ANNE E. ANDERSON

VERSUS

WARREN JEFFERY ANDERSON

NO. 20-CA-186

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 655-044, DIVISION "P"
HONORABLE LEE V. FAULKNER, JR., JUDGE PRESIDING

December 23, 2020

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Jude G. Gravois,
Robert A. Chaisson, and Hans J. Liljeberg

AFFIRMED

HJL
JGG
RAC

COUNSEL FOR PLAINTIFF/APPELLEE,
ANNE E. ANDERSON
Michael D. Conroy

COUNSEL FOR DEFENDANT/APPELLANT,
WARREN JEFFERY ANDERSON
Rebecca A. Gilson

LILJEBERG, J.

Defendant/Appellant, Warren Jeffery Anderson, appeals the trial court's dismissal, with prejudice, of his petition to annul two judgments issued by the trial court, the first on September 10, 2012, rendering past due child and spousal support amounts executory, and the second on February 14, 2013, partitioning the parties' community property. However, after reviewing the record and applicable law, we find that Mr. Anderson fails to raise proper grounds warranting the nullification of these judgments. Therefore, we affirm the trial court's dismissal of Mr. Anderson's petition for nullity with prejudice.

FACTS AND PROCEDURAL BACKGROUND

This matter arises from a petition for divorce filed by plaintiff/appellee, Anne E. Anderson, on March 30, 2009. In the petition, Ms. Anderson requested, *inter alia*, that the trial court partition the community property acquired by the parties during their marriage. Mr. Anderson executed an acceptance of service and citation for Ms. Anderson's petition for divorce on April 9, 2009. On April 21, 2009, Mr. Anderson filed an answer and reconventional demand also requesting partition of the community property and use of a 2007 Jeep Wrangler pending partition of the community property.

On April 1, 2010, Mr. Anderson filed a motion for judgment terminating the community property regime. On May 3, 2010, the parties entered into a consent judgment agreeing to terminate the community of acquets and gains effective March 30, 2009. On August 12, 2010, Mr. Anderson filed a request for notice of all trials and hearings set in this matter, as well as notice of all orders and judgments rendered. On that same day, Mr. Anderson also filed a petition for partition of the community property and for an accounting. On August 13, 2010, the trial court issued an order requiring each party to file a sworn descriptive list within 45 days of service of the petition for partition and requiring each party to

either traverse or concur with the other party's list within 60 days of the last filed descriptive list. On September 8, 2010, Ms. Anderson filed an answer to the petition for partition of the community property.

The next action taken by the parties to partition their community property was on January 9, 2012, when Ms. Anderson filed a sworn detailed descriptive list of the community assets and liabilities. On March 22, 2012, Ms. Anderson filed a motion for her descriptive list to be deemed a judicial determination of the community assets and liabilities due to Mr. Anderson's failure to file his sworn descriptive list. In the motion, Ms. Anderson explained that neither party filed their sworn descriptive lists in accordance with the trial court's August 13, 2010 order because they were attempting to amicably resolve the community property issues, but settlement negotiations failed. Ms. Anderson alleged that she sent a courtesy copy of her sworn descriptive list to Mr. Anderson on January 6, 2012, and requested that he file his sworn list within 30 days. After receiving no response, Ms. Anderson alleged that she sent additional requests to Mr. Anderson to file his descriptive list, which he eventually filed on March 29, 2012.

On May 8, 2012, Mr. Anderson's attorney filed a motion and order to withdraw as counsel of record, which the trial court granted that same day. In the motion, the attorney listed Mr. Anderson's last known physical address as 3201 Riverside Dr. in Mobile, Alabama.[1]

On May 17, 2012, Ms. Anderson filed a motion to set for trial on the merits, which is the focus of Mr. Anderson's efforts to nullify the February 4, 2013 judgment. The motion contained in the record appears to be a generic, standard form provided by the trial court to set civil matters for trial. Ms. Anderson did not specify the issues she intended to set for trial in the motion as the form does not

[1] Mr. Anderson confirmed at the trial on his petition to annul the judgments that he lived at this address in Mobile, Alabama, at that time.

provide a space for such an explanation. The motion included an order setting a trial on the merits on June 21, 2012, presumably before the hearing officer, and a date before the district court on July 30, 2012. The form contains a handwritten note stating "waive service."

