

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

JKW

NUMBER 2013 CA 1947

TROY THIBODEAUX

VERSUS

RENTAL INSURANCE SERVICES, INC. AND MARSHA WILLIS

Judgment Rendered: APR 24 2015

Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 613982

Honorable Timothy Kelley, Judge

Kelly E. Balfour
Baton Rouge, LA

Attorney for Appellee
Plaintiff – Troy Thibodeaux

Marsha A. Willis
Baton Rouge, LA

Attorney for Appellant
Defendant – Marsha A. Willis

Donna Powe Green
Hattiesburg, MS

Attorney for Appellee
Defendant – Rental Insurance
Services, Inc.

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

gob
Pettigrew, J. Concurs
J - Concurs

WELCH, J.

Marsha Willis challenges five trial court judgments in favor of Troy Thibodeaux, and/or Rental Insurance Services, Inc. (“RIS”). RIS has filed a motion to dismiss the appeal based on untimeliness. For reasons that follow, we dismiss the appeal in part, maintain the appeal in part, and affirm the judgments of the trial court.

FACTUAL AND PROCEDURAL HISTORY

This matter arises out of an automobile accident that occurred on August 4, 2011, between the plaintiff, Troy Thibodeaux, and defendant Marsha Willis. The petition for damages, filed on July 23, 2012, alleged that Marsha Willis rear-ended Troy Thibodeaux’s vehicle, causing him injuries. The petition also alleged that Marsha Willis was driving a vehicle owned by Ean Holdings, LLC (the parent company of Enterprise Rent-a-Car) and insured by defendant RIS.

On August 21, 2012, Marsha Willis answered the petition, alleging, among other things, that the accident was caused due to the mechanical failure of the rented vehicle she was driving. On October 2, 2012, RIS filed its answer to the petition, affirmatively pleading that the rental contract was with Ida Mae Willis (Marsha Willis’s mother) and that Marsha Willis was not authorized to operate the vehicle. RIS did not provide a defense for Marsha Willis in the suit, and in December, 2012, Marsha Willis propounded discovery to RIS. In December 2012, Marsha Willis also filed a supplemental answer challenging the manner in which the rental car contract was handled and claiming that both her and her mother, Ida Mae Willis, entered into the rental contract.¹ Thereafter, Troy Thibodeaux settled all claims in his petition by virtue of entering into a settlement with RIS, and

¹ At this time, Marsha Willis also sought and obtained an order allowing her to proceed *in forma pauperis*.

counsel for RIS then sent a letter to Marsha Willis expressing that the discovery she propounded was moot because the case had settled.²

In February 2013, Marsha Willis filed a “supplemental answer asserting reconventional demand” against Troy Thibodeaux, in which she asserted that he was aiding in the “fraud and tortious injury” perpetrated on her by RIS in its handling of the case. Although Marsha Willis filed a motion seeking to compel discovery, on March 13, 2013, the trial court signed an order suspending all discovery “pending the ruling on any exceptions that may be filed in response to the Reconventional Demand.”³ Marsha Willis filed a motion for new trial as to the order suspending discovery. Troy Thibodeaux, appearing as defendant in reconvention, filed a peremptory exception raising the objection of no cause of action in response to Marsha Willis’s reconventional demand. Ultimately, the trial court signed a judgment on April 29, 2013, sustaining the exception and dismissing

² The record contains a letter dated January 28, 2013 from counsel for RIS stating that “the above-captioned matter has been settled” and asserting that the discovery Marsha Willis had propounded was moot. A later email from RIS counsel to Marsha Willis stated that RIS, “[w]ithout admitting coverage, liability, causation or damages RIS negotiated a settlement with [Troy] Thibodeaux whereby he will dismiss all claims against all parties.” The existence of a settlement between RIS and Troy Thibodeaux is confirmed by his attestation in his memorandum in support of his peremptory exception raising the objection of no cause of action filed in response to Marsha Willis’s subsequent reconventional demand. Marsha Willis claims that the details of the settlement were not made available to her and so she continued her efforts to propound discovery.

³ At a status hearing on March 12, 2013, the trial court denied as moot Marsha Willis’s “Motion to Compel Discovery and Motion to Delay Signing of Judgment in Principal Demand.” On March 25, 2013, Marsha Willis filed a “Motion for a New Trial” challenging the March 13, 2013, order suspending discovery. Marsha Willis’s motion for new trial is not entirely clear, but it appears to assert that the discussion at the March 12, 2013 status conference led Marsha Willis to believe that the entire case was to be dismissed, while the order signed on March 13, 2013, merely denied her motions to compel discovery and delayed signing of judgment. She also alleged that she had not been properly served with the peremptory exception raising the objection of no cause of action.

