NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 2133

JESSICA C. SALLEY, ET AL.

VERSUS

NATALIE W. DUPUY, ET AL. AND
MARKET INSURANCE COMPANIES

consolidated with

NUMBER 2012 CA 2134

NATALIE DUPRE ON BEHALF OF CIARA WELCH

VERSUS

FRED E. SALLEY AND CECILY S. SALLEY ON BEHALF OF
JESSICA SALLEY AND GEICO

Judgment Rendered: SEP 2 6 2013

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 2009-12535 c/w 2009-14365

Honorable Reginald T. Badeaux, Judge

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Fred E. Salley
Covington, LA

In proper person
and as Counsel for
Plaintiffs/Appellants
Cecily S. Salley,
individually and on
behalf of Jessica C.
Salley

Dawn L. Morris
Lafayette, LA

Counsel for
Defendants/Appellees

Parro, J. concurs in the result.

Natalie W. Dupre on
behalf of Ciara C. Welch
and Safeway Insurance
Company of Louisiana

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

GUIDRY, J.

This appeal arises from an automobile accident involving two students, which occurred in the parking lot of Covington High School on May 1, 2009. As each student maintained that the accident was due to the fault of the other, two separate lawsuits were eventually filed. On May 4, 2009, Fred E. Salley and Cecily S. Salley, the parents of Jessica C. Salley, filed suit individually and on behalf of their daughter for the property damage sustained to their vehicle and for the alleged emotional distress suffered by Jessica as a result of the accident. The Salleys named Natalie Dupre, on behalf of her daughter, Ciara Welch, and Ms. Dupre's automobile liability insurer, Safeway Insurance Company of Louisiana,[1] as defendants in that suit under docket number 2009-12535. Conversely, Ms. Dupre filed suit on July 24, 2009, on behalf of Ciara, for the "severe and disabling injuries" that her daughter allegedly suffered as a result of the accident. Ms. Dupre named the Salleys, on behalf of Jessica, and their automobile liability insurer, GEICO General Insurance Company, as defendants in that suit under docket number 2009-14365. The two suits were later consolidated by order of the trial court.

The Salleys subsequently filed a pleading entitled "Compulsory Counter-Claim on behalf of Fred E. Salley, et al," wherein they asserted claims for:

> exemplary damages, both punitive and statutory, plus attorney fees, for counter-defendant Dupre's blatant and intentional misrepresentations while exchanging data with counter-claimant [i.e. the Salleys] at the incident scene, as specifically required by Louisiana law; giving counter-claimant and others, a false name, address, and insurance carrier, to prevent, delay, or frustrate counter-claimants claim against Dupre and Welch for Welch's obvious fault and callous disregard, in speeding through a school parking lot, and then running over counter-claimants' stationary vehicle.

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[1] In their original petition, the Salleys erroneously referred to Ms. Dupre as "Natalie Dupuy" and named "Market Insurance Companies" as her automobile liability insurer. The Salleys later filed an amended petition to change "Market Insurance Companies" to "Safeway Insurance Company," but did not correct the spelling of Ms. Dupre's name. In later pleadings in the record, however, the Salleys refer to Ms. Dupre by the correct spelling of her name.

In response to this pleading, Ms. Dupre and Safeway Insurance filed exceptions raising several objections, including the objections of prescription, no cause of action, and no right of action. Following a hearing, the trial court sustained the peremptory exception on the basis of prescription, which judgment the Salleys appeal herein.

DISCUSSION

Initially, it would appear that this matter is not properly before us, as the judgment on appeal only dismisses the Salleys' reconventional demand premised on fraud.[2] See La. C.C.P. art. 1915(B).[3] However, prior to rendering the subject judgment, the trial court had signed a "Joint Motion and Order of Final Dismissal" of all the claims raised by Ms. Dupre, on behalf of Ciara, in docket number 2009-14365. Thus, at the time the trial court rendered the present judgment at issue in this appeal, there were no other matters left pending under docket number 2009-14365, although the consolidated suit filed by the Salleys under docket number 2009-12535 remains pending below. The continued pendency of the separate, but consolidated suit does not affect the finality and appealability of the judgment before us.

The consolidation of actions is a procedural convenience designed to avoid multiplicity of actions and does not cause a case to lose its status as a procedural entity. In re Miller, 95-1051, p. 4 (La. App. 1st Cir. 12/15/95), 665 So. 2d 774, 776, writ denied, 96-0166 (La. 2/9/96), 667 So. 2d 541; see La. C.C.P. art. 1561. The filing of a pleading or motion in one of several consolidated cases does not

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[2] According to the Code of Civil Procedure, incidental demands are either reconvention, cross-claims, intervention, and demand against third parties. See La. C.C.P. art. 1031(B). Thus, the Salleys' pleading titled as a "counter claim" is more appropriately referred to as a reconventional demand.

