

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0928

SHERIE LANDRY WIFE OF/AND RAYMOND C. BURKART, JR.

VERSUS

ELAINE L. WILLIAMSON WIFE OF/AND JAMES R. WILLIAMSON;
WILLIAM L. DUNFORD; RHONDA HEMELT WIFE OF/AND
CHRISTOPHER J. AUBERT; GROUP INTEGRITY, L.L.C. d/b/a KELLER
WILLIAMS REALTY; JACKIE E. STALEY; JEAN BROWN; WILLIAM
STONE HATCHETT, III; JOHN J. HENRY; JOHN J. HENRY & ASSOCIATES,
L.L.C. d/b/a HATCHETT INSPECTION SERVICES, L.L.C d/b/a HENRY &
HATCHETT INSPECTION SERVICES

Judgment Rendered: APR 25 2014

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 2003-13648

Honorable William J. Knight, Presiding

Raymond C. Burkart, Jr.
Covington, LA

Plaintiff/Appellant
Pro Se

Paul A. Lea, Jr.
Covington, LA

Counsel for Plaintiff/Appellant
Sherie Landry

Howard Marc Spector
Dallas, TX

Counsel for Defendants/Appellees
Elaine L. Williamson and James R.
Williamson

Gus A. Fritchie, III
Edward W. Trapolin
New Orleans, LA

Counsel for Defendants/Appellees
Jackie E. Staley, Jean Brown, Group
Integrity, L.L.C. d/b/a Keller
Williams Realty



John P. Wolff, III
Christopher K. Jones
Baton Rouge, LA

Counsel for Defendants/Appellees
Christopher J. Aubert, Rhonda H.
Aubert, and Great Northern Insurance
Company

Jay Russell Sever
Maria N. Rabieh
Karl H. Schmid
Jonathan B. Womack
New Orleans, LA

Counsel for Defendant/Appellee
Scottsdale Insurance Company

William J. Jones, Jr.
Howard R. Fussell
Leland R. Galaspy
Covington, LA

Counsel for Defendants/Appellees
LCV Partnership, Crowne Colony
Builders, Inc., Viking Land, Inc., and
Lee Road Development Company

William L. Dunford
Jonestown, TX

Defendant/Appellee
Pro Se

* * * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

GUIDRY, J.

Sherie Landry and Raymond Burkart, Jr. (the Burkarts), appeal from a trial court judgment granting summary judgment in favor of defendant, Scottsdale Insurance Company (Scottsdale). For the reasons that follow, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

On August 28, 2002, the Burkarts purchased a home located at 806 Heather Hollow in Highlands Subdivision in Covington, Louisiana, from Elaine and James Williamson. On or about September 26, 2002, water started leaking into the home during periods of rainfall. Consequently, on August 1, 2003, the Burkarts filed a petition in redhibition and for damages, naming as defendants the Williamsons; all prior homeowners in the chain of title, including Rhonda Hemelt wife of/and Christopher Aubert; unidentified insurance companies; and realtors.

The Auberts originally purchased the home at issue from the contractors, LCV Partnership. The sole partners of LCV consisted of Lee Road Development Company, Crowne Colony Builders, Inc., and Viking Land, Inc. After retaining a civil engineer to examine the home in 2004, the Burkarts discovered that the exterior walls of the home were not constructed with a secondary water barrier, and that this improper method of construction caused the widespread water intrusion throughout the Burkarts' home.

Thereafter, the Burkarts filed a first supplemental and amending petition on August 2, 2005, naming LCV and its individual partners and their respective insurers as defendants and asserting claims against them for negligence, negligent supervision, respondeat superior, and claims under the Louisiana New Home Warranty Act and La. C.C. art. 2545. By way of a second supplemental and amending petition filed on April 11, 2008, the Burkarts substituted Scottsdale as the insurer of Crowne Colony Builders, Inc.