Marsha Willis also filed a notice of intent to seek supervisory writs from the March 13, 2013 order. After Marsha Willis filed two motions to extend the initial return date for the writ, the trial court set the return date for May 15, 2013. Marsha Willis then filed two motions for extension of return date in this Court; however, both motions were denied on June 3, 2013, and ultimately, no supervisory writ application was ever filed in this Court.

Marsha Willis's reconventional demand against Troy Thibodeaux at her cost.⁴ The notice of judgment was mailed on May 1, 2013.

On May 13, RIS filed a motion to strike and for sanctions under La. C.C.P. art. 863, along with a request for an expedited hearing. On June 11, RIS filed a motion to dismiss all claims against all parties,⁵ and on July 19, 2013, RIS filed a supplemental motion to dismiss and controvert Marsha Willis's pauper status. Troy Thibodeaux also filed a motion to dismiss all claims against all parties on July 29, 2013, which the trial court granted that same date.

The July 29, 2013 minute entry indicates a hearing was held on Marsha Willis' motion for new trial (on the trial court's March 13, 2013 order suspending discovery), RIS's motion to strike and for sanctions, RIS's motion to dismiss, and RIS's supplemental motion to dismiss and to controvert Marsha Willis's pauper status. Counsel for RIS informed the court that RIS's motion to dismiss was moot. After argument, the trial court orally denied Marsha Willis's motion for new trial, granted RIS's supplemental motion to dismiss, and granted RIS's motion to strike and for sanctions. The trial court further ordered Marsha Willis to pay \$9,000.00 to RIS for monies expended by them to react to Marsha Willis's pleadings. The trial court also ordered the matter dismissed with prejudice. On August 15, 2013,

⁴ Troy Thibodeaux's peremptory exception raising the objection of no cause of action was heard on April 15, 2013; the minute entry indicates that Marsha Willis was given fifteen days to amend her demand. Also on April 15, 2013, Marsha Willis filed a "motion to amend and supplement the reconventional demand." That same day, the trial court signed the order attached to the motion allowing Marsha Willis to file the amended and supplemental reconventional demand by April 30. Although confusing and seemingly in conflict with the April 15, 2013 order, the record indicates the trial court signed a judgment on April 29, 2013, sustaining the exception and dismissing Marsha Willis' reconventional demand against Troy Thibodeaux at her cost. That same day, Marsha Willis filed a motion for extension of time in which to file an amended reconventional demand; she stated that "the necessity to attend to her clients' cases and her chronic asthma" prevented her from filing a timely amendment. On April 30, 2013, the trial court granted Marsha Willis until May 15, 2013, to file an amended reconventional demand. On May 8, 2013, Marsha Willis filed a "Motion to Amend and Supplement Answer," which was granted the same day. Several emails between Marsha Willis and Troy Thibodeaux's counsel were attached to the amended reconventional demand.

⁵ Marsha Willis filed an opposition to RIS's motion in which she continued to seek the right to conduct discovery.

the trial court signed three separate written judgments in accordance with its July 29, 2013 oral rulings, and the notices of judgment for each judgment were mailed on August 30, 2013.

On August 1, 2013, Marsha Willis filed “Exceptions of Insufficient Service of Process, Lack of In Personam Jurisdiction, Lack of Procedural Capacity and No Cause of Action” with respect to RIS’s supplemental motion to dismiss and motion to controvert Marsha Willis’s pauper status. On September 6, 2013, Marsha Willis filed a motion for a new trial on RIS’s motions for sanctions and attorney fees and on its motion controverting her pauper status, and an alternative motion to find and declare RIS’s motions and judgments “null.” In the motion, Marsha Willis sought the reversal of the trial court’s July 29, 2013 rulings (August 15, 2013 written judgments) based on Marsha Willis’s claim that she was not properly served with the motions.⁶ Alternatively, Marsha Willis sought to have RIS’s “motions and judgments” declared null, but did not specifically state which judgment should be declared null. This motion was set for hearing on October 28, 2013.⁷

On September 27, 2013, Marsha Willis filed a petition for devolutive appeal, in which she recites some of the procedural history of the case but does not specify which judgment she seeks to appeal. The only judgment the petition refers to by date is the “April 25, 2013” judgment, in which “April 25” is handwritten over the typed (and scratched out) date of “August 15.” The record does not reflect that a judgment was rendered or signed on April 25, 2013; however, there is the April 29, 2013 judgment, which was attached to Marsha Willis’s motion, that sustained Troy Thibodeaux’s peremptory exception raising the objection of no cause of action and

⁶ Despite her allegation that she was not properly served with the motions, we note that the trial court’s minute entry of July 29, 2013, indicates that Marsha Willis was in court for the hearing on the motions.

