

NOT DESIGNATED FOR PUBLICATION

KATHLEEN PUMPHREY * **NO. 2004-CA-0889**
VERSUS * **COURT OF APPEAL**
THE CITY OF NEW ORLEANS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

* * * * *

CONSOLIDATED WITH:
DARLENE RIZZUTO

CONSOLIDATED WITH:
NO. 2004-CA-0890

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:
FRED FARVE, JR.

CONSOLIDATED WITH:
NO. 2004-CA-0891

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:
MICHAEL RICKS AND
VIVIAN RICKS

CONSOLIDATED WITH:
NO. 2004-CA-0892

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:
BARBARA ELLIS

CONSOLIDATED WITH:
NO. 2004-CA-0893

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:
HERBERT CRAIG

CONSOLIDATED WITH:
NO. 2004-CA-0894

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:

A. RAY PIATTOLY

CONSOLIDATED WITH:

NO. 2004-CA-0895

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:

PATRICK MURPHY

CONSOLIDATED WITH:

NO. 2004-CA-0896

VERSUS

THE CITY OF NEW ORLEANS

CONSOLIDATED WITH:

IGNATIUS JAMES

CONSOLIDATED WITH:

NO. 2004-CA-0897

VERSUS

THE CITY OF NEW ORLEANS

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 93-158, C/W 93-159, C/W 93-160, C/W 93-161, C/W 93-162, C/W
93-163, C/W 93-164, C/W 93-165, C/W 93-2970, DIVISION "G-11"

Honorable Robin M. Giarrusso, Judge

* * * * *

Judge Roland L. Belsome

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(Court composed of Judge David S. Gorbaty, Judge Edwin A. Lombard,
Judge Roland L. Belsome)

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COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

The City of New Orleans (“the City”) appeals once more the
declaratory judgment rendered against them in which the trial court held that
the provisions of La. R.S. 22:657 apply to the City with regard to its self-

funded health care plan. We affirm

FACTS AND PROCEDURAL HISTORY

This consolidated matter stems from a suit filed by several plaintiffs against the City. The plaintiffs are seeking penalties and attorneys fees for non-payment and/or untimely payment of insurance benefits which were due and payable to the City's self-funded employee health care plan.

On January 19, 1995, prior to the consolidation, this Court previously decided the case of *Rizzuto*. In *Rizzuto*, this Court affirmed the trial court's declaratory judgment, which held that the provisions of La. R.S. 22:657 apply to the City. A joint motion to consolidate was filed. On July 20, 1998, an order was signed by the district court consolidating several cases, *Rizzuto* being one of them. The City then filed a petition for declaratory judgment in all of the consolidated matters. On April 1, 2004, the trial court entered judgment against the defendant holding that provisions of La. R.S. 22:657 apply to the City. This appeal followed.

ANALYSIS

The City contends, as it did in *Rizzuto*, that the trial court erred when it held that the provisions of La. R.S. 22:657 apply to the City with regard to its self-funded health care plan. This Court has previously decided that issue *Rizzuto*. In *Rizzuto*, this court affirmed the trial judge's holding that La.

R.S. 22:657 applied to the City's self-funded health care plan.

In *Kiefer v. Southern Freightways, Inc.*, 95-2037, p. 5 (La.App. 4 Cir. 12/27/96), 686 So.2d 1041, 1046, this Court dealt with the issue of whether a defendant should be barred by the "law of the case" doctrine from re-urging an argument in an appeal which was presented, and ultimately rejected, in a previous appeal even though not all parties were in the appeal at issue were parties in the prior appeal. This Court specifically stated:

The conclusion is inescapable that State Farm is re-urging in the present appeal an argument that was squarely presented, and ultimately rejected, in the previous appeal.

Under the "law of the case" doctrine, an appellate court generally will not reconsider a ruling made in a previous appeal. *Day v. Campbell-Grosjean Roofing and Sheet Metal Corp.*, 260 La. 325, 256 So.2d 105, 107 (1971). State Farm points out that LIGA was not a party at the time of our decision in the previous appeal and thus, State Farm contends, the law of the case doctrine does not apply. However, the law of the case doctrine "applies only *against* those who were parties to the case when the former appellate decision was rendered and who thus had their day in court." *Day*, 256 So.2d at 107 (emphasis added). In the present appeal, the law of the case doctrine is being applied "against" State Farm and State Farm was, of course, a party at the time of our decision in the previous appeal.

* * *

State Farm had a full opportunity to present its argument in the previous appeal and, particularly in view of the fact that we expressly noted that argument and commented that it had some merit, it was fully considered in the previous appeal. Thus, State Farm may not re-urge that same argument in this present appeal.

In the present appeal, the law of the case doctrine is being applied "against" the City and the City was, of course, a party at the time of our decision in the previous appeal. The City had a full opportunity to present its argument in the previous appeal. Thus, this court has already decided the exact issue in one of the consolidated cases; the same ruling applies and should be adopted to all of the cases concerning the instant appeal.

CONCLUSION

Accordingly, the law of the case doctrine precludes our reconsideration of this appeal.

AFFIRMED