Thereafter, on November 5, 2012, Scottsdale filed a motion for summary judgment, asserting that it is undisputed that Scottsdale did not insure Crowne Colony Builders, Inc. or any other defendant at the time that the Burkarts' alleged property damage and/or bodily injury occurred. As such, Scottsdale asserted that it does not provide coverage for the Burkarts' claims. Scottsdale also filed a motion for partial summary judgment regarding the Burkarts' claims asserted under La. C.C. art. 2545 for Crowne Colony Builders, Inc.'s alleged failure to disclose defects in their home and filed peremptory exceptions raising the objections of no cause of action and preemption. Following a hearing on Scottsdale's motions and exceptions, the trial court rendered judgment in favor of Scottsdale, granting its motion for summary judgment regarding trigger of coverage and finding the remaining motion for partial summary judgment and exceptions moot. The Burkarts now appeal from the trial court's judgment.

DISCUSSION

Appellate courts have the duty to determine, *sua sponte*, whether their subject matter jurisdiction exists, even when the parties do not raise the issue. Gaten v. Tangipahoa Parish School System, 11-1133, p. 3 (La. App. 1st Cir. 3/23/12), 91 So. 3d 1073, 1074. Under Louisiana law, a final judgment is one that determines the merits of a controversy, in whole or in part. La. C.C.P. art. 1841. A final judgment must be identified as such by appropriate language. La. C.C.P. art. 1918. A valid judgment must be precise, definite, and certain. Laird v. St. Tammany Parish Safe Harbor, 02-0045, p. 3 (La. App. 1st Cir. 12/20/02), 836 So. 2d 364, 365. 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. Gaten, 11-1133 at p. 3, 91 So. 3d at 1074. These determinations should be evident from the

language of the judgment without reference to other documents in the record. Laird, 02-0045 at p. 3, 836 So. 2d at 366.

In the instant case, this court issued a rule to show cause ordering the parties to show by briefs why the appeal in this case should not be dismissed for having been taken from a judgment lacking the appropriate decretal language disposing of and/or dismissing the claims of the plaintiffs. See La. C.C.P. arts. 1911 and 1918; see also Johnson v. Mount Pilgrim Baptist Church, 05-0337, pp. 2-3 (La. App. 1st Cir. 3/24/06), 934 So. 2d 66, 67. Scottsdale does not dispute that, in accordance with the jurisprudence, the judgment at issue is defective, because it fails to dismiss the plaintiffs' claims against it. The Burkarts, however, contend that the *effect* of the judgment is to dismiss their claims against Scottsdale, and therefore, this court should consider the appeal. Alternatively, the Burkarts assert that this court should consider the appeal under its supervisory jurisdiction.

As stated previously, a judgment cannot require reference to extrinsic documents or pleadings in order to discern the court's ruling. Vanderbrook v. Coachmen Industries, Inc., 01-0809, pp. 11-12 (La. App. 1st Cir. 5/10/02), 818 So. 2d 906, 913. In the instant case, though Scottsdale sought dismissal of the Burkarts' claims against it in filing its motion for summary judgment, the judgment itself does not state that it is granting the requested relief to Scottsdale. Because this information, which is necessary for a determination of whether a final, appealable judgment has been rendered in this case, cannot be ascertained without referring to other pleadings in the record, the judgment is ambiguous and lacks appropriate decretal language. See Thomas v. Lafayette Parish School System, 13-91, p. 2 (La. App. 3rd Cir. 3/6/13), 128 So. 3d 1055, 1056. In the absence of decretal language, the judgment is defective and cannot be considered a final judgment. Gaten, 11-1133 at p. 4, 91 So. 3d at 1074. In the absence of a final

judgment, this court lacks appellate jurisdiction to review this matter. Gaten, 11-1133 at p. 4, 91 So. 3d at 1074.

Further, we are unable to exercise our discretion to convert the Burkarts' appeal to an application for supervisory writs and consider the merits of the appeal under our supervisory jurisdiction, because the Burkarts failed to file their motion for appeal within the 30-day delay applicable to supervisory writs contained in Uniform Rules—Court of Appeal, Rule 4-3. See Wooley v. Amcare Health Plans of Louisiana, Inc., 05-2025, p. 11 (La. App. 1st Cir. 10/25/06), 944 So. 2d 668, 674 n.4.

CONCLUSION

For the foregoing reasons, the appeal of the trial court's judgment granting Scottsdale's motion for summary judgment is dismissed. All costs of this appeal are assessed to Sherie Landry and Raymond Burkart, Jr.

APPEAL DISMISSED.