⁷ This hearing occurred after Marsha Willis filed her motion for appeal. The record herein was supplemented with numerous items, including the transcript from the hearing and a November 14, 2013 judgment denying all of Marsha Willis’s “exceptions” at Marsha Willis’s cost.

dismissed Marsha Willis's reconventional demand against Troy Thibodeaux, which was filed on April 25, 2013 (although rendered and signed on April 29, 2013).⁸

On October 3, 2013, the trial court signed an order granting the appeal, but the order does not reflect the specific judgment or judgments appealed. The notice of appeal, however, indicates that a devolutive appeal was granted from the judgments of April 29, 2013 and August 15, 2013.

In January 2014, RIS filed a motion to supplement the record in the trial court, which was granted on January 8, 2014. The order signed by the trial court ordered the East Baton Rouge Parish Clerk of Court to supplement the record on appeal with:

all matters including but not limited to the missing pages 12 and 18, those pleadings specifically described in the motion filed by RIS and all matters filed with the Clerk of Court for the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, from October 15, 2013, to the present, with a transcript of the proceedings heard on October 28, 2013, said supplementation to begin at page 249 and to be filed with the First Circuit Court of Appeal.

The supplement includes items that occurred after the trial court granted the first motion for appeal on October 3, 2013. The items added to the record include a transcript of the October 28, 2013 hearing on Marsha Willis's exceptions and motion for new trial, which reflects the trial court's oral ruling denying the motion for new trial and overruling the exceptions, and a written judgment with regard to the exceptions that was signed on November 14, 2013. Additionally, the record was supplemented with an "Amending and Supplemental Petition for Appeal" filed by Marsha Willis on November 22, 2013. In this pleading, Marsha Willis asserts that the striking of the August 15, 2013 typewritten date with the handwritten date

⁸ This judgment was mailed to the parties or their counsel on May 1, 2013.

of April 25, 2013, and the attachment of the April 29, 2013⁹ judgment was an “inadvertent and unintentional error caused by a misunderstanding and confusion of information received from the Office of the Clerk of Court, just before filing, and due to illness affecting my ability to carry out the tasks.” This pleading further notes the hearing on October 28, 2013, and requests an appeal of not only the three judgments of August 15, 2013, but also the November 14, 2013, judgment denying her exceptions. The trial court signed an order granting the appeal on November 25, 2013; however, an amended notice of appeal is not contained in the record before us.

RIS’S MOTIONS TO DISMISS THE APPEAL

On November 12, 2013, RIS filed, in this Court, a motion to dismiss this appeal, arguing that the appeal was untimely and improper.¹⁰ Essentially, RIS seeks to dismiss the appeal of the August 15, 2013 judgments denying Marsha Willis’s motion for new trial. RIS contends that Marsha Willis’s motion for new trial sought a new trial related to the March 13, 2013 order denying her motion to compel discovery and motion to delay signing of judgment in the principal demand, that the March 13, 2013 order was mailed to Marsha Willis and counsel for the other parties on March 14, 2013, and that the seven-day delay, excluding Sunday as a legal holiday, for filing a motion for new trial ended on March 22, 2013. RIS argues that the motion for new trial was “stamped” or marked as “received” and “posted” on March 26, 2013,¹¹ and was, thus, untimely. RIS also

⁹ Although Marsha Willis stated in her amending and supplemental petition for appeal that she inadvertently attached the April 15, 2013 judgment to her original, this was a mistake, as she attached the April 29, 2013 judgment to the original motion to appeal.

¹⁰ RIS simultaneously filed with this Court a motion to expedite the hearing of its motion to dismiss, which was denied by this Court on December 20, 2013. See **Thibodeaux v. Rental Insurance Services, Inc.**, 2013-1947 (La. App. 1st Cir. 12/20/13)(*unpublished action*).

¹¹ RIS states that the motion for new trial was filed on March 26, 2013. Although the motion was “received” and “posted” on that date, the last page of the motion bears a “filed” stamp that is dated March 25, 2013.

contends the only judgment attached to the motion for devolutive appeal was the judgment rendered on April 29, 2013.

