

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 2054

EDNA R. HORRELL

VERSUS

GERARDO R. BARRIOS AND LISA C. MATTHEWS

Judgment Rendered: SEP 26 2013

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 2005-12893

Honorable Raymond S. Childress, Presiding

Walter J. Horrell
Covington, LA

Counsel for Plaintiff/Appellant
Edna R. Horrell

Kathleen D. Lambert
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New Orleans, LA

Counsel for Defendants/Appellees
Gerardo Barrios & Lisa C. Matthews

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

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GUIDRY, J.

Plaintiff, Edna R. Horrell, appeals a judgment of the Twenty-Second Judicial District Court (22nd JDC), which granted a motion for partial summary judgment in favor of defendants, Lisa C. Matthews and Gerardo R. Barrios, and dismissed her tort claims against them with prejudice. For the reasons that follow, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Edward A. Horrell, Sr. died on July 9, 1993, survived by his wife, Clare, and five adult children. Edna Horrell is the wife of Walter J. Horrell, Edward's oldest son. The succession of Edward Horrell, Sr. has been pending in the civil district court for the parish of Orleans since 1993 and has resulted in substantial litigation between the heirs and the provisional administratrix, Lisa Matthews.¹

The instant case arises from a dispute regarding certain movable and immovable property located in Covington, Louisiana. At the time of his death, Edward Horrell owned a substantial amount of separate property, including a tract located on 19th Street in Covington. Walter and Edna Horrell have occupied the residence on this tract since before Edward Horrell's death.

In 1998, Ms. Matthews filed a detailed descriptive list wherein she listed the Covington property as an asset of Edward Horrell's succession. Thereafter, following the 22nd JDC's invalidation of a donation of the Covington property to Walter Horrell, which invalidation was affirmed by this court on appeal, Ms. Matthews amended the descriptive list to claim the household furnishings located

¹ See Horrell v. Matthews, 10-1694 (La. App. 1st Cir. 5/6/11) (unpublished opinion), writ denied, 11-1848 (La. 11/4/11), 75 So. 3d 925; Horrell v. Barrios, 09-2199 (La. App. 1st Cir. 7/21/10) (unpublished opinion); Matthews v. Horrell, 06-1973 (La. App. 1st Cir. 11/7/07), 977 So. 2d 62; Horrell v. Matthews, 06-1838 (La. App. 1st Cir. 8/15/07) (unpublished opinion); Horrell v. Horrell, 99-1093 (La. App. 1st Cir. 10/6/00), 808 So. 2d 363, writ denied, 01-2546 (La. 12/7/01), 803 So. 2d 971; Succession of Horrell, 11-1574 (La. App. 4th Cir. 4/11/12), 102 So. 3d 139; Succession of Horrell, 11-0194 (La. App. 4th Cir. 11/30/11), 79 So. 3d 1162, writ denied, 12-0180 (La. 3/23/12), 85 So. 3d 96; Succession of Horrell, 95-1598 (La. App. 4th Cir. 9/11/96), 680 So. 2d 725, writ denied, 96-2841 (La. 1/31/97), 687 So. 2d 403.

in the house and outbuildings on the Covington property as disputed assets of Edward Horrell's succession. Clare Horrell and the other heirs to the succession filed a motion to traverse the detailed descriptive list in 2002. Following a hearing on the traversal, the civil district court for the parish of Orleans issued a judgment on November 6, 2002, finding, in particular, that "[t]here are household furnishings situated in Covington, Louisiana, at the current residence of Walter J. Horrell, that belong to the succession, including, but not limited to, a cabinet, sofa, and [four] chairs" and ordering Ms. Matthews to establish the 1993 value of "the household furnishings situated in Covington, Louisiana that were inherited by [Edward] Horrell and which were owned by [him] at the time of his death including, but not limited to, a cabinet, sofa and [four] chairs" with the "value thereof ... to be listed as separate property on an amended descriptive list."