On May 31, 2012, Ms. Anderson filed a motion to reset explaining that the matter was "presently scheduled regarding a partition community of community of acquets and gains," on June 21, 2012 before the hearing officer and on July 30, 2012 before the district court. Ms. Anderson explained that Mr. Anderson was now representing himself in proper person and resided out of state in Alabama. Ms. Anderson asked to continue the matter to allow her the requisite time to serve Mr. Anderson by means of the "Louisiana Long Arm Statute." The court granted the request and continued the hearing officer conference date to August 2, 2012, and the district court date to September 10, 2012. The record indicates that on May 31, 2012, the clerk of court's office issued a notice of the motion to reset and new hearing dates to be served on Mr. Anderson pursuant to the long arm statute.

On June 18, 2012, Karen Bergeron, a paralegal for Ms. Anderson's attorney, filed an affidavit of service of process indicating that on June 1, 2012, she sent Mr. Anderson, via Federal Express, certified copies of the following matters, including a motion to reset the trial on the community property partition and a rule for contempt and to make past due support executory,[2] as well as notices of the dates to appear for these matters:

a. Notice of Hearing Officer Conference and Notice of Hearing Date of Suit and Rule for Contempt, To Make Past Due Support Executory, For Legal Interest, Attorneys Fees and Costs which is scheduled for hearing before the hearing officer on August 2, 2012 at 10 a.m. and before the District Court on September 10, 2012 at 9 a.m.;

b. Notice of Hearing Officer Conference and Notice of Hearing Date of Suit and Motion to Reset which is scheduled for hearing before

[2] The September 10, 2012 judgment, which Mr. Anderson also seeks to nullify, grants relief requested by Ms. Anderson in her rule for contempt and to make past due support executory.

the hearing officer on August 2, 2012 at 10 a.m. and before the District Court on September 10, 2012 at 9 a.m.;

c. Rule to Show Cause for Sentencing on Contempt Ruling which is scheduled before the District Judge on September 10, 2012 at 9 a.m.

The affidavit attached a receipt from Federal Express indicating that after two delivery attempts were "[r]efused by recipient" on June 2 and 5, 2012, the envelope was delivered to Mr. Anderson by leaving it at his front door on June 6, 2012.

On the day of the hearing officer conference, August 2, 2012, Ms. Anderson filed an amended sworn detailed descriptive list. The hearing officer recommendations filed into the record indicate that Mr. Anderson did not attend the conference. In his recommendations, the hearing officer determined that Mr. Anderson owed $10,730.82 in past due child and spousal support. The hearing officer recommended an executory judgment in favor of Ms. Anderson in this amount, plus legal interest, costs and attorney fees in the amount of $2,000.00. The hearing officer further recommended to defer the community property partition and contempt issues to the trial court. The trial court signed an interim judgment on that same day indicating that the recommendations would become the judgment of the court if objections were not filed and further ordered that a separate final judgment be prepared and presented by the parties or counsel of record. The designated record does not contain any documents indicating that Mr. Anderson was served with notice of the hearing officer's recommendations following the conference.

