

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 2131

MAGNOLIA RIDGE PROPERTIES, LLC

VERSUS

PAUL A. KADAIR, SR. AND MELANIE R. KADAIR

Judgment Rendered: JUL 10 2014

Appealed from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Docket Number 21883

The Honorable William G. Carmichael, Judge Presiding

Charles E. Griffin, II
St. Francisville, LA

Counsel for Plaintiff/Appellant,
Magnolia Ridge Properties, LLC

John B. Brumfield, Jr.
Baton Rouge, LA
and
Randall G. Wells
Baton Rouge, LA

Counsel for Defendants/Appellees,
Paul A. Kadair, Sr. and Melanie
R. Kadair

John W. Martinez
Mandeville, LA

Counsel for Third Party Defendants,
Coastal Tie & Timber Company, Inc.

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

WHIPPLE, C.J.

This matter is before us on appeal by plaintiff, Magnolia Ridge Properties, LLC, (“Magnolia Ridge”), from a judgment of the trial court maintaining an exception of *res judicata* and granting a motion for declaratory judgment in favor of plaintiffs, Paul A. Kadair, Sr. and Melanie R. Kadair. For the reasons that follow, we affirm the judgment of the trial court, as amended.

DISCUSSION

The facts and procedural history of this matter are more fully developed in a related appeal also handed down this date. See Paul A. Kadair, Sr. and Melanie R. Kadair v. Thomas Hampton, Janelle Bramlett Hampton, Magnolia Ridge Properties, LLC, and Raymond W. Banker, Jr., 2013-1171 (La. App. 1st Cir. __/__/)(unpublished opinion). In that case, the Kadairs filed a boundary action, requesting that the trial court set and reestablish the boundary of their property to include a 1.62 acre disputed piece of property that the Kadairs had maintained and possessed by acquisitive prescription for over thirty years. The Kadairs also sought a determination that a servitude of passage and utilities appearing on the original plat be declared null. The trial court rendered judgment as prayed for in favor of the Kadairs decreeing that: (1) the Kadairs had exercised adverse possession of the disputed tract for over thirty years; (2) the northern boundary of their property (Tract W) was reestablished to include a fence line depicted on a plat of survey prepared by Tobias P. Ford, Jr. and dated December 30, 2012; (3) the thirty-foot servitude of passage and utilities was null; and (4) Magnolia Ridge and Banker were ordered to file a petitory action within sixty days in accordance with LSA-C.C.P. art. 3662.

Magnolia Ridge and Banker appealed the trial court’s judgment, contending that the trial court erred in: (1) failing to understand the distinction between a possessory action and a petitory action “in trying this case and in its

rulings”; (2) failing to apply the appropriate legal requisites to maintain a possessory action in favor of the appellants; and (3) declaring a dedicated predial servitude void without proof of revocation or abandonment.

In the related appeal, we noted that the action before the trial court was the Kadairs’ boundary action and that the trial court had, in fact, rendered judgment on the boundary action. On review, we affirmed the portion of the trial court’s judgment which recognized that the Kadairs had proved their boundary action claims by acquisitive prescription rather than by title in accordance with LSA-C.C. art. 794, and the portion of the judgment fixing and reestablishing the boundary line of their property in accordance with the court’s finding that the Kadairs had possessed for themselves and their predecessor in title, up to the fence or boundary line for over thirty years. Further, we determined that Magnolia Ridge failed to establish that the servitude was established in favor of its estate, and thus, Magnolia Ridge had no legal basis to challenge the portion of the judgment declaring the thirty-foot servitude of passage and utilities null. We also vacated the portion of the judgment ordering Magnolia Ridge and Banker to file a petitory action within sixty days.

The matter now before us on appeal arises from Magnolia Ridge’s petition for petitory action, filed against the Kadairs in accordance with the trial court’s previous judgment,¹ with a “cross claim and third party demand” filed against Coastal Tie & Timber Company, Inc. (“Coastal”) in warranty.² The Kadairs filed

¹We note that while the judgment of the trial court in the boundary action ordered that Magnolia Ridge assert a petitory action within sixty days, the trial court’s reasons for judgment made no mention of such an order. Nonetheless, a trial court’s written reasons for judgment form no part of the judgment, and where there is a conflict between the judgment and the written reasons, the judgment controls. Delahoussaye v. Board of Supervisors of Community and Technical Colleges, 2004-0515 (La. App. 1st Cir. 3/24/05), 906 So. 2d 646, 654.