Thereafter, Gerardo Barrios was appointed by the Orleans Parish civil district court as the notary public charged with the duty of conducting an inventory of the movable property located in Covington. Due to Walter and Edna Horrell's resistance to allowing the inventory, Ms. Matthews filed a motion to compel inventory and appraisal, which was granted. However, despite the civil district court's order, Mr. Barrios was still unable to conduct an inventory of the movables at the Covington property.

On June 20, 2005, Edna Horrell (Mrs. Horrell) filed a pro se action for damages, declaratory judgment, and a permanent injunction in the 22nd JDC, naming Ms. Matthews and Mr. Barrios as defendants and asserting that they were violating her rights by inventorying all movables at the Covington property, which included movables that she, and not the succession, owned. In her petition, Mrs. Horrell sought a judgment decreeing that she is the owner of all the corporeal movables located in her home or on the premises on which her home is located, awarding reasonable compensation for damages caused by the defendants, and

enjoining defendants from harassing her or disturbing her peaceable possession of her corporeal movables in any way, making any claim of ownership of the corporeal movables, or examining, inventorying, or appraising her corporeal movables.

Thereafter, the defendants filed exceptions raising the objections of improper venue, lack of subject matter jurisdiction, res judicata, lis pendens, vagueness and ambiguity, nonconformity with La. C.C.P. art. 891, failure to join a party, and no cause of action. Mrs. Horrell subsequently filed a supplemental and amending petition, acknowledging that she had forbidden Mr. Barrios from entering onto the Covington property and asserting that Mr. Barrios trespassed on her property and that the actions of the defendant are disturbing her peaceable possession of the immovable property at issue. Thereafter, the defendants reurged their exceptions.

Because Mr. Barrios still had been unable to obtain an inventory of the movables at the Covington property, Ms. Matthews filed a motion for contempt. Following a hearing on the motion, the Orleans Parish civil district court signed a judgment granting the motion and ordering that the inventory and appraisal of the movable property of Edward Horrell located in Covington take place on July 18, 2007. In accordance with the court's orders, Mr. Barrios and two appraisers took an inventory of all the movable property located at the Covington property, and Mr. Barrios thereafter filed a procès verbal of the inventory.

In May 2009, Ms. Matthews filed a third amended descriptive list, including the items inventoried in Covington. On May 26, 2009, Mrs. Horrell filed a second supplemental and amending petition, asserting that Mr. Barrios had invaded her home and photographed and touched movables belonging to her.

On June 4, 2009, the 22nd JDC held a hearing on the exceptions previously asserted by the defendants and thereafter signed a judgment sustaining the

exceptions raising the objections of lack of subject matter jurisdiction and lis pendens and dismissing Mrs. Horrell's action. Mrs. Horrell sought review of the 22nd JDC's judgment, and in an unpublished opinion, this court reversed that judgment and remanded the matter to the 22nd JDC for further proceedings.

Thereafter, on August 23, 2011, the defendants filed a motion for partial summary judgment, requesting dismissal of Mrs. Horrell's claims seeking an injunction prohibiting the defendants from inventorying and appraising the movable property located on or in structures located on the Covington property, seeking an injunction prohibiting the defendants from entering or coming onto the immovable property located in Covington, and seeking damages from the defendants individually or in their official capacities as the court-appointed administratrix and notary for any alleged tort, including but not limited to, any alleged invasion and disturbance of Mrs. Horrell's peaceable possession of the properties.

Following a hearing, the 22nd JDC granted the defendants' motion for partial summary judgment, as it pertained to the request by Mrs. Horrell for injunctive relief, but denied the motion for partial summary judgment as it pertained to her tort claims. However, the 22nd JDC specifically noted that the summary judgment as to Mrs. Horrell's tort claims could certainly be revisited.

On May 21, 2012, the defendants filed another motion for partial summary judgment, seeking dismissal of Mrs. Horrell's claims against the defendants, individually and in their official capacities as the court-appointed administratrix and notary, for any alleged tort, including but not limited to, any alleged invasion and disturbance of Mrs. Horrell's peaceable possession of the properties. Following a hearing, the 22nd JDC granted the defendants' motion.