On September 10, 2012, Ms. Anderson appeared with her counsel for the community property partition trial. Mr. Anderson did not appear for these proceedings. Prior to proceeding with the trial, Ms. Anderson's counsel presented a proposed final judgment containing the recommendations rendered by the

hearing officer at the August 2, 2012 conference outlined above. The trial court signed this judgment on that same day, September 10, 2012.[3] The trial court then proceeded with the trial on the community property partition in Mr. Anderson's absence.[4] On February 4, 2013, the trial court rendered a judgment partitioning the community property.[5]

Over five years later, on November 2, 2018, Mr. Anderson filed a petition to annul the judgments signed by the trial court on September 10, 2012 and February 4, 2013. In his petition, Mr. Anderson alleged that these judgments are an absolute nullity because, *inter alia*, Ms. Anderson did not serve him with the original motion to set the trial on the community partition and failed to serve him with the hearing officer recommendations, thereby denying him the opportunity to file objections prior to the rendering of the final judgment. On August 7, 2019, Mr. Anderson filed an amended petition for nullity to correct clerical errors regarding the date of the second judgment contained in the original petition for nullity.

On September 25, 2019, the parties conducted a trial on Mr. Anderson's petition for nullity. Following the presentation of testimony from the parties and argument by counsel, the trial court took the matter under advisement and ordered the parties to file post-trial memoranda within 20 days. On November 14, 2019,

---

[3] The trial court indicated in its reasons for judgment that the clerk of court issued notice of this judgment to Mr. Anderson at his Mobile, Alabama address and it was returned unclaimed on December 7, 2012. Mr. Anderson does not contest this finding.

[4] In his appellate brief, Mr. Anderson incorrectly characterizes the community property partition trial as a hearing to confirm a default judgment. As discussed more fully below, though the community property partition proceeded in Mr. Anderson's absence, it did not result in a default judgment, but rather an ordinary final judgment entered after a party fails to appear for a trial, for which he received notice. Both parties demanded partition of the community property in their petitions: 1) Ms. Anderson in her petition for divorce; and 2) Mr. Anderson in his reconventional demand and subsequently, in a separate petition to partition the community property. The parties each filed answers in response to these petitions/reconventional demand. Therefore, neither party sought an initial default judgment (now referred to as a preliminary default) nor had grounds to seek to confirm a default judgment (now referred to as a final default judgment). Such judgments are granted to plaintiffs in situations where a defendant fails to file an answer, which is clearly not the case in the present matter. *See* La. C.C.P. arts 1701 and 1702.

[5] According to the trial court's written reasons, the clerk of court issued and mailed notice of this judgment to Mr. Anderson on February 14, 2013. Again, Mr. Anderson does not contest the issuance of the notice of signing of judgment on appeal. At the trial on the petition to annul the judgments, Mr. Anderson admitted that he received the judgment partitioning the community property, but could not recall the date he received it.

the trial court rendered a judgment and written reasons denying Mr. Anderson's petition to annul the judgments and dismissed his suit with prejudice.

On November 27, 2019, Mr. Anderson filed a motion for devolutive appeal of the trial court's judgment dismissing his petition to annul, which the trial court granted on December 2, 2019. On December 6, 2019, Mr. Anderson filed a motion and order to designate the record on appeal, which the trial court granted on January 14, 2020.[6]

DISCUSSION

Mr. Anderson did not file a direct appeal of either of the judgments at issue. Rather, he chose to collaterally attack the judgments over five years after they were entered and issued by filing a petition to annul the judgments. On appeal, Mr. Anderson argues that the trial court erred in denying his petition to annul the September 10, 2012 and February 4, 2013 judgments. He raises several issues regarding each of these judgments. With respect to the February 4, 2013 judgment partitioning the community property, he argues the trial court erred by finding he was properly served with the original motion to set the matter for trial on the merits because there is no proof he was served with this motion via the long arm statute. He also argues the trial court erred by failing to allow him to traverse the amended sworn detailed descriptive list Ms. Anderson filed on August 2, 2012.

With respect to the September 10, 2012 judgment, he argues that the trial court erred by failing to find his procedural rights were violated because he did not receive the hearing officer recommendations prior to entry of the final judgment. He also argues that the trial court erred with respect to both judgments by declining to find that Ms. Anderson failed to follow proper procedure requiring presentation

[6] In his motion to designate the record, Mr. Anderson provided the statement of the points he intended to rely on appeal required by La. C.C.P. art. 2129. In the statement, he indicated that he intended "to rely solely on his contention that the trial on the Partition of the Community Property is an absolute nullity due to lack of service and the trial on arrears owed in support is an absolute nullity as the requirements for the circulation of the Judgment were not met."

of the proposed judgments to him for review prior to submitting them to the trial court for signature and that the trial court erred by finding he acquiesced to the judgments.

