NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1057

DAVID GUESS

VERSUS

WILLIAM JOYNER, ALLSTATE INSURANCE COMPANY, AND UNITED SERVICES AUTOMOBILE ASSOCIATION

CONSOLIDATED WITH

2013 CA 1058

BRIDGEFIELD CASUALTY INSURANCE COMPANY

VERSUS

WILLIAM JOYNER AND ALLSTATE INSURANCE COMPANY

Judgment Rendered: FEB 1 8 2014

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2000-13065 c/w 2000-13084

Honorable August J. Hand, Judge

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WELCH, J.

In this action for damages arising out of an automobile accident, Audubon Indemnity Company ("Audubon") appeals a partial summary judgment granted in favor of the plaintiff, David Guess, determining that the uninsured/underinsured motorist ("UM") coverage, while driving a "Non-Owned Auto," was equal to the full liability coverage limits provided by Audubon. However, because we find that the judgment was improperly certified as final and that this court lacks subject matter jurisdiction, we dismiss this appeal.

FACTUAL AND PROCEDURAL HISTORY

On July 8, 1999, the plaintiff, an employee of Brian Harris Pontiac GMC, Inc. ("Brian Harris")[1], was operating a 1999 Mazda 626 on Interstate 10 in Slidell, Louisiana. As the plaintiff exited the interstate at Highway 433 (Old Spanish Trail) and turned left (allegedly with the protection of the traffic signal), the defendant, William Joyner, who was operating a 1995 Ford Aspire northbound on Old Spanish Trail, ran the red light, struck the vehicle driven by the plaintiff, and caused damages to the plaintiff. The vehicle being operated by the plaintiff was purportedly owned by Thomas Reckert, a customer of Brian Harris, who had brought the vehicle to Brian Harris for service.[2] The plaintiff claimed that he was test-driving the vehicle, although at the time of the accident, he had just picked his son up from summer camp and was intending to drop his son off at home.

On July 5, 2000, the plaintiff filed a petition for damages, naming as defendants: Mr. Joyner; Allstate Insurance Company ("Allstate"), as Mr. Joyner's

[1] The plaintiff's amended petition references "Harris Chevrolet, Inc." and "its related companies, including but not limited to Brian Harris Chevrolet, Harris Motors, Inc., Brian Harris Reality, Brian Harris Pontiac, Buick, GMC, Mazda, Brian Harris Imports, Inc. d/b/a/ Brian Harris, Sugar Land Motor Co., Inc. d/b/a Harvest Ford, Lincoln, Mercury, Harris Properties, L.L.C." Collectively, these entities are referred to by the parties in the record as "Brian Harris." Accordingly, in order to avoid confusion, we will also refer to theses entities as "Brian Harris."

[2] Apparently, there was a disputed issue as to whether the 1999 Mazda 626 was owned by Brian Harris or by Mr. Reckert. Following a trial on the issue, the trial court concluded that the vehicle was owned by Thomas Reckert. An interlocutory judgment in accordance with the trial court's ruling was signed on May 4, 2009.

automobile liability insurer; and USAA Casualty Insurance Company ("USAA")[3], as the plaintiff's own UM insurer.[4] By first supplemental and amending petition filed on July 6, 2001, State Farm Mutual Automobile Insurance Company ("State Farm"), as Mr. Reckert's UM insurer, and Audubon, as Brian Harris's UM insurer, were added as defendants.[5]

Audubon had issued policy number CLA 400660 to Brian Harris, which was in effect from June 19, 1999 through June 19, 2000. The policy provided automobile liability coverage with limits of $1,000,000.00. With regard to UM coverage under the policy, on June 18, 1999, Dan Donaldson, Controller (the legal representative) of Brian Harris, executed a UM selection form wherein he selected UM coverage with a lower limit than the bodily injury liability coverage.[6]

On June 3, 2008, USAA filed a motion seeking to deposit the UM policy limits for its policy with the plaintiff ($25,000.00) into the registry of the court. After the funds were deposited, all of the plaintiff's claims against USAA were dismissed. Additionally, following the judicial determination that, at the time of the accident, Mr. Reckert was the owner of the vehicle driven by the plaintiff, the plaintiff settled his claims with State Farm.