Thereafter, on December 4, 2013, RIS filed an “Opposition to ‘Amending and Supplemental Petition for Appeal’ with Renewed Motion to Dismiss Appeal,” asserting that Marsha Willis’s amended motion for appeal seeks an appeal of “all adverse rulings and judgments rendered against her by the district court.” RIS argues that Marsha Willis’s request for appeal is improper because it is overly broad and does not identify the rulings from which she seeks relief and that the appeal of the August 15, 2013 judgments by the amended motion for appeal, filed on November 22, 2013, is untimely. RIS contends that in Marsha Willis’s initial motion for appeal, filed September 27, 2013, she did not seek review of the August 15, 2013 judgments, because she only attached a copy of the April 29, 2013 judgment, and then RIS reiterates its previous argument that the appeal is untimely as to the April 29, 2013 judgment. Additionally, RIS further argues that there is no authority that grants a party “the right to use a ‘supplement’ to appeal that which has not been timely appealed” Finally, RIS complains that Marsha Willis failed to mail it a copy of the amended motion for appeal despite the certificate of service attesting that a copy was sent to all counsel of record.

Thus, RIS seeks to dismiss the appeal herein.¹²

Applicable Legal Precepts

An appeal is taken by obtaining an order therefor, within the delay allowed, from the court that rendered the judgment. La. C.C.P. art. 2121. Appellate jurisdiction extends to “final judgments.” La. C.C.P. art. 2083. Under La. C.C.P. art. 2087(A), a devolutive appeal may be taken within sixty days of any of the following:

¹² The merits of RIS’s motions to dismiss was referred to this panel. See **Thibodeaux v. Rental Insurance Services, Inc.**, 2013-1947 (La. App. 1st Cir. 9/23/14)(*unpublished action*).

(1) The expiration of the delay for applying for a new trial ... as provided by [La. C.C.P. art.] 1974 ... if no application has been filed timely.

(2) The date of the mailing of notice of the court's refusal to grant a timely application for a new trial ... as provided under [La. C.C.P. art.] 1914.

Under La. C.C.P. art. 1974, the delay for applying for a new trial shall be seven days, exclusive of legal holidays, with the delay commencing to run on the day after the clerk has mailed the notice of judgment required by La. C.C.P. art. 1913. Once the seven-day period for filing a motion for new trial has passed, and no motion for new trial is filed, or said motion is untimely filed, the judgment becomes final, and appellate delays begin to run. **Nelson v. Teachers' Retirement System of Louisiana**, 2010-1190 (La. App. 1st Cir. 2/11/11), 57 So.3d 587, 589-590. The appeal delays found in La. C.C.P. art. 2087 are not prescriptive periods that are subject to interruption; these time limits are jurisdictional. **Everett v. Baton Rouge Student Housing, L.L.C.**, 2010-0856 (La. App. 1st Cir. 5/6/11), 64 So.3d 883, 886, writ denied, 2011-1169 (La. 9/16/11), 69 So.3d 1149.

Louisiana Code of Civil Procedure article 1841 provides:

A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. It may be interlocutory or final.

A judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment.

A judgment that determines the merits in whole or in part is a final judgment.

An interlocutory judgment is appealable only when expressly provided by law. See La. C.C.P. art. 2083(C); see also **Augman v. City of Morgan City**, 2004-1746 (La. App. 1st Cir. 9/23/05), 914 So.2d 583, 585 n.2.

Louisiana Code of Civil Procedure article 2088 provides, in pertinent part, as follows:

A. The jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond, in the case of a suspensive appeal or on the granting of the order of appeal, in the case of a devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over those matters not reviewable under the appeal, including the right to:

(1) Allow the taking of a deposition, as provided in Article 1433;

(2) Extend the return day of the appeal, as provided in Article 2125;

(3) Make, or permit the making of, a written narrative of the facts of the case, as provided in Article 2131;

(4) Correct any misstatement, irregularity, informality, or omission of the trial record, as provided in Article 2132;

(5) Test the solvency of the surety on the appeal bond as of the date of its filing or subsequently, consider objections to the form, substance, and sufficiency of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124, and 5126;

(6) Grant an appeal to another party;

(7) Execute or give effect to the judgment when its execution or effect is not suspended by the appeal;

(8) Enter orders permitting the deposit of sums of money within the meaning of Article 4658 of this Code;

(9) Impose the penalties provided by Article 2126, or dismiss the appeal, when the appellant fails to timely pay the estimated costs or the difference between the estimated costs and the actual costs of the appeal; or

(10) Set and tax costs and expert witness fees.
(Emphasis added).

An appellate court cannot consider any actions of the trial court taken after the motion for appeal was granted, except as permitted by La. C.C. P. art. 2088.

An appellate court must render its judgment upon the record on appeal. See La. C.C.P. art. 2164.¹³ A court of appeal is a court of record, which must limit its

¹³ Louisiana Code of Civil Procedure article 2164 provides for the scope of an appeal and the action to be taken:

review to evidence in the record before it. **River Parishes Financial Services, L.L.C. v. Goines**, 2007-0641 (La. App. 5th Cir. 2/6/08), 979 