February 4, 2013 Judgment

We first address Mr. Anderson's arguments seeking to nullify the February 4, 2013 judgment that partitioned the parties' community property. As noted above, he argues that this Court should find the February 4, 2013 judgment is a nullity because he was not served with the original motion to set the trial on community property partition via the long arm statute.

As the parties do not dispute the essential facts related to long arm service and notice of trial, the question of whether the trial court properly granted or denied a petition for nullity is a question of law, and questions of law are reviewed under the *de novo* standard of review. *See Nunez v. Superior Hospitality Systems, Inc*., 14-668 (La. App. 5 Cir. 12/23/14), 166 So.3d 1004, 1007.

According to La. C.C.P. art. 2002, a final judgment is an absolutely nullity for a vice of form, if it is rendered under one of the following exclusive[7] grounds: 1) against an incompetent person not represented as required by law; 2) against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid final default judgment has not been taken; or 3) by a court which does not have jurisdiction over the subject matter of the suit. With the exceptions of when a defendant voluntarily acquiesces in the judgment or was present in the parish at the time of the judgment's execution and did not attempt to enjoin its enforcement, an action to annul a judgment on the grounds listed in La. C.C.P. art. 2002 may be brought at

[7] *See Cosse v. Orihuela*, 12-456 (La. App. 5 Cir. 1/30/13), 109 So.3d 950, 955, *writ denied*, 13-680 (La. 4/26/13), 12 So.3d 850; *see also* Official Revision Comment (e) to La. C.C.P. art. 2002.

any time. *Id*. Grounds for nullifying a judgment include insufficient service and lack of due process. *Nunez*, 166 So.3d at 1008.

Mr. Anderson does not deny that he was properly served, via the long arm statute, with the *motion to reset* the trial on the community property partition or with notice of the dates assigned for that trial. Rather, he relies on La. C.C.P. art. 2594,[8] and the portion of La. R.S. 13:3204(A)[9] governing service of process for a motion or pleading initiating a summary proceeding via long arm statute, as well as jurisprudence from this Court interpreting those laws, *Nunez, supra*, to argue the judgment is a nullity because he was not served with the initial motion to set the community property partition trial. Defendant also cites to La. R.S. 13:3205, which provides:

> No preliminary default or final default judgment may be rendered against the defendant and no hearing may be held on a contradictory motion, rule to show cause, or other summary proceeding . . . until thirty days after the filing in the record of the affidavit of the individual who . . .
>
> (2) Utilized the services of a commercial carrier to make delivery of the process to the defendant, showing the name of the commercial courier, the date, and address at which the process was delivered to defendant, to which shall be attached the commercial courier's confirmation of delivery.

Therefore, in his arguments, Mr. Anderson equates the initial motion to set the trial on the merits with a motion or petition filed by a plaintiff to initiate a

[8] La. C.C.P. art. 2594 provides:

> Citation and service thereof are not necessary in a summary proceeding. A copy of the contradictory motion, rule to show cause, or other pleading filed by the plaintiff in the proceeding, and of any order of court assigning the date and hour of the trial thereof, shall be served upon the defendant.