On April 5, 2012, the plaintiff filed a motion for partial summary judgment seeking a declaration that Audubon provided UM coverage to the plaintiff while driving a "non-owned" automobile in the full amount of its liability coverage limits

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[3] In the plaintiff's petition for damages, USAA was erroneously identified as United Services Automobile Association Casualty Insurance Company.

[4] On July 6, 2000, Bridgefield Casualty Insurance Company, Brian Harris's workers' compensation carrier, filed a petition for recoupment of workers' compensation benefits against William Joyner and Allstate. Those proceedings were ultimately consolidated with the instant proceedings; however, there are no issues with regard to that matter in this appeal.

[5] The plaintiff named both State Farm and Audubon as defendants based on the factual dispute as to the ownership of the vehicle that the plaintiff was driving at the time of the accident. <u>See</u> footnote 2.

[6] The form executed by Mr. Donaldson was the official form promulgated by the Louisiana Commissioner of Insurance.

and that William Joyner had no other insurance coverage other than the $25,000.00 coverage that his insurer, Allstate, had already paid.[7] Audubon filed a cross motion for summary judgment seeking the dismissal of the plaintiff's claims on the grounds that there was no coverage for the plaintiff under the Audubon policy with Brian Harris. In opposition to the motion for summary judgment filed by the plaintiff and in support of its own motion for summary judgment, Audubon argued that Brian Harris validly selected lower limits of UM coverage under its policy with Audubon, and further, that the plaintiff was not an "insured" under the policy.

After a hearing, the trial court denied Audubon's motion for summary judgment and granted the plaintiff's motion for partial summary judgment as requested. A judgment in accordance with the trial court's ruling was signed by the trial court, and it is from this judgment that Audubon appeals.

LAW AND DISCUSSION

This court's appellate jurisdiction extends to "final judgments." La. C.C.P. art. 2083. Louisiana Code of Civil Procedure article 1915 authorizes the immediate appeal of final judgments, including partial final judgments, and provides, in pertinent part as follows:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
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> * * *
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> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
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> * * *
>
> B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party,

[7] The record does not reflect that Allstate has been dismissed; however, the plaintiff has judicially confessed that Allstate paid its policy limits in this matter.

> whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
>
> (2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

The September 5, 2012 judgment, from which Audubon appeals, grants a partial summary judgment in accordance with La. C.C.P. art. 966(E) (as it did "not dispose of the entire case")[8] and denies a summary judgment.[9] Therefore, in order for the judgment to be appealable, it must be designated as final, after an express determination by the trial court that there is no just reason for delay. See La. C.C.P. art. 1911.

In this case, the trial court certified the September 5, 2012 judgment as being final under La. C.C.P. art. 1915(B)(1), finding no just reason for delay, and therefore, subject to an immediate appeal. When appropriately granted, the trial court's certification vests jurisdiction in the court of appeal even if the successful party is not granted all of the relief prayed for or the judgment does not adjudicate all of the issues in the case. See La. C.C.P. art. 1915. However, the trial court's certification of a partial judgment as a final judgment is not determinative of an appellate court's jurisdiction. See **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664 (La. 3/2/05), 894 So.2d 1113, 1122.

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[8] Louisiana Code of Civil Procedure article 966(E) provides that "[a] summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment *does not dispose of the entire case*." (Emphasis added).

[9] "An appeal does not lie from the court's refusal to render any ... summary judgment." La. C.C.P. art. 968. Although the denial of Audubon's motion for summary judgment is generally a non-appealable interlocutory judgment under La. C.C.P. arts. 968 and 2083, it could be reviewed on an appeal of a final judgment in the suit. See **People of the Living God v. Chantilly Corp.**, 251 La. 943, 947, 207 So.2d 752, 753 (La. 1968); **Devers v. Southern University**, 97-0259, 97-0260 (La. App. 1st Cir. 4/8/98), 712 So.2d 199, 209.

In order to assist the appellate court in its 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. *Id.* In this case, the trial court certified the judgment as final on the basis that it was a final adjudication of the validity of the UM selection form and the amount of UM coverage; that there was no possibility that a reviewing court might be obligated to consider this issue a second time; and that the determination of the validity of the UM selection form and the amount of UM coverage would facilitate resolution of this litigation, reduce the costs and expenses of litigation, and foster judicial economy.

