

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2013 CA 1386**

**LAVERNE DEAL, DARRELL IRVIN, LLOYD IRVIN, ROOSEVELT  
MACKYEON, TYRONE SMITH AND FRANK SMITH, JR.**

**VERSUS**

**CITY OF GONZALES, MAYOR BARNEY ARCENEUX, THE CITY  
COUNSEL FOR THE CITY OF GONZALES, AND THE ZONING  
COMMISSION FOR THE CITY OF GONZALES**

**Judgment Rendered: MAR 26 2014**

**Appealed from the  
Twenty-Third Judicial District Court  
In and for the Parish of Ascension, Louisiana  
Docket Number 104,557**

**Honorable Jessie LeBlanc, Judge Presiding**

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**Paul Aucoin  
Vacherie, LA**

**Counsel for Plaintiffs/Appellants  
Laverne Deal, Darrell Irvin, Lloyd Irvin,  
Roosevelt Mackyeon, Tyrone Smith, and  
Frank Smith, Jr.**

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**Counsel for Defendants/Appellees  
City of Gonzales, Mayor Barney  
Arceneaux, The City Counsel for the City  
of Gonzales, The Zoning Commission for  
the City of Gonzales**

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

## **WHIPPLE, C.J.**

Plaintiffs appeal a judgment granting, in part, the defendants' motion for summary judgment. Because we conclude that the judgment was improperly certified as final, we dismiss the appeal and remand the case for further proceedings in the trial court.

### **FACTS AND PROCEDURAL HISTORY**

This litigation arises out of a zoning dispute in Gonzales, Louisiana. In January 2012, the city annexed 39.060 acres into the city limits. That same month, L & L Investment Corporation, through Nolan A. "Sonny" Lamendola, petitioned the Gonzales Planning and Zoning Commission ("the Commission") to change 38.89 of those acres from the existing "residential" zoning to I-1 (light industrial). Following various hearings and procedural events, in June of 2012, the Commission approved a change for 18.62 acres of the tract to a C-2 zone classification and approved a special use permit to allow for the operation of a "minor fabrication facility of greater than 10,000 square feet"<sup>1</sup> thereon.

In August 2012, plaintiffs, Laverne Deal, Darrell Irvin, Lloyd Irvin, Rossevelt Mackyeon, Tyrone Smith and Frank Smith, Jr., filed a petition for judicial review and declaratory judgment alleging that the property had been rezoned by the city without following the applicable rules, procedures, city ordinances and codes. Plaintiffs named as defendants the City of Gonzales, the Mayor, the City Council and the Zoning Commission. Plaintiffs alleged that the zoning change should be set aside and the property should revert back to its original residential zoning classification. Specifically, plaintiffs alleged that the procedures were deficient and the zoning change was interdicted by the city and/or the Commission's actions in their:

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<sup>1</sup>According to the defendants, the rezoning request was made for the purpose of "attracting a light industrial user, Emerson, Inc. . . . to locate on the site."

- (1) Failure to collect a required fee;
- (2) Failure to obtain a detailed submittal package of the zoning request as required by the City Code;
- (3) Failure to wait six months to accept the subsequent rezoning request;
- (4) Acceptance of a verbal request for a zone change;
- (5) Voting for a zoning change not requested by applicant;
- (6) Failure to follow the city's Comprehensive Master Growth Plan;
- (7) Failure to require widening of the street as a condition of the rezoning request;
- (8) Engagement in spot zoning; and
- (9) Reduction of the area of the requested rezoning change without following proper procedures.

In December 2012, the defendants filed a motion for summary judgment urging the trial court to uphold the zoning change, contending that all "substantive requirements for the rezoning of property were met." Following a hearing, the trial court granted the defendants' motion for summary judgment as to all issues, except plaintiffs' allegations of improper "spot zoning." The May 6, 2013 judgment of the trial court provided, in pertinent part, as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment is GRANTED on all issues except the issue of "spot zoning," for which the court found a genuine issue of material fact on the issue of spot zoning.

Plaintiffs then filed the instant appeal seeking review of the judgment.

Upon the lodging of the appeal, this court issued a "show cause" order, noting that the judgment appears to be a partial judgment lacking the designation of finality required by LSA-C.C.P. art. 1915(B). In response, the record was supplemented with an amended judgment by the trial court, designating the judgment as final, and a *per curiam* opinion by the trial court giving its analysis as to why there was no just reason for delaying review of the judgment. The reasons given by the trial court for its designation of the judgment as final and subject to immediate appeal were that: (1) the claims resolved on summary judgment are not related to the factors to be considered in determining whether spot zoning has occurred, and (2) rendering judgment on the issue of spot zoning will not require

this court to consider the same issues resolved on summary judgment, as the matters involve separate issues of law.