Thereafter, the 22nd JDC signed judgments in conformity with its oral rulings, expressly finding that there was no just reason for delay and designating

the judgments as final, appealable judgments pursuant to La. C.C.P. art. 1915.² Mrs. Horrell now appeals the 22nd JDC's judgment granting the defendants' motion for partial summary judgment and dismissing her tort claims with prejudice.

DISCUSSION

Before the merits of Mrs. Horrell's arguments can be addressed, we must first determine whether this court has appellate jurisdiction over the partial summary judgment. This court has a duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. Motorola, Inc. v. Associated Indemnity Corporation, 02-0716, p. 4 (La. App. 1st Cir. 4/30/03), 867 So. 2d 715, 717. Although the trial court designated the partial judgment as being a final judgment under La. C.C.P. art. 1915(B), that designation is not determinative of this court's jurisdiction. Van ex rel. White v. Davis, 00-0206, p. 2 (La. App. 1st Cir. 2/16/01), 808 So. 2d 478, 480. This court must still ascertain whether it has appellate jurisdiction to review the partial judgment from which the appeal was taken. See Code v. Department of Public Safety and Corrections, 11-1282, p. 6 (La. App. 1st Cir. 10/24/12), 103 So. 3d 1118, 1123, writ denied, 12-2516 (La. 1/23/13), 105 So. 3d 59.

In order to assist this court in our review of designated final judgments, the trial court should give explicit reasons, either oral or written, for its determination that there is no just reason for delay. In those cases where a trial court does not provide reasons, such as the instant matter, the appellate court is required to conduct a *de novo* determination of whether the designation was proper, utilizing the factors set forth in R.J. Messinger, Inc. v. Rosenblum, 04-1664, pp. 13-14 (La. 3/2/05), 894 So. 2d 1113, 1122-23. Those factors include: (1) the relationship

² We note that the trial court signed two identical judgments, one dated August 9, 2012, and one dated August 13, 2012, granting defendants' motion for partial summary judgment and dismissing all of Mrs. Horrell's tort claims with prejudice.

between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obligated to consider the same issue a second time; and (4) miscellaneous facts such as delay, economic or solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. R.J. Messinger, Inc., 04-1664 at p. 14, 894 So. 2d at 1122-23.

Based on our *de novo* review of the record, we conclude that the designation by the 22nd JDC was inappropriate. At the heart of this litigation is the ownership of certain movable property at the Covington address. In addition to her request for injunctive relief and damages, Mrs. Horrell also filed a petition for declaratory judgment, requesting that the court declare her to be the owner of all of the movables located in her home or on the premises on which her home is located. This request for declaratory relief, as of this date, is still pending in the 22nd JDC. Because Mrs. Horrell's claims for damages, which she has labeled as "malicious inventorying," are inextricably linked to her claim that she owns the movables in question, if the 22nd JDC subsequently determines that she, in fact, is *not* the owner of the movables at the Covington property, then any review by this court of the motion for partial summary judgment as to the dismissal of her tort claims would be rendered moot. Therefore, we find that the 22nd JDC's designation of the judgment, which granted the defendants' motion for partial summary judgment and dismissed Mrs. Horrell's tort claims, as a final judgment was improper.

Moreover, we decline to convert this matter to an application for supervisory writs, as the granting of the writ application will not terminate the litigation at this time and the parties have an adequate remedy by review on appeal after a final judgment. See Herlitz Construction Company, Inc. v. Hotel Investors of New

Iberia, Inc., 396 So. 2d 878 (La. 1981); Best Fishing, Inc. v. Rancatore, 96-2254, p. 11 (La. App. 1st Cir. 12/29/97), 706 So. 2d 161, 166-67.

CONCLUSION

For the foregoing reasons, we dismiss the appeal for lack of appellate jurisdiction. All costs of this appeal are assessed to Edna Horrell.

APPEAL DISMISSED.