

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2379

LINDA WILLIAMS AND HUSTON WILLIAMS

VERSUS

DEREK HENDRY, STATE FARM INSURANCE COMPANY,  
AND LIBERTY MUTUAL INSURANCE COMPANY

Judgment Rendered: September 21, 2012.

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On Appeal from the  
19<sup>th</sup> Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court No. 579,807

The Honorable R. Michael Caldwell, Judge Presiding

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BEFORE: CARTER, C.J., GUIDRY AND GAIDRY, JJ.

*Trinity D. concurs in the result.*

## **CARTER, C.J.**

Linda Williams and Huston Williams (“Plaintiffs”) appeal an adverse partial summary judgment regarding UM coverage limits on both their Auto policy and an umbrella policy in favor of Liberty Mutual Insurance Company (“Liberty Mutual”) finding: 1) that plaintiffs’ claims against Liberty Mutual are limited to UM coverage limits of \$100,000 per person, \$300,000 per accident; 2) that the Personal Catastrophe Liability Policy (“PCLP”) is not triggered until plaintiffs’ damages exceed the required \$250,000 retained limit required in the PCLP, plus the limits of the tortfeasor’s insurance; and 3) that the plaintiffs have no coverage for damages between the \$100,000 per person UM limit of the Auto policy and the \$250,000 retained limit of the PCLP. Because we conclude the judgment was improperly certified as final, we dismiss the appeal.

### **FACTS AND PROCEDURAL HISTORY**

This suit arises from a motor vehicle accident. The plaintiffs settled and dismissed their claims against the other driver and his insurer. Plaintiffs’ claims against Liberty Mutual, which issued UM coverage for both the Auto and umbrella policy, remain.

Liberty Mutual filed a Motion for Partial Summary Judgment claiming that the UM coverage it provided to the plaintiffs is limited to \$100,000 per person and that the PCLP it issued to the plaintiffs is not triggered until the plaintiffs’ damages exceed the required \$250,000 retained limit in the umbrella policy, plus the limits of the tortfeasor’s insurance. Therefore, Liberty Mutual sought a judgment that plaintiffs are not entitled to recover any amount between the \$100,000 UM limit and the \$250,000 retained limit of the PCLP.

The trial court granted Liberty Mutual's motion for partial summary judgment finding that the Uninsured/Underinsured Motorist Bodily Injury Coverage Form executed by insured Huston Williams selected \$100,000 of UM coverage rather than the Auto policy liability limit of \$250,000. The trial court designated the judgment as final and expressly determined that there was no just reason for delay. The reasons given by the trial court for designating the judgment as final were the interest of judicial economy, fairness and efficiency to all parties, considering the need for the parties to know now rather than after a trial on the merits the extent of UM coverage available under the two policies at issue. Plaintiffs now appeal.

#### **DISCUSSION**

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. *Barnett v. Watkins*, 06-2442 (La. App. 1 Cir. 9/19/07), 970 So. 2d 1028, 1032, *writ denied*, 07-2066 (La. 12/14/07), 970 So. 2d 537. Therefore, this court must determine if this partial summary judgment is properly appealable.

Louisiana Code of Civil Procedure article 1915 authorizes the appeal of a partial summary judgment as to "one or more but less than all of the claims, demands, issues, or theories" presented where the judgment is designated as a final judgment by the trial court after a determination that there is no just reason for delay. A partial summary judgment rendered pursuant to Louisiana Code of Civil Procedure article 966(E) may be immediately appealed during an ongoing litigation only if it has been properly designated as a final judgment by the trial court pursuant to Louisiana Code of Civil Procedure article 1915(B). A trial court's certification of a partial judgment as final does not make the judgment

immediately appealable. *Marquez v. Jack Ussery Const.*, 06-1852 (La. App. 1 Cir. 6/8/07), 964 So. 2d 1045, 1048, *writ denied*, 07-1404 (La. 10/12/07), 965 So. 2d 400. The appellate jurisdiction of this court extends to “final judgments.” La. Code Civ. Proc. Ann. art. 2083. A final judgment pursuant to Louisiana law is one which determines the merits of the controversy, in whole or in part. La. Code Civ. Proc. Ann. art. 1841. A judgment rendered pursuant to Louisiana Code of Civil Procedure article 1915 must be sufficiently final in that it disposes of the claim or dispute in regard to which the judgment is rendered. *Marquez*, 964 So. 2d at 1048.