[9] La. R.S. 13:3204(A) provides:

> In a suit under R.S. 13:3201, a certified copy of the citation or the notice in a divorce under Civil Code Article 102 and of the petition or a *certified copy of a contradictory motion, rule to show cause, or other pleading filed by the plaintiff in a summary proceeding* under Code of Civil Procedure Article 2592 shall be sent by counsel for the plaintiff, or by the plaintiff if not represented by counsel, to the defendant by registered or certified mail, or actually delivered to the defendant by commercial courier, when the person to be served is located outside of this state or by an individual designated by the court in which the suit is filed, or by one authorized by the law of the place where the service is made to serve the process of any of its courts of general, limited, or small claims jurisdiction. [Emphasis added].

summary proceeding under La. C.C.P. art. 2592, and argues that the affidavit filed by Ms. Anderson does not attest that a certified copy of the initial motion to set the trial was served on him. We cannot ignore, however, the fatal flaw in Mr. Anderson's argument. As explained above, the community property partition trial did not involve a default judgment. Furthermore, it did not involve a summary proceeding, but rather an ordinary proceeding. A partition of community property may be asked for as incidental relief in a suit for divorce, but it must be requested in a petition and handled in an ordinary proceeding. *Durden v. Durden*, 14-1154 (La. App. 4 Cir. 4/29/15), 165 So.3d 1131, 1143. Because the community property partition is an ordinary proceeding, Ms. Anderson properly file a motion to set a trial date, as opposed to a rule to show cause to set a contradictory hearing for a summary proceeding.[10]

Further, our review of the record indicates there are no process issues requiring the nullification of the February 4, 2013 judgment. Ms. Anderson filed a petition for divorce, which included a demand for partition of the community property, and Mr. Anderson filed an acceptance of service and citation of this petition. He then filed an answer and reconventional demand in response, which also demanded partition of the community property. Therefore, Mr. Anderson received proper service of process for Ms. Anderson's demand for a community property partition.

Mr. Anderson also does not deny that he was served via the long arm statute with a certified copy of the motion to reset the trial date and notice of the August 2, 2012 and September 10, 2012 trial dates for the community property partition trial

[10] The trial court notes in its reasons for judgment that it held a "trial" on the community property partition on September 10, 2012.

via the long arm statute.[11] The motion to reset also explained that the purpose of the trial date was to partition the community property. The motion to set trial on the merits, which is the focus of Mr. Anderson's petition to annul the February 4, 2013 judgment, is merely a generic form provided by the trial court, which did not contain an explanation regarding the issues that Ms. Anderson intended to set for trial. It is not a contradictory motion.

Because the February 4, 2013 judgment involves an ordinary proceeding initiated by Ms. Anderson's petition for divorce, Mr. Anderson's reliance on law governing summary proceedings and this Court's reasoning in *Nunez, supra*, is inapposite. *Nunez* involved a summary proceeding to recover unpaid compensation or wages.[12] *Id.* at 1005. The plaintiff initiated the proceeding with a Petition for Payment of Compensation, which was set for a contradictory hearing. After the sheriff was unable to serve the defendant with the initial Petition for Payment of Compensation on defendant's registered agent, the plaintiff filed a motion to reset a new hearing date on the petition and requested alternative service on any employee. This Court noted that the motion to reset served on the defendant did not attach a copy of the initial Petition for Payment of Compensation and, unlike the present matter, did not contain an explanation of her claims against the defendant. *Id.* at 1006.

The trial court entered a judgment against the defendant after he failed to appear for the hearing and he filed a petition to nullify the judgment. The trial court denied the petition for nullity finding the defendant had notice of the hearing date and failed to appear. *Id.* at 1007. On appeal, this Court reversed and held the

[11] As noted above, Mr. Anderson refused to accept delivery of the envelope containing the motion to reset and notice of the trial dates on two occasions before Federal Express left it at his door. Service is proper under La. R.S. 13:3204 when a defendant receives notice of the mailing to him, but simply refuses to claim the mailing as the defendant's conduct is tantamount to refusal of service. *See Wood v. Hackler*, 52,791 (La. App. 2 Cir. 8/14/19), 276 So.3d 1136, 1140-41, *writ denied*, 19-1469 (La. 12/10/19), 285 So.3d 490.

