vehicle an the request of his father-in-law, after work hours.

Following a hearing, the trial court took the matter under advisement. On December 7, 2001, the trial court rendered judgment denying plaintiffs' Motion for Summary Judgment, granting Herzog's Motion for Summary Judgment, and dismissing Herzog from plaintiffs' suit. Subsequently, on December 17, 2001, the trial court issued written reasons in support of its judgment. Plaintiffs then filed a timely petition for devolutive appeal from the judgment rendered against them.

The initial issue that we must address in this appeal is whether the December 7, 2001 partial judgment is a final appealable judgment pursuant to La. C.C.P. art. 1915.

At the time summary judgment was rendered and this appeal was filed, La. C.C.P. art. 1915(B) provided that a judgment dismissing less than all of the claims or parties shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

The December 7, 2001 judgment granting summary judgment in favor of Herzog did not adjudicate plaintiffs' claims against the remaining defendants, Sampey or Progressive. In addition, plaintiffs filed a First Amended Petition on December 11, 2001, naming Herzog Auto Parts as an additional defendant. In order to be immediately appealable under La. C.C.P. art. 1915, the law required that the judgment, because it was a partial final judgment, be designated as a final judgment by the trial court after making an express determination that there was no just reason for delay. No such designation appears in the record. Likewise, the record contains no evidence that the parties requested that the trial court make such a designation.

In Jackson v. America's Favorite Chicken Co., 98-0605 (La. App. 4

Cir. 2/3/99), 729 So.2d 1060, we held that "[a] trial court's mere signing of an order for appeal from a partial judgment will not make that judgment immediately appealable." In addition, we held that the certification by the court "to consider the partial judgment as final must be of record when the appeal is first filed." We went on to note, however, that a party does not lose the right to appeal a partial judgment that is not certified as final; it merely loses the right to take an immediate appeal of that partial judgment.

For the foregoing reasons, we dismiss without prejudice the plaintiffs' appeal because the December 7, 2001 judgment contains no certification that it is a final appealable judgment pursuant to La. C.C.P. art. 1915(B). While the plaintiffs do not have the right to an immediate appeal, they have not lost their right to appeal after final judgment is rendered adjudicating all of the claims, demands, issues and theories of the case.

APPEAL DISMISSED WITHOUT PREJUDICE