### DISCUSSION

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. Barnett v. Watkins, 2006–2442 (La. App. 1st Cir. 9/19/07), 970 So.2d 1028, 1032, writ denied, 2007–2066 (La. 12/14/07), 970 So.2d 537. Accordingly, we must determine if this partial summary judgment is properly before us on immediate appeal.

Louisiana Code of Civil Procedure article 1915(B) authorizes the appeal of a partial summary judgment as to “one or more but less than all of the claims, demands, issues, or theories” presented where the judgment is designated as a final judgment by the trial court after a determination that there is no just reason for delay. However, a trial court's certification of a partial judgment as final does not make the judgment immediately appealable. Marquez v. Jack Ussery Const., 2006–1852 (La. App. 1st Cir. 6/8/07), 964 So.2d 1045, 1048, writ denied, 2007–1404 (La. 10/12/07), 965 So.2d 400. When reviewing an order designating a judgment as final for appeal purposes, when accompanied by explicit reasons, the reviewing court must determine whether the trial court abused its discretion in certifying the judgment. R.J. Messinger, Inc. v. Rosenblum, 2004-1664 (La. 3/2/05), 894 So.2d 1113, 1122.

Pursuant to Messinger, the following list of non-exclusive factors are to be considered in determining whether a partial judgment should be certified as final:

- (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.

Messinger, 894 So.2d at 1122. However, in determining whether a partial judgment is a final one for the purpose of an immediate appeal, a court must always keep in mind the historic policies against piecemeal appeals. Van ex rel. White v. Davis, 2000-0206 (La. App. 1st Cir. 2/16/01), 808 So.2d 478, 483.

In the instant matter, despite the trial court's conclusion in the *per curiam* that the remaining, unresolved claims related to spot zoning involve "separate issues of law," we find that the need for review may be mooted by future developments in the trial court. The relief that plaintiffs seek in the adjudicated and unadjudicated claims is identical, *i.e.*, that the alleged improper zoning change be set aside and that the classification of the property revert back to its original residential zoning classification. Thus, if plaintiffs prevail on the merits of their claim that the Commission improperly engaged in "spot zoning," then the zoning change presumably would be set aside and our review of the instant dismissal of some of plaintiffs' claims on summary judgment would be unnecessary, as plaintiffs would obtain the relief sought in both their remaining and dismissed claims, namely, the reversion of the property to its prior zoning classification, whether based on the alleged procedural irregularities at issue in this appeal or on the unadjudicated claim of improper spot zoning. Therefore, the need for review of the judgment dismissing the claims at issue in this appeal would be mooted.

Applying the factors set forth in Messinger, considering the relationship between the adjudicated and unadjudicated claims, the probability that the need for review could be mooted by future action by the trial court, and the policies against piecemeal appeals, we conclude that there are just reasons to delay review of this partial summary judgment at this time. The judgment is not determinative of the entirety of the claims between the parties and an effective remedy is available to the parties once the trial court renders a final judgment. To hold otherwise and

permit an appeal of the judgment at this time would encourage multiple appeals and piecemeal litigation. See Duvic v. McCuen, 2011-0010 (La. App. 1st Cir. 6/10/11), 2011 WL 3423796 (unpublished opinion) (In a property dispute where summary judgment was partially granted declaring that the defendants owned the disputed property and denying the plaintiffs' request for a declaration they were entitled to traverse the property, the trial court improperly certified the judgment as final, as: (1) the judgment was not determinative of the entirety of the claims between the parties; (2) an effective remedy was available to the parties once the trial court rendered final judgment; and (3) to permit an appeal of such a judgment would encourage multiple appeals and piecemeal litigation.)

### **CONCLUSION**

For the above and foregoing reasons, we dismiss the instant appeal of the May 6, 2013 judgment and remand the case to the trial court for further proceedings. Because this partial summary judgment does not constitute a final judgment for purposes of appeal, it may be revised by the trial court at any time prior to the rendition of a judgment adjudicating all of the claims and the rights and liabilities of the parties. LSA-C.C.P. art. 1915(B)(2). Assessment of costs shall await final disposition.

**APPEAL DISMISSED; REMANDED.**