²While styled as a “Cross Claim and Third Party Demand,” this claim appears to actually be an additional main demand being asserted by Magnolia Ridge, as plaintiff, against Coastal, as a defendant. However, any such claims by Magnolia Ridge against Coastal are not before us in this appeal.

peremptory exceptions of prescription and *res judicata* and, by reconventional demand, a petition for declaratory judgment as to the true and rightful ownership of the disputed 1.62 acre disputed tract. After hearing argument, on July 16, 2013, the trial court rendered judgment maintaining the peremptory exception of *res judicata* and granting the motion for declaratory judgment in favor of the Kadairs. After the denial of its motion for new trial, Magnolia Ridge perfected the instant suspensive appeal.³

In our opinion in the related appeal of the boundary action judgment, we determined that, contrary to Magnolia Ridge's characterization of those proceedings, the matter before the court was not a possessory action. We further found that the trial court erred in ordering that a petitory action be asserted within sixty days as otherwise provided for in LSA-C.C.P. art. 3662, and vacated that portion of the judgment.⁴ Therein, we reasoned that under LSA-C.C. art. 794, a

³Although the Kadairs question whether the judgment before us on appeal is a final judgment for purposes of appeal, we note that the judgment dismisses all of Magnolia Ridge's claims against the Kadairs. Magnolia Ridge's "third party demand" against Coastal Tie & Timber Company, Inc. remains. Thus, because the judgment dismisses the suit as to the Kadairs, the judgment is final in accordance with LSA-C.C.P. art. 1915(A)(1) and this court's jurisdiction to review the judgment on appeal is proper.

⁴Louisiana Code of Civil Procedure article 3662 provides as follows:

A. A judgment rendered for the plaintiff in a possessory action shall:

- (1) Recognize his right to the possession of the immovable property or real right therein, and restore him to possession thereof if he has been evicted, or maintain him in possession thereof if the disturbance has not been an eviction;
- (2) Order the defendant to assert his adverse claim of ownership of the immovable property or real right therein in a petitory action to be filed within a delay to be fixed by the court not to exceed sixty days after the date the judgment becomes executory, or be precluded thereafter from asserting the ownership thereof, if the plaintiff has prayed for such relief; and
- (3) Award him the damages to which he is entitled and which he has prayed for.

B. A suspensive appeal from the judgment rendered in a possessory action may be taken within the delay provided in Article 2123, and a devolutive appeal may be taken from such judgment only within thirty days of the applicable date provided in Article 2087 (A).

title holder may acquire more land than his title calls for by possessing property beyond his title for thirty years without interruption and within visible bounds.⁵ Such a title holder may attain the thirty-year possessory period—which is necessary to perfect prescriptive title in the absence of good faith and just title—by “tacking” on to the possession of his ancestor in title. LSA-C.C. arts. 794 and 3442; Secret Cove, L.L.C. v. Thomas, 2002-2498 (La. App. 1st Cir. 1/7/03), 862 So. 2d 1010, 1015-1016, writ denied, 2004-0447 (La. 4/2/04), 869 So. 2d 889. Because the trial court determined, and we have ultimately agreed in the other appeal, that the Kadairs attained prescriptive title, there was no need for the instant petitory action, in that the issue of the Kadairs’ ownership has been adjudicated. For these reasons, and considering our ruling handed down this date in the related matter, to the extent that the judgment herein maintains the Kadairs’ exception of *res judicata* and grants declaratory judgment in their favor in response to the claims asserted by Magnolia Ridge against them, the judgment in favor of the Kadairs is legally correct. However, we will amend the judgment to expressly state with appropriate decretal language that Magnolia Ridge’s claims against the Kadairs are hereby dismissed with prejudice.

CONCLUSION

For the reasons set for above, we hereby amend the July 16, 2013 judgment of the trial court to provide that the claims of Magnolia Ridge against Paul and Melanie Kadair are hereby dismissed with prejudice. In all other respects, the judgment is affirmed in accordance with Uniform Rules – Courts of Appeal, Rule

⁵Louisiana Civil Code article 794, entitled, “Determination of ownership according to prescription,” provides as follows:

When a party proves acquisitive prescription, the boundary shall be fixed according to limits established by prescription rather than titles. If a party and his ancestors in title possessed for thirty years without interruption, within visible bounds, more land than their title called for, the boundary shall be fixed along these bounds.

2-16.1(B). Costs of this appeal are assessed to the plaintiff/appellant, Magnolia Ridge Properties, LLC.

AMENDED, AND AS AMENDED, AFFIRMED.