

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 1449

SUCCESSION OF WOODIE CARL WHITE, JR.

Judgment Rendered: JUN 17 2011

Appealed from
Sixteenth Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Probate No. 18,742

Honorable Keith R.J. Comeaux, Judge

Dale H. Hayes
Morgan City, LA

Counsel for
Appellant
Michael Patrick White

S. Patrick Skiles
Morgan City, LA

Counsel for
Appellee
Monique White Falcon

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Hughes, J., concurs.

g May
RHB

GUIDRY, J.

This matter comes before us for review of an April 12, 2010 judgment nullifying a judgment placing Michael Patrick White, the brother of the decedent, Woodie Carl White, Jr., and the sole legatee of decedent's will, in possession of his brother's estate. On March 11, 2010, Monique White Falcon, the decedent's daughter, filed a "Motion to Nullify Judgment of Possession and for Contempt of Court," and following a hearing on said motion, the trial court rendered the April 12, 2010 judgment appealed herein.

On September 29, 2010, this court issued a rule to show cause wherein we observed, "[t]he April 12, 2010 judgment[,] which is the subject of this appeal[,] appears to be a NON-APPEALABLE ruling." (Emphasis omitted.) Thus, the parties were ordered to show cause by briefs on or before October 14, 2010, why the appeal should not be dismissed. The rule to show cause was subsequently referred to our panel for resolution.

The following decrees are contained in the April 12, 2010 judgment:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Nullify Judgment of Possession filed by Monique White Falcon is hereby **granted** and the Judgment of Possession signed by the Court on February 1, 2010 in favor of Michael Patrick White is hereby **vacated and nullified**.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment nullifying the Judgment of Possession signed by the Court on February 1, 2010 in favor of Michael Patrick White be recorded in the Mortgage and Conveyance Records of the Parish of St. Mary, State of Louisiana.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Motion for Contempt filed by Monique White Falcon against Michael Patrick White herein be and hereby is continued without date.

The judgment appealed ordered that the February 1, 2010 judgment of possession be vacated and nullified; however, the judgment appealed further shows that the claim for contempt filed by Monique White Falcon remains unresolved.¹

A final judgment is appealable in all causes in which appeals are given by law. La. C.C.P. art. 2083(A). A judgment that determines the merits in whole or in part is a final judgment. La. C.C.P. Art. 1841. Although the issue of contempt is not related to the issue presented in this appeal regarding nullification of the judgment of possession, the issue of contempt was presented in the original pleading for which the judgment appealed from was rendered. See Bergeron v. Bergeron, 256 So. 2d 334 (La. App. 1st Cir. 1971). Moreover, La. C.C.P. art. 1915(B) provides:

(1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, ***the judgment 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.***

(2) ***In the absence of such a determination and designation***, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and ***shall not constitute a final judgment for the purpose of an immediate appeal.*** Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties. [Emphasis added.]

The trial court did not certify or designate the April 12, 2010 judgment as a final judgment. Since this judgment adjudicates fewer than all the claims and was not certified as final by the trial court in accordance with La. C.C.P. art. 1915(B)(1), it is not an appealable final judgment. Richardson v. Tessier, 07-0374, p. 3 (La. App.

¹ The request for a contempt ruling is premised on the allegation that Michael Patrick White failed to comply with a prior judgment of the trial court to deliver all assets of the estate of the decedent, including several guns and a checkbook, to the law offices of counsel for Monique White Falcon.

1st Cir. 11/2/07), 977 So. 2d 55, 56; Boudreaux v. Audubon Insurance Company,
01-2061, pp. 5-6 (La. App. 1st Cir. 10/16/02), 835 So. 2d 681, 684-85.

For these reasons, the appeal is dismissed without prejudice. Costs of the
appeal are to be borne by Michael Patrick White.

APPEAL DISMISSED.