[12] La. C.C.P. art. 2592(12) authorizes the use of summary proceedings in all matters in which it is permitted. An employee is granted the right to proceed against an employer for a wage claim via summary proceeding under La. R.S. 23:631(B).

judgment entered against the defendant was a nullity because the defendant was not served with the Petition for Payment of Compensation. This Court based its ruling on its determination that, for matters involving summary proceedings, La. C.C.P. art. 2594 requires service of the contradictory motion, as well as notice of the hearing date. *Id.* at 1008-09.

As explained above, the community property partition trial did not involve a summary proceeding that required long arm service of the initial motion set for contradictory hearing. Mr. Anderson fails to cite to any law that requires long arm service of process of any additional pleadings beyond a demand in a petition for divorce to set a community property partition for trial. Further, the motion to set the matter for trial was not a "contradictory motion" set for a contradictory hearing. It did not include a rule to show cause. Rather, it simply indicated that the matter was ready for a trial on the merits. The trial court then filled in the trial dates and signed an order setting the matter for trial. When the matter could not proceed on the original trial dates, Ms. Anderson filed the motion to reset, which she served on Mr. Anderson via the long arm statute.

Accordingly, we find that the trial court did not err by denying Mr. Anderson's petition to nullify the February 4, 2013 judgment on that grounds that he was not served with the initial motion to set the matter for trial. No process issues exist that warrant the nullification of the February 4, 2013 judgment. Mr. Anderson accepted service of process of the petition demanding partition, and filed his own demands for partition. Further, he was served with notice of the motion to reset the trial date, which explained that the matter was set for trial on the community property partition, and provided notice of the dates assigned for the trial. The fact that Mr. Anderson did not receive a copy of the original notice to set the trial date does not warrant nullification of the February 4, 2013 judgment, because the trial did not proceed on the date set in that initial motion. Mr.

Anderson does not dispute that Ms. Anderson filed an affidavit of service in accordance with La. R.S. 13:3204 indicating that a certified copy of the motion to reset the community partition trial and notice of the trial dates were sent to him via Federal Express.

Based on our findings that Mr. Anderson received process as required by law, it is not necessary for this Court to consider his assignment of error arguing that the trial court erred by finding that he acquiesced to this judgment. Therefore, we pretermit discussion of this issue.[13]

Finally, as noted above, Mr. Anderson did not pursue a direct appeal of the February 4, 2013 judgment.[14] Rather, he chose to wait to collaterally attack the judgment by filing a petition to annul, which is limited to the exclusive grounds contained in La. C.C.P. art. 2002 in this case. We rejected these grounds, and therefore, we cannot consider Mr. Anderson's final issue on appeal with respect to the February 4, 2013 judgment, that the trial court erred by failing to allow him the opportunity to traverse the amended sworn descriptive list.

An action for nullity is not a substitute for an appeal to address the merits or substantive issues relating to the judgment. *See Guerrero v. Guerrero*, 10-930 (La. App. 5 Cir. 5/10/11), 65 So.3d 737, 744, *writ denied*, 11-1805 (La. 10/21/11), 73 So.3d 385. Anderson had several opportunities to object to this filing, which he chose to forego. First, he failed to appear for the hearing officer conference on August 2, 2012, the day Ms. Anderson filed the amended sworn descriptive list, and he failed to appear for the community partition trial on September 10, 2012. More importantly, he failed to file a timely appeal of the February 4, 2013

[13] We further note that Mr. Anderson did not include the issue of whether he acquiesced to the February 4, 2013 judgment in the statement of points on appeal required by La. C.C.P. art. 2129 and submitted with his motion to designate the record.