[3] 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, p. 5 (La. App. 1st Cir. 9/19/07), 970 So. 2d 1028, 1032, writ denied, 07-2066 (La. 12/14/07), 970 So. 2d 537.

procedurally affect the others. The mere fact that a pleading, a discovery response, or correspondence bears the suit captions of the consolidated actions does not render the pleading or document applicable to all of the consolidated actions. The substance and purpose of such a pleading, the cause of action to which it relates, the parties actually affected, and the particular suit record or records in which it was filed must be considered to determine if it applies to only one or more of the consolidated actions. Dendy v. City National Bank, 06-2436, p. 6 (La. App. 1st Cir. 10/17/07), 977 So. 2d 8, 11.

Consolidation does not render the procedural or substantive rights peculiar to one case applicable to a companion case, and it in no way enlarges or decreases the rights of the litigants. Despite an order of consolidation, each case must stand on its own merits. The consolidation of actions does not merge the two cases unless the records clearly reflect an intention to do so. Ricks v. Kentwood Oil Co., Inc., 09-0677, pp. 4-5 (La. App. 1st Cir. 2/23/10), 38 So. 3d 363, 366-67, writ denied, 10-1733 (La. 10/15/10), 45 So. 3d 1112.

In the "compulsory counter claim" filed by the Salleys, they refer to themselves as "counter-plaintiffs" and expressly recognize that they are "counter-claimants in #2009-14365." Upon identifying their status as such, the Salleys incorporated by reference the contents of their petition in docket number 2009-12535 and then added their claim for "exemplary damages, both punitive and statutory, plus attorney fees." Thus, it is clear that the reconventional demand filed by the Salleys was intended to apply solely to the matter pending under docket number 2009-14365. And since the trial court previously dismissed with prejudice all of the other claims and demands pending under docket number 2009-14365, the judgment before us qualifies as a final judgment that is properly appealable. See La. C.C.P. art. 1841.

Having thus determined that the judgment is properly appealable, we will now consider the merits of the Salleys' appeal, in which they basically assert that the trial court erred in dismissing their reconventional demand.

We find the dismissal of the Salleys' reconventional demand was proper, because no right of action exists for the Salleys to pursue the claims asserted in the reconventional demand. Initially, we should point out that, while the trial court found merit in the alternative objections of no cause and no right of action raised by Ms. Dupre and Safeway Insurance, it failed to definitively decree such in its judgment. However, as this court can recognize and raise the objection on its own motion, we do so herein. See La. C.C.P. art. 927.

The peremptory exception pleading the objection of no right of action tests whether the plaintiff has any interest in judicially enforcing the right asserted. See La. C.C.P. art. 927(A)(6). Simply stated, the objection of no right of action tests whether this particular plaintiff, as a matter of law, has an interest in the claim sued on. To prevail on a peremptory exception pleading the objection of no right of action, the defendant must show that the plaintiff does not have an interest in the subject matter of the suit or legal capacity to proceed with the suit. Whether a plaintiff has a right of action is ultimately a question of law; therefore, it is reviewed *de novo* on appeal. OXY USA Inc. v. Quintana Production Company, 11-0047, p. 12 (La. App. 1st Cir. 10/19/11), 79 So. 3d 366, 376, writ denied, 12-0024 (La. 3/2/12), 84 So. 3d 536.

In the proceedings below, the Salleys alleged that they were seeking recovery of their "damages, attorney fees and other defense costs" as a result of the alleged fraud committed by Ms. Dupre and Ciara. Yet, despite their allegations that Ciara had provided false information as a basis for the initiation and maintenance of a lawsuit against the Salleys, the Salleys, through their insurer, GEICO General Insurance Company, nonetheless, compromised the suit filed by

Ms. Dupre, thereby settling the dispute or any uncertainty concerning that claim. See La. C.C. art. 3071. In arguments before this court, the Salleys urge that they should be allowed to pursue their claim of fraud, claiming that the settlement did not settle the question of Ciara's fraud or liability for the accident. Moreover, they asserted that the claim and subsequent settlement has caused them further harm in the form of increased insurance costs.

A cause of action does not exist in Louisiana for increased insurance costs. Nikolaus v. City of Baton Rouge/Parish of East Baton Rouge, 09-2090, pp. 5-6 (La. App. 1st Cir. 6/11/10), 40 So. 3d 1244, 1248, writ not considered, 10-1638 (La. 10/8/10), 46 So. 3d 1256; Severn Place Associates v. American Building Services, Inc., 05-859, pp. 8-9 (La. App. 5th Cir. 4/11/06), 930 So. 2d 125, 129. Moreover, due to the settlement negotiated with Ms. Dupre, a dispute as to Ciara's fault relative to the May 1, 2009 accident no longer exists. Thus, for these reasons, we find that the Salleys have no right of action to pursue their reconventional demand and therefore dismissal of the demand is proper.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court that dismissed the Salleys' reconventional demand filed under docket number 2009-14365. All costs of this appeal are cast to the appellants, Fred and Cecily Salley.

AFFIRMED.