The proper standard of review from an order designating a judgment as final for appeal purposes, when accompanied by explicit reasons, is whether the trial court abused its discretion. *Id.* The following list of factors may be used by the court when considering whether a partial judgment should be certified as appealable:

> 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.

Id. Nevertheless, the overriding inquiry for the court is whether there is no just reason for delay. *Id.* at 1122-1123.

As noted by the Louisiana Supreme Court, La. C.C.P. art. 1915 attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review available at a time that best serves the needs of the parties. *Id.* at 1122. Thus, in considering whether a judgment is properly designated as final pursuant to La. C.C.P. art. 1915, we take into account judicial administrative interests as well as the equities involved. *Id.*

Applying these precepts to the present case, we can find no reasons that justify designating the judgment appealed herein, a partial summary judgment, as final. The record reflects that there are many unadjudicated claims to be resolved, such as the total amount of the plaintiff's damages, *i.e.*, whether those damages exceed the policy limits already paid by Mr. Joyner's insurer (Allstate) such that Mr. Joyner is an underinsured motorist and whether the plaintiff is an insured under the Audubon policy. Should the plaintiff be unable to prove damages over $25,000.00 or that he is an insured under Audubon's policy, a decision of this court would be mooted. Furthermore, there is no shortening of trial as the plaintiff will still have to put on the same evidence as to his damages and his status as an insured under the Audubon policy regardless of whether the judgment is affirmed or reversed; therefore, an appeal at this time is not in the interest of judicial economy

In addition, the September 5, 2012 judgment does not terminate any of the parties' claims nor does it dismiss any party. See **Joseph v. Ratcliff**, 2010-1342 (La. App. 1st Cir. 3/25/11), 63 So.3d 220, 224 (partial summary judgment that did not terminate any party's claims or dismiss any party held to be non-appealable). The judgment herein simply determined that the amount of UM coverage for a "Non-Owned Auto" under the policy was equal to the full liability coverage limits provided by the policy ($1,000,000.00) and that Mr. Joyner had no other available insurance coverage other than the amount already paid by his insurer ($25,000.00). Thus, the judgment determines the extent of UM coverage for a "Non-Owned Auto" below a certain amount of damages, and above a certain amount of damages but it does not determine the liability of Audubon or the total damages of the plaintiff. 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 plaintiff may collect some, but not all of his 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. 1st Cir. 3/31/00), 764 So.2d 1041, 1047, writ denied, 2000-1265 (La. 6/16/00), 765 So.2d 338.

The overriding inquiry is whether there is no just reason for delay. While the parties claim that they need to know the extent of coverage available, 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 La. C.C.P. art. 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 partial summary judgment appealed does not dispose of the plaintiff's claim against Audubon, but just decides the preliminary issue of the amount of UM coverage under the policy, we find 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.**, 2011-1860 (La. App. 1st Cir. 5/2/12) (*unpublished*).

Accordingly, we do not find that the issue presented for our review is of such exigent or prejudicial import that immediate review on appeal is warranted. Rather, we believe that if the trial court's ruling is later found to be erroneous on the appeal of a judgment on the merits, the error can be adequately addressed and remedied at that point. Further, the interests of judicial administration outweigh any equitable considerations for immediate appeal by these litigants, and to allow an immediate appeal in this instance would only serve to encourage piecemeal adjudication, causing delay and judicial inefficiency. Therefore, after reviewing this matter, we find that the trial court abused its discretion in certifying the partial judgment as a final judgment under La. C.C.P. art. 1915(B) when the partial summary judgment lacked the requisite finality to be so certified. Accordingly, we conclude that this court lacks subject matter jurisdiction and therefore, we dismiss this appeal.

CONCLUSION

For the above and foregoing reasons, we find that this court lacks subject matter jurisdiction to review the September 5, 2012 judgment, as it was a partial summary judgment not properly certified for immediate appeal under La. C.C.P. art. 1915. Therefore, we hereby dismiss this appeal.

All costs of this appeal are assessed to the appellant, Audubon Indemnity Company.

APPEAL DISMISSED.