NOT DESIGNATED FOR PUBLICATION

BRANDON JOHNSON, ET AL.	*	**NO. 2002-CA-0973**
VERSUS	*	**COURT OF APPEAL**
STATE FARM MUTUAL AUTOMOBILE CASUALTY INSURANCE COMPANY, ET AL.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-1565, DIVISION "A-5"
Honorable Carolyn Gill-Jefferson, Judge
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JUDGE MAX N. TOBIAS, JR.
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(COURT COMPOSED OF CHIEF JUDGE WILLIAM H. BYRNES III, JUDGE TERRI F. LOVE, JUDGE MAX N. TOBIAS, JR.)

RICHARD A. THALHEIM, JR.
RICHARD A. THALHEIM, JR., LTD., APLC
506 CANAL BOULEVARD
P. O. BOX 5327
THIBODAUX, LA 70302
COUNSEL FOR PLAINTIFF/APPELLANT

DAVID J. MITCHELL
JENNIFER E. ADAMS
PORTEOUS, HAINKEL & JOHNSON, L.L.P.
704 CARONDELET STREET

NEW ORLEANS, LA 70130-3774
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED WITHOUT PREJUDICE

Plaintiffs/appellants, Gwendolyn Holder ("Holder"), individually and as mother of Brandon Johnson ("Johnson"), appeal the trial court's grant of summary judgment in favor of defendants, Carl W. Strother ("Strother") and State Farm Mutual Automobile Insurance Company ("State Farm"), and the resulting dismissal of their action against Strother and State Farm.

FACTS AND PROCEDURAL HISTORY

This case stems from an automobile accident that occurred shortly after 2:00 a.m. on 31 January 1998. On the morning in question, Johnson was a guest passenger in a vehicle being driven by Heath Strother, with the consent, permission, and knowledge of his farther, Carl W. Strother, the vehicle's owner. The Strother vehicle was insured under a policy issued by State Farm. A collision occurred when the Strother vehicle, which had been traveling in the wrong direction on Common Street, attempted to cross the intersection of Common and Carondelet Streets. The vehicle that struck the Strother vehicle was owned by Billy Jean Badie ("Badie"), insured under a policy issued by Academy Insurance Agency ("Academy"), and being driven by Qureshi Maqsood ("Maqsood").

As a result of the accident, Johnson, and his mother Holder, filed suit against Heath Strother, Strother, State Farm, Badie, Maqsood, Academy, and the City of New Orleans. By way of a first amended petition, the plaintiffs added as defendants Entergy Corporation, Entergy Louisiana, Inc., Entergy Services, Inc., and Entergy Companies, as well as any and all of its members (collectively hereinafter referred to as "the Entergy defendants"). Plaintiffs subsequently filed a second amended petition in which they named as a defendant North American Fire and Casualty Insurance Company, in place of Academy, as the insurer of the Badie vehicle.

On 15 June 2001, Strother and State Farm filed a Motion for Summary Judgment seeking dismissal of plaintiffs' claims against them. Several documents were attached to the motion. First, was a copy of an "Ex Parte Motion and Order to Deposit Funds into the Registry of the Court," file stamped on 31 May 2000, whereby Heath Strother, Strother, and State Farm tendered $27,700.00 into the registry of the court; the amount represented the full amount of per person liability coverage in favor of Strother plus legal interest and court costs through the date of deposit. The motion stated that the funds were being offered as an unconditional tender and that the tender was being made to solely prevent a further accrual of interest against the Strothers and State Farm, and without any admission of

liability on their part. State Farm also attached to their motion for summary judgment a copy of a 9 June 2000 "Ex Parte Motion and Order to Withdraw and Receive Deposited Funds into the Registry of the Court as Unconditional Tender of Payment" along with an order signed by the trial court on 15 June 2000, releasing the funds on deposit to the plaintiffs with the proviso that "receipt and withdrawal [of the funds] is without any restrictions on plaintiffs' claims and is without prejudice to any claims by plaintiffs in this matter…." A copy of the policy issued by State Farm to Strother was attached to the motion. Finally, the motion included 1) an affidavit by Strother, in which he stated that his son, Heath Strother, was not on a mission for him or his benefit at the time of the accident, that he had no knowledge of any facts that would have caused him to believe that his son was physically or mentally incompetent to drive, and that the vehicle involved in the accident was free from defects, and 2) an affidavit by Heath Strother reiterating his father's statements that he was not on a mission for his father at the time of the accident, and that to the best of his knowledge, the vehicle being operated by him at the time of the accident was free from defects.

No opposition to Strother and State Farm's motion for summary judgment appears in the record. Following a contradictory hearing on 2

September 2001, the trial court issued a written judgment on 14 November 2001 in favor of defendants Strother and State Farm and against the plaintiffs, dismissing their action with each party to bear its own costs. Plaintiffs timely filed a motion and order for devolutive appeal from that judgment.

The initial issue that we must consider in this appeal is whether the 14 November 2001 judgment was a final judgment subject to immediate appeal pursuant to La. C.C.P. art. 1915.

The version of La. C.C.P. art. 1915(B) that applies to this matter 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 no just reason for delay exists.

The 14 November 2001 judgment granting summary judgment in favor of Strother and State Farm did not adjudicate plaintiffs' claims against the numerous remaining named defendants in this matter. As such, the judgment did not dismiss all parties and falls under La. C.C.P. art. 1915(B). In order to be immediately appealable under La. C.C.P. art. 1915, the law required that the judgment, because it was a partial judgment, be designated as a final judgment by the trial court after making an express determination

that no just reason for delay exists. 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 plaintiffs' appeal, without prejudice, because the 14 November 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