Since the trial court gave reasons for certifying the partial motion for summary judgment as immediately appealable, we review the certification applying the abuse of discretion standard. *See R.J. Messinger, Inc. v. Rosenblum*, 04-1664 (La. 3/2/05), 894 So. 2d 1113, 1122.

In considering whether a judgment is properly designated as final pursuant to Article 1915, a court must take into account judicial administrative interests as well as the equities involved. *Messinger*, 894 So. 2d at 1122. Factors to be considered by a trial court, although not exclusive, when determining whether a partial judgment should be certified as appealable include: 1) the relationship between the adjudicated and unadjudicated claims; 2) the possibility that the need for review might or might not be mooted by future developments in the trial court; 3) the possibility that the reviewing court might be obliged to consider the same issue a second time; and 4) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense and the like. Nevertheless, the overriding inquiry for the trial court is whether there is no just reason for the delay. *Messinger*, 894 So. 2d at 1122-23.

Applying these precepts, we find the trial court abused its discretion in certifying the partial summary judgment as a final judgment pursuant to Article 1915(B). There are many unadjudicated claims to be resolved such as the amount of plaintiffs' damages, whether any of those damages fall within the parameters of the gap created by the two policies, the amount of the tortfeasor's policy, the amount paid by the tortfeasor, and whether Liberty Mutual is ultimately liable. Should the plaintiffs be unable to prove damages above \$100,000, a decision of this court would be mooted. There is no shortening of the trial as the plaintiffs will still have to put on the same evidence whether the judgment is affirmed or reversed. Therefore, an appeal at this time is not in the interest of judicial economy.

The judgment does not terminate any of the parties' claims, nor does it dismiss any party. *See Joseph v. Ratcliff*, 10-1342 (La. App. 1 Cir. 3/25/11), 63 So. 3d 220, 224 (partial summary judgment which did not terminate any party's claims or dismiss any party held to be non-appealable). The judgment merely adjudicates the limit of the UM coverage and the amount which triggers the PCLP. The judgment recognizes a gap in the coverage amounts of the two policies. The judgment determines the extent of coverage but not the liability of Liberty Mutual or the damages of plaintiffs. All the evidence presented at the trial court will be the same regardless if the trial court decision is affirmed or not.

The determination of UM coverage of the Auto policy and the PCLP does not shorten the length of trial, narrow the scope of evidence to be presented at trial, or decrease the costs of litigation. Should the plaintiffs' damages be below \$100,000, the question of the applicable limits would become moot, obviating the need for appellate review. There is nothing in the record that suggests that the

appeal of the partial summary judgment at this stage of the proceedings best serves the needs of the parties or that other compelling circumstances exist that would make a delay in appellate review unjust. The judgment only determines the extent of coverage below a certain amount of damages and above a certain amount of damages. Allowing an immediate appeal from a judgment finding that the defendant is responsible for some, but not all, of the damages or, conversely, that the plaintiffs may collect some, but not all, of their damages only serves to encourage piecemeal adjudication and appeals, causing delay and judicial inefficiency. *See Doyle v. Mitsubishi Motor Sales of America, Inc.*, 99-0459 (La. App. 1 Cir. 3/31/00), 764 So. 2d 1041, 1047, *writ denied*, 00-1265 (La. 6/16/00), 765 So. 2d 338.

The overriding inquiry is whether there is no just reason for delay. The trial court abused its discretion in finding no just reason for delay. The judgment of the trial court states that the parties need to know now the extent of coverage available. However, the judgment at issue does not end the litigation, but only results in the matter being remanded to the trial court for further proceedings. A judgment rendered pursuant to Article 1915 must be sufficiently final in that it disposes of the claim or dispute in regard to which the judgment is entered. *See Doyle*, 764 So. 2d at 1047. As the summary judgment appealed does not dispose of the Williams' claim against Liberty Mutual, but just decides the preliminary issue of coverage, we find that the trial court improperly designated the matter as a final judgment. *See Doyle*, 764 So. 2d at 1047; *Cutrer v. Louisiana Farm Bureau Casualty Ins. Co.*, 11-1860 (La. App. 1 Cir. 5/2/12), 2012 WL 1550544.

For the foregoing reasons, we dismiss the appeal and remand the case for further proceedings consistent with the view expressed herein. Because this partial

summary judgment does not constitute a final judgment for the purposes of appeal, it may be revised by the trial court at any time prior to the rendition of the judgment adjudicating all issues and claims. La. Code Civ. Proc. art. 1915(B)(2). Costs of this appeal are assessed to appellants, Linda Williams and Huston Williams.

**APPEAL DISMISSED.**