

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0468

GARY COSTANZA, ET UX.

VERSUS

SNAP-ON TOOLS, ET AL.

consolidated with

2013 CA 0469

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.

Plaintiffs, Gary Costanza and his wife, Tressie Costanza, appeal the trial court's denial of their motion to set court costs and interest against defendants, Snap-On Tools **Company** and Snap-On Tools **Corporation**.¹ For the reasons stated herein, this appeal is dismissed.

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. During the trial, the parties reached a settlement agreement, which was recited in open court on May 25, 2012.² On July 9, 2012, the trial court conducted a hearing regarding the settlement and ordered Snap-On to deposit the settlement proceeds into the registry of the court. An order consistent with this ruling was signed on July 17, 2012, and Snap-On deposited the settlement funds, 2.25 million dollars, into the registry of the court on the same day. The plaintiffs submitted a judgment purportedly evidencing the May 25, 2012 settlement, which was signed by the trial judge on July 18, 2012.

Snap-On Tools **Company** filed a motion for new trial, which the trial court denied. On September 4, 2012, Snap-On Tools **Company** suspensively appealed the July 18, 2012 judgment, purporting to evidence the settlement, and the trial court's order denying a new trial. The suspensive appeal order was signed on

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 For a more detailed description of the facts in the case, see our opinion in *Costanza v. Snap-On Tools, et al*, 13-0332 c/w 13-0333 (La. App. 1 Cir. 3/5/14)(unpublished).

September 4, 2012. Snap-On Tools **Corporation** filed a devolutive appeal on September 28, 2012.³

After the appeals were filed, on October 5, 2012, plaintiffs filed a motion to set court costs and interest. Plaintiffs attached a typed sheet of paper itemizing court costs as \$54,583.96.⁴ Plaintiffs also attached a document claiming they were owed \$2,873,674.39 in judicial interest. Snap-On Tools **Company** filed an opposition to the court costs and interest claimed by plaintiffs. Snap-On Tools **Company** alleged that it agreed to pay only “documented court costs,” not all the costs claimed by plaintiffs. Snap-On Tool **Company** admitted that it agreed to pay the deposition fee of Dr. A.J. McPhate.

On November 5, 2012, the trial court held a hearing on the motion to set costs and interest, which the trial court denied orally. Prior to the trial court signing a judgment on the November 5, 2012 hearing, plaintiffs filed a motion and order to supplement the costs and interest by removing one of the entries, which the trial court denied.⁵ The trial court signed the judgment denying the motion to set costs and interest, consistent with the oral ruling, on November 15, 2013. Plaintiffs then filed a motion to reconsider the motion to set costs and interest, which the trial court denied by written order on November 26, 2012.

Plaintiffs appealed the judgment of November 15, 2012, denying the motion to set costs and interest. However, this court originally issued a rule to show cause order and requested supplementation of the judgment for lack of appropriate decretal language. An amended judgment was signed June 11, 2013, dismissing

³ Snap-On Tools **Corporation** filed a separate appeal to protect its interest, even though it was never named in the lawsuit and never answered the lawsuit, since plaintiffs did include its name in the July 18, 2012 judgment.

⁴ This court notes that the sum of the listed items only equals \$51,683.96.

⁵ Interestingly, even though the plaintiffs deleted one of the deposition fees of Dr. Dietze from the original motion to set costs, plaintiffs show the amount claimed in the supplemented motion as the amount previously claimed, \$54,593.96 (which was originally incorrectly totaled), even though the correct supplemented amount is \$50,641.38.

the claim of plaintiffs as to costs and interests. It is from the June 11, 2013 amended judgment that the plaintiffs appeal.

ASSIGNMENT OF ERRORS

The plaintiffs allege that the trial court erred in failing to set court costs, including expert expenses, deposition costs, and expert witness expenses, and in not setting judicial interest pursuant to La. R.S. 13:4203 and La. C.C.P. art. 1921.

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 judgment for costs rendered after the final judgment on the merits is a separate and appealable judgment. *Hoyt v. State Farm Mutual Automobile Ins. Co.*, 623 So. 2d 651, 664 (La. App. 1 Cir.), *writ denied*, 629 So. 2d 1179 (La. 1993); *Price v. City of Ponchatoula Police Dept.*, 12-0727 (La. App. 1 Cir. 12/21/12), 111 So. 3d 1053, 1055. A judgment for costs and fees rendered may be an interlocutory judgment. Generally, costs of expert's fees are incidental in nature to the main demand and, if charged by decree prior to final judgment, would be considered non-appealable as interlocutory decrees. However, this is not the case where the costs are fixed and taxed post final judgment on the merits. *Louisiana Resources Co. v. Fiske*, 343 So. 2d 1219, 1221 (La. App. 3 Cir. 1977).

In the present case, this court has determined that the July 18, 2012 judgment disposing of the principal controversy is not a final, appealable

judgment. *Costanza v. Snap-On Tools, et al*, 13-0332 (La. App. 1 Cir. 3/5/14)(unpublished). Therefore, the judgment for costs in this case was not rendered **after the final judgment** on the merits. The trial court retains jurisdiction to make modifications to the judgment on the principal controversy. There is no separate and appealable judgment on the motion to set costs and interests, since there is no final judgment on the principal demand. Consequently, the motion to set costs and interest is not properly before this court, and we issue this summary opinion in accordance with Uniform Rules—Courts of Appeal Rule 2-16.2(A)(1). Appeal dismissed.

CONCLUSION

For the reasons set forth above, the appeal of this matter is dismissed. Costs of the appeal are assessed to plaintiffs, Gary and Tressie Costanza.

APPEAL DISMISSED.