

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1241

GLENN THIBODAUX AND ANGELA THIBODAUX

VERSUS

ST. MARY PARISH SEWER DISTRICT NO. 7
AND CNA INSURANCE COMPANY

Judgment rendered March 27, 2009.

Appealed from the
16th Judicial District Court
in and for the Parish of St. Mary, Louisiana
Trial Court No. 108,152
Honorable William D. Hunter, Judge

J. LOUIS GIBBENS
DENNIS STEVENS
NEW IBERIA, LA

GREGORY W. RONIGER
METAIRIE, LA

RUSSEL J. CREMALDI
FRANKLIN, LA

JAMES C. ARCENEUX, IV
KENNER, LA

ATTORNEYS FOR
PLAINTIFFS-APPELLANTS
GLENN AND ANGELA THIBODAUX,
SKYLER JAMES THIBODAUX, AND
DANIELLE RENEE THIBODAUX WARD

ATTORNEY FOR
DEFENDANTS-APPELLEES
ST. MARY PARISH SEWER DISTRICT
NO. 7 AND VALLEY FORGE
INSURANCE COMPANY

ATTORNEY FOR
DEFENDANT-APPELLEE
ST. MARY PARISH SEWER DISTRICT
NO. 7

ATTORNEY FOR
THIRD PARTY DEFENDANT-APPELLEE
KUHLMAN-BECNEL HARDWARE &
ELECTRIC COMPANY, INC.

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

PETTIGREW, J.

In this case, plaintiffs, Glenn and Angela Thibodaux, filed an action for damages against defendants, St. Mary Parish Sewer District 07 ("St. Mary"), and its insurer, Valley Forge Insurance Company, for damages to their home caused by a sewerage back up and the subsequent flooding to the home due to a tropical storm. St. Mary filed a third-party demand against Kuhlman-Becnel Hardware & Electric, Inc. ("Kuhlman-Becnel") alleging that Kuhlman-Becnel had assumed complete responsibility for the inspection, maintenance, repair, and upkeep of the equipment that was the subject of plaintiffs' complaint. Following a trial on the merits in March 2007, the trial court rendered judgment on July 18, 2007, finding as follows:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Angela Thibodaux against defendants St. Mary Parish Sewer District 07 and its insurer, CNA Insurance Company in the sum of \$5,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of St. Mary Parish Sewer District 07 and CNA Insurance Company and against Glenn Thibodaux;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of St. Mary Parish Sewer District 07 and CNA Insurance Company and against Skyler Thibodaux and Danielle Renee Thibodaux Ward;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of St. Mary Parish Sewer District 07 and CNA Insurance Company and against Kuhlman Becnel for the sum of \$5,000;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants St. Mary Sewer District and CNA Insurance Company are cast for all costs; and Judgment over in their favor and against Kuhlman Becnel for all costs.

Plaintiffs timely appealed the trial court's judgment, and both St. Mary and Kuhlman-Becnel answered plaintiffs' appeal.

On June 30, 2008, this court issued a rule to show cause why the appeal should not be dismissed because the trial court's July 18, 2007 judgment failed to contain sufficient decretal language. Thereafter, on August 4, 2008, an interim order was issued remanding the matter to the trial court for the limited purpose of having the trial court sign a valid judgment in accordance with La. Code Civ. P. art. 1918. In response

thereto, the trial court signed an amended judgment on September 18, 2008, which resulted in substantive changes to the July 18, 2007 judgment made without recourse to the proper procedures. On October 28, 2008, this court dismissed the appeal of the July 18, 2007 judgment, vacated the September 18, 2008 judgment, and reinstated the July 18, 2007 judgment, noting, in pertinent part, as follows:

Because the original judgment was not properly altered, amended, or revised by a new trial or an action of nullity in the trial court, and because the September 18, 2008 judgment substantively amended the original judgment, we find that the September 18, 2008 judgment is an absolute nullity. See La. C.C.P. art. 2002. ... There is no valid basis for an appeal of an absolutely null judgment, and we lack jurisdiction to review it. See **Mack v. Wiley**, 2007-2344 (La. App. 1 Cir. 5/2/08), [991] So.2d [479].

... Once the trial court has signed a written judgment with appropriate language as required by La. C.C.P. art. 1918, and the requisite notice is sent, a timely motion for appeal may be filed.

Following this October 28, 2008 action by the writ panel, the clerk's office erroneously docketed the answers to the appeal, filed by St. Mary and Kuhlman-Becnel, for review by this panel. Because the answers to the appeal are based on the same defective judgment of the trial court, i.e., the July 18, 2007 judgment, and the issues addressed by St. Mary and Kuhlman-Becnel are intertwined with the issues raised in plaintiffs' original appeal, which has previously been dismissed, the answers should also be dismissed, as part of the original appeal. As previously noted by the writ panel in its October 28, 2008 action, once the trial court signs a judgment with proper decretal language, all parties will have the right to appeal and/or answer the appeal at that time.

ANSWERS TO THE APPEAL DISMISSED.