NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 2244

WHW
JEW
NJ

STEVE ORY AND BRENDA ORY, ET AL.

VERSUS

RD & FAM, LLC, RICHARD PRICE CONTRACTING CO., L.L.C., THE SANCHEROSA, LLC, THOMAS KILBRIDE, LAWSON-BONET CONSTRUCTION, INC. AND TANGIPAHOA PARISH COUNCIL

Judgment Rendered: JUN 06 2014

Appealed from the
Twenty-first Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Docket Number 2009-0000167

Honorable Wayne Ray Chutz, Judge Presiding

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James F. Willeford **Reagan L. Toledano** **Shane D. Pendley** **New Orleans, LA**	**Counsel for Plaintiff/Appellants,** **Steve Ory and Brenda Ory, et al**
Willis J. Ray **New Orleans, LA**	**Counsel for Defendant/Appellee,** **Sancherosa, LLC**

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

WHIPPLE, C.J.

This is an appeal by plaintiffs, seventeen residents of Loranger, Louisiana, from a judgment of the Twenty-first Judicial District Court dismissing their suit for damages against defendant, The Sancherosa, LLC (hereinafter "Sancherosa"), after a bench trial. For the reasons that follow, we affirm.

BACKGROUND FACTS AND PROCEDURAL HISTORY

This suit arises from a claim for damages against Sancherosa, under LSA-C.C. art. 667 in connection with the operation of a dirt pit on Sancherosa's property. Sancherosa, the owner of a tract of land in Tangipahoa Parish, entered into royalty contracts with Coastal Dredging, Inc. and, subsequently, with C&H, (another contractor), whereby Coastal and C&H contractually agreed that they would excavate dirt for their own commercial purposes and pay Sancherosa for the amount of dirt removed. While Sancherosa maintained authority over the location, dimensions, and configuration of the dirt pit and resulting lake, Coastal and C&H separately contracted with truckers to haul the dirt away from the Sancherosa property.

Plaintiffs' complaints about dust, the number of trucks used, and the frequency with which they traveled to and from the property eventually gave rise to this action. Specifically, plaintiffs alleged that the truckers monopolized the roadway, interfered with their ability to travel, and exhibited aggressive behavior. Thus, plaintiffs filed the instant suit for damages under LSA-C.C. art. 667, which provides: "Although a proprietor may do with his estate whatever he pleases, he still cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him."

The trial court found that Sancherosa's "work" was a dirt pit operation, with the objective of selling dirt and constructing a lake. The trial court further found that the actual excavation of dirt was not "the nuisance" and that any possible

nuisance resulted from the actions of the contractors and/or subcontractors, rather than Sancherosa. Accordingly, the trial court rendered judgment in favor of Sancherosa, dismissing plaintiffs' claims against it.

Plaintffs then appealed, alleging that the trial court erred: (1) in failing to find that Sancherosa created a nuisance in operating a dirt pit on its property; (2) in drawing a distinction between the overall operation of the dirt pit and the contractors using the nearby roadways to move the dirt away from the pit; and (3) in holding that the landowner was not liable for a nuisance created by third party contractors on neighboring roads merely because the contractors had taken ownership of the dirt.

However, plaintiffs next moved to limit the designation of the record on appeal as limited to those documents necessary for a determination of issues of law, stating in the motion that they accepted the trial court's findings of fact and did not wish to have the trial transcript included in the record. Likewise, in their brief to this court, plaintiffs specifically stated that they "accept the court's findings of fact but contend the court erred in holding that [d]efendant's operation of the dirt pit did not create a nuisance." Thus, our review is limited to the record as designated herein.

DISCUSSION

In considering plaintiffs' first assignment of error, we note at the outset that whether a particular activity constitutes a nuisance or a mere inconvenience is not a question of law, but of fact, which findings may not be disturbed on appeal absent manifest error. Barrett v. T.L. James & Company, 28,170, p. 6 (La. App. 2nd Cir. 4/3/96), 671 So. 2d 1186, 1191, writ denied, 96-1124 (La. 6/7/96), 674 So. 2d 973. Appellants have specifically acknowledged that they "accept" the trial court's factual findings. Accordingly, we can find no basis in the record, as it is, to disturb

the lower court's factual finding that **Sancherosa's** activities did not constitute a nuisance.

As to plaintiffs' remaining contention that the trial court erred by "drawing a distinction" (between the overall operation of the dirt pit and the contractors' use of the roadway to haul the dirt away), and thus erred in holding that the land owner is not liable for a nuisance created by its contractors, again, we are unable to fully consider those arguments in the absence of a transcript. In its reasons for judgment, the trial court linked "any nuisance that developed" to Coastal, C&H, and/or their subcontractors, but refrained from a specific factual finding on the issue. Instead, the court later noted in its reasons that Sancherosa is not liable for damages "created by nuisance" and again states that "[a]ny nuisance was created" by Coastal, C&H or their subcontractors. Thus, as written, the trial court's statements suggest that the lower court did not intend to, nor did it specifically, make a factual finding on whether Coastal, C&H, or the subcontractors actually created a nuisance. Instead, the court concluded: "This court notes that it makes no ruling or finding as to any claim that may have been made against either the contractors or their subcontractors, either pursuant to [LSA-C.C. a]rt. 2315 or any other applicable law."

On review, we are bound by the well-settled rule that appellate courts review judgments, not reasons for judgment. Wooley v. Lucksinger, 09-0571, 09-0584, 09-0585, 09-0586, p. 77 (La. 4/1/11), 61 So. 3d 507, 572. With only pleadings, briefs, and some photographic evidence before us, we are unable to determine on appeal whether Coastal, C&H, or their subcontractors did, in fact, create a nuisance and whether such activities thereby rendered Sancherosa liable for damages. When neither a transcript nor a narrative of facts is included in the record, there is nothing for the appellate court to review. Instead, we are obligated to presume that

the trial court's judgment is correct and supported by sufficient evidence. Boellert v. Lumpkin, 620 So. 2d 431, 433 (La. App. 3rd Cir. 1993).

As to plaintiffs' final argument that the trial court erred in separating the actions of Sancherosa from those of the third party contractors, we again note that our review for error is limited to review of the judgment and the evidence of record in support thereof, and not review for correctness of the trial court's reasons for judgment. Judgments are often upheld on appeal for reasons different than those assigned by district judges. The written reasons are merely an explication of the trial court's determinations and do not alter, amend or affect the final judgment. Wooley, 572 So 3d at 61.

Regardless, even if we were to conclude that the trial court erred in drawing a distinction between the overall operation of the dirt pit and the individual component parts of that operation, without a transcript, we are unable to make the necessary factual determinations required to grant relief from the judgment, which, for purposes of review, is presumed to be correct.

CONCLUSION

Accordingly, we affirm the judgment of the trial court dismissing plaintiffs' claims against Sancherosa at plaintiffs' costs. Costs of this appeal are assessed against plaintiffs/appellants Steve Ory and Brenda Ory, et al.

AFFIRMED.