[14] Mr. Anderson does not dispute the trial court's finding in its reasons for judgment that on February 14, 2013, the clerk of court issued and mailed him the February 4, 2013 judgment, which initiated the time to file a direct appeal of the judgment. *See* La. C.C.P. art. 1913; La. C.C.P. art. 3942; La. C.C.P. art. 2087.

judgment, wherein he could have raised his objections. Due to the untimeliness of his appeal with respect to the amended sworn descriptive list, we do not have jurisdiction to consider this issue relating to the merits of the judgment. *See Joseph v. Egan Health Care Corp.*, 19-10 (La. App. 5 Cir. 5/6/19), 273 So.3d 459, 462 ("Absent a timely filed motion for appeal, the appellate court lacks jurisdiction over the appeal.").[15]

September 10, 2012 Judgment

Mr. Anderson also seeks to collaterally attack and nullify the September 10, 2012 judgment, in which the trial court rendered amounts for past due child and spousal support executory. As explained above, the September 10, 2012 judgment granted relief in favor of Ms. Anderson on her rule for contempt, to make past due support executory, for legal interest, attorney's fees and costs that she filed against Mr. Anderson. As opposed to the community property partition, this rule for contempt and to make past due support executory involved a summary proceeding governed by La. C.C.P. art 2594 and set for a contradictory motion. However, Mr. Anderson does not deny or contest that he received service, via the long arm statute, of the rule for contempt and to make past due support executory. He also does not deny or contest that he received notice of the August 2, 2012 hearing officer conference and September 10, 2012 district court date assigned for Ms. Anderson's rule.

As a result, Mr. Anderson cannot and does not raise any valid grounds to nullify the September 10, 2012 judgment for lack of process with respect to service of the contradictory rule for contempt and notice of the hearing date required under La. C.C.P. art 2594. Instead, he claims the judgment is invalid because he did not receive a copy of the hearing officer's recommendations, thereby preventing him

[15] We also note that Mr. Anderson did not specify this issue regarding the sworn amended descriptive list in his statement of points on appeal submitted with his motion to designate the record.

from filing an objection to the recommendations. Second, he argues that opposing counsel failed to provide a copy of the final judgment to him prior to presenting it to the trial court for signature pursuant to Louisiana District Court Rule 9.5.

Just as with the February 4, 2013 judgment, we note that Mr. Anderson does not dispute the trial court's finding that on November 2, 2012, the clerk of court mailed him a notice of the September 10, 2012 judgment. Instead of filing a direct appeal, he waited to file a petition to nullify this judgment pursuant to La. C.C.P. art. 2002, which is limited to service of process issues. However, we do not find that any process issues exist as he received proper service of the rule and hearing date in accordance with La. C.C.P. art. 2594. Mr. Anderson had the opportunity to raise objections regarding lack of notice of the hearing officer recommendations and failure to circulate a copy of the proposed judgment on direct appeal. However, he chose not to do so and his attempts to now raise these issues on appeal are untimely. Therefore, as explained above, when a party fails to file a timely appeal from a final judgment, this Court lacks jurisdiction to consider these underlying issues relating to the judgment. *See Joseph, supra.* [16]

DECREE

For all of the reasons stated more fully above, we affirm the trial court's judgment dismissing Mr. Anderson's petition to nullify the September 10, 2012 and February 4, 2013 judgments with prejudice.

AFFIRMED

[16] Mr. Anderson also argues in his assignments of error that the trial court erred by finding that he acquiesced to both judgments. Based on our findings that Mr. Anderson received process as required by law, it is not necessary for this Court to consider his argument that the trial court erred by finding that he acquiesced to the September 10, 2012 judgment. We further note that in the arguments presented to this Court in this appellate brief, Mr. Anderson only briefed the issue relating to acquiescence to the February 4, 2013 judgment. He did not address how the trial court erred in finding that he acquiesced to the September 10, 2012 judgment. Therefore, this issue is abandoned. *See* Uniform Rules, Courts of Appeal, Rule 2-12.4(B)(4). Finally, Mr. Anderson did not include this issue in his statement of points on appeal.

FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 23, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

20-CA-186

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HON. LEE V. FAULKNER, JR. (DISTRICT JUDGE)
MICHAEL D. CONROY (APPELLEE)
REBECCA A. GILSON (APPELLANT)

MAILED
NO ATTORNEYS WERE MAILED