

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0332

GARY COSTANZA, ET UX.

VERSUS

SNAP-ON TOOLS, ET AL.

consolidated with

2013 CA 0333

SNAP-ON TOOLS COMPANY, LLC, ET AL.

VERSUS

GARY COSTANZA, ET AL.

Judgment Rendered: MAR 05 2014

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On Appeal from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Trial Court No. 9400040
Consolidated with
Trial Court No. 2012-0002383

The Honorable Bruce C. Bennett, Judge Presiding

* * * * *

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.

Defendants, Snap-On Tools **Company** and Snap-On Tools **Corporation**,¹ appeal the trial court's denial of a new trial regarding a judgment signed July 18, 2012, and that judgment, which purports to evidence the settlement between defendants and plaintiffs, Gary Costanza and his wife, Tressie Costanza. For the reasons stated herein, the appeal of the judgment is dismissed and the denial of the new trial is moot.

FACTS AND PROCEDURAL HISTORY

This matter arises out of an accident in which Gary Costanza was injured while working as a mechanic on a vehicle during the course and scope of his employment. Gary Costanza and Tressie Costanza filed suit on January 5, 1994, against numerous defendants, including Snap-On Tools **Corporation**, Martin Elder, and Derrin Cavalier, for products liability related to a defective remote starter switch in the vehicle. Snap-On Tool **Company** (which was referred to as Snap-On Tools **Corporation** in the petition), Martin Elder,² and Derrin Cavalier answered the petition. Snap-On Tools **Corporation** never answered the petition. After years of pre-trial activity, which included the death of Martin Elder and the bankruptcy of Derrin Cavalier, this matter proceeded to trial on May 22, 2012. Before the trial was concluded, the parties reached a settlement, which was dictated on the record in open court on May 25, 2012. The plaintiffs submitted a judgment purportedly evidencing the settlement, which was signed by the trial judge on July 18, 2012.

¹ Both defendants assert that Snap-On Tools **Corporation** was erroneously named as a defendant, never made an appearance in the lawsuit, and was erroneously included in the judgment at issue. For the sake of brevity, both Snap-On Tools **Company** and Snap-On Tools **Corporation** will be referred to as "defendants" when speaking of them collectively.

² The claims against Martin Elder were orally dismissed at the beginning of the trial. (R. 1759).

After the settlement was reached, but before the judgment was signed, the employer of Costanza sought to file a petition for intervention. Plaintiffs filed a motion to enforce the settlement on July 9, 2012, as no settlement proceeds had been paid. On the same date, Snap-On Tools **Company** filed a “motion to stay proceedings and hold settlement in abeyance pending adjudication of newly-framed issues,” claiming there were new issues, such as the intervention of Costanza’s employer, which was filed on June 19, 2012, and garnishment proceedings against plaintiffs’ attorney. At the hearing on the petition for intervention, also held on July 9, 2012, the plaintiffs also sought to have their motion to enforce the settlement heard. The trial court heard arguments on both plaintiffs’ motion to enforce the settlement and Snap-On Tools **Company**’s motion for stay. The trial court informed defendants that “we had a settlement and your obligation is to pay it within 45 days.” The trial court denied the stay and ordered the settlement funds to be placed in the registry of the court.³ On July 17, 2012, the trial court signed an order denying the motion to “stay proceedings and hold settlement in abeyance” filed by Snap-On Tools **Company**. The trial court also ordered the defendants to deposit the proceeds of the compromise and settlement entered into on May 25, 2012, into the registry of the court.

On July 18, 2012, the trial court signed a judgment purporting to evidence the settlement of May 25, 2012. On July 20, 2012, Snap-on Tools **Company** filed a concursus proceeding depositing 2.25 million dollars into the registry of the court, as ordered by the trial court. On July 27, 2012, Snap-On Tools **Company** filed a motion for new trial, claiming that the provisions contained in the judgment did not accurately reflect the agreement recited in open court. On August 6, 2012, the trial court denied the motion for new trial and stated, “The judgment is appropriate.” Snap-On Tools **Company** filed an appeal from both the July 18,

³ The plaintiffs and intervenors eventually entered into a consent judgment settling the

2012 judgment and the judgment denying the motion for new trial signed August 6, 2012.

After the appeal was filed, on September 20, 2012, Snap-On Tools **Company** filed a motion to correct misstatements in the judgment of July 18, 2012, for various reasons. The trial court did sign a second judgment on October 31, 2012, to strike all references to Snap-On Tools **Corporation** from the July 18, 2012 judgment. On November 5, 2012, the court held a hearing on plaintiffs' motion to set costs and interest, which the trial court denied. At issue in this appeal are the denial of the new trial signed August 6, 2012, and the July 18, 2012 judgment.

DISCUSSION

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. *Texas Gas Exploration Corp. v. Lafourche Realty Co., Inc.*, 11-0520 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1054, 1059, *writ denied*, 12-0360 (La. 4/9/12), 85 So. 3d 698. This court's appellate jurisdiction extends only to "final judgments." La. C.C.P. art. 2083(A); *Van ex rel. White v. Davis*, 00-0206 (La. App. 1 Cir. 2/16/01), 808 So. 2d 478, 483. A judgment that determines the merits in whole or in part is a final judgment. La. C.C.P. art. 1841. A final judgment shall be identified as such by appropriate language. A valid judgment must be "precise, definite, and certain." *Laird v. St. Tammany Parish Safe Harbor*, 02-0045 (La. App. 1 Cir. 12/20/02), 836 So. 2d 364, 365. Moreover, a final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. *See Carter v. Williamson Eye Center*, 01-2016 (La. App. 1 Cir. 11/27/02), 837 So. 2d 43, 44.

claims of the intevenors.

These determinations should be evident from the language of a judgment without reference to other documents in the record. *Laird*, 836 So. 2d at 366. Thus, a judgment that does not contain decretal language cannot be considered as a final judgment for the purpose of an immediate appeal, and this court lacks jurisdiction to review such a judgment. *See Johnson v. Mount Pilgrim Baptist Church*, 05-0337 (La. App. 1 Cir. 3/24/06), 934 So. 2d 66, 67.

Judicial Interest in Judgment

Defendants' appeal is based on the argument that the judgment is not consistent with the settlement agreement dictated in open court. Defendants claim that the amount agreed to be paid on May 25, 2012, was a total settlement and included all payments to be made, plus the specific costs to which it agreed. The July 18, 2012 judgment which was signed stated: "The Court awards interest as provided by law (La. C.C.P. art. 1921)." Defendants argue that interest is only owed from the date the settlement funds were due, since, once the case was settled, it no longer was a tort case. La. C.C. art. 2000. Plaintiffs argue that interest is owed from the date of judicial demand, January 5, 1994, since one of the "laws" referred to in La. C.C.P. art. 1921 is La. R.S. 13:4203, which allows judicial interest from the date of judicial demand in tort cases.

Although the form and wording of judgments are not sacramental, Louisiana courts require that a judgment be precise, definite, and certain. *Laird*, 836 So. 2d at 365; *see also Vanderbrook v. Coachmen Industries, Inc.*, 01-0809 (La. App. 1 Cir. 5/10/02), 818 So. 2d 906, 913. Further, the amount of the recovery awarded by a judgment must be stated in the judgment with certainty and precision. The amount must be determinable from the judgment itself, without reference to an extrinsic source, so that a third person could determine from the judgment the amount owed without reference to other documents. *In re Succession of Wagner*, 08-0212 (La. App. 1 Cir. 8/08/08), 993 So. 2d 709, 724; *see Vanderbrook*, 818 So.

2d at 913-14. This court determined in *Wagner* that since it was impossible to determine the rate of interest from the judgment, without resort to extrinsic evidence, the interest award was uncertain and indefinite. *Wagner*, 993 So. 2d at 724-25. This court vacated only the portion of the judgment related to interest, rather than the entire judgment. *Id.* at 725.

In *Vanderbrook*, this court previously stated that the “amount of damages should be determinable from a judgment without reference to an extrinsic source such as pleadings or reasons for judgment” and quoted the Louisiana supreme court from a century ago:

[I]f a judgment purports to be final and is given upon a money demand, the amount of the recovery must be stated in it with certainty and precision. If the amount remains to be determined by a future contingency, or ascertained by references, or diminished by the allowance of an unliquidated credit, or is otherwise indefinite and uncertain, it is no proper judgment.

818 So. 2d at 913 (quoting *Fontelieu v. Fontelieu*, 116 La. 866, 41 So. 120, 125 (La. 1906)). This court also recognized in *Vanderhook* that “[j]udgments are recorded in the mortgage records, not judgments and pleadings, not judgments and written reasons.” *Id.* at 913.

In the present case, the interest is not certain and determinable from the judgment, which is evidenced by the parties’ arguments in this appeal. Plaintiffs argue that because this matter is a tort claim, they are entitled to interest pursuant to La. R.S. 13:4203 from the date of judicial demand, despite entering into a settlement agreement that is silent as to interest. The defendants argue that the total settlement was the amount agreed upon, and if interest is owed, it is only from the date the settlement proceeds were due. See La. C.C. art. 2000. Since the determination of interest requires extrinsic evidence, the judgment is not definite and certain as to the interest, and is therefore, not a final judgment.

Is the Judgment a Final Appealable Judgment?

For additional reasons, this court finds that the July 18, 2012 judgment is not a final judgment. In the instant case, the judgment states:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is enforceable pursuant to the Code of Civil Procedure, and is a non-appealable, full and final judgment.

Despite the above cited language, the judgment did not dismiss any party. The judgment does not contain the appropriate decretal language disposing of or dismissing plaintiffs' claims against defendants. *See Advocate Financial, L.L.C. v. Joseph F. Lahatte, Jr., L.L.C.*, 09-0609 (La. App. 1 Cir. 10/23/09), 2009 WL 3452832 (unpublished). The judgment does not contain the proper decretal language necessary for final appealable judgments. *See McCarroll v. Prime Cut Lawn Care & Tractor Work, L.L.C.*, 12-0456 (La. App. 1 Cir. 3/22/13), 2013 WL 1189241 (unpublished). As no party is dismissed by the judgment, it is unclear from the judgment whether the entirety of plaintiffs' case is disposed of or dismissed by the judgment. *See Accardo v. Chenier Property Partners, LLC*, 10-0825 (La. App. 1 Cir. 10/29/10), 2010 WL 4272906 (unpublished). The judgment does not terminate any of the parties' claims, nor does it dismiss any party; therefore, it is not a final judgment. *Joseph v. Ratcliff*, 10-1342 (La. App. 1 Cir. 3/25/11), 63 So. 3d 220, 224. As there is no final judgment in the present case, the trial court is entitled to revise the judgment at any time prior to the rendition of a final judgment. *See* La. C.C.P. art. 1915(B)(2).

An appellate court may dismiss, at any time, an appeal where there is no right to appeal. La. C.C.P. art. 2162. Since appellants have no right to appeal this judgment, we dismiss the appeal and permit the trial court to take whatever action it deems proper to amend the judgment.⁴

Denial of New Trial

⁴ This opinion does not negate the validity of the settlement agreement entered into between the parties, which is governed by La. C.C. art. 3071.

Defendants also appeal the denial of a new trial, which was signed on August 6, 2012. The denial of a new trial is not generally appealable. The Louisiana Supreme Court, however, has instructed courts to consider an appeal of the denial of a motion for new trial as an appeal of the judgment on the merits, when it is clear from appellant's brief that the appeal was intended to be on the merits. *Chaney v. Department of Public Safety & Corrections*, 09-1543 (La. App. 1 Cir. 3/26/10), 36 So. 3d 328, 333 n.1 (citing *Carpenter v. Hannan*, 01-0467 (La. App. 1 Cir. 3/28/02), 818 So. 2d 226, 228-29, writ denied, 02-1707 (La. 10/25/02), 827 So. 2d 1153).

The proper vehicle for a substantive change in a judgment is a timely motion for a new trial or a timely appeal. *Rebco Marine, Inc. v. Homestead Ins. Co.*, 96-1975 (La. App. 1 Cir. 12/29/97), 706 So. 2d 508, 511. Louisiana Code of Civil Procedure article 1951 limits a trial court's ability to amend a **final** judgment to phraseology or errors of calculation. A trial court cannot amend a **final** judgment as to its substance. La. C.C.P. art. 1951. In this instance, since there was no **final** judgment, there was no need for a motion for a new trial, and the appeal of the denial of the new trial is moot.

October 31, 2012 Judgment

Plaintiffs raise the incorrectness of the trial court's October 31, 2012 judgment, which purported to correct the July 18, 2012 judgment and remove all references to Snap-On Tools **Corporation**. This court first notes that the appeal of this matter was filed, and the order for appeal was signed, on September 4, 2012. The appeal bond was filed on September 6, 2012. The trial court is divested of jurisdiction, and the jurisdiction of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond. La. C.C.P. art. 2088. Although the trial court may still "[c]orrect any misstatement, irregularity, informality, or omission of the trial record, as provided in Article 2132," there is

no authority for the trial court to correct a judgment after it is divested of jurisdiction. *See State v. Star Enterprise*, 95-2124 (La. App. 4 Cir. 8/7/96), 691 So. 2d 1221, 1233, *writ granted*, 96-2218 (La. 9/19/96), 679 So. 2d 409; La. C.C.P. art. 2088(A)(4). Furthermore, the defendants did not appeal the October 31, 2012 judgment, and although plaintiffs argue in their brief regarding the correctness of the parties, plaintiffs did not answer the appeal seeking any redress, as required by La. C.C.P. art. 2133. Consequently, the issue of the October 31, 2012 judgment is not before this court, as it has not been raised on appeal. Additionally, since this court has found that the July 18, 2012 judgment is not a final judgment, the October 31, 2012 judgment, seeking to amend the prior judgment, is moot, and upon remand the trial court may amend the judgment to reflect the proper parties.

CONCLUSION

Finding that the July 18, 2012 judgment is not appealable, we hereby dismiss the appeal and remand the case to the trial court for further proceedings and the entry of a final appealable judgment. The denial of the new trial is moot. Costs of the appeal are assessed to defendant, Snap-On Tools Company.

APPEAL DISMISSED AND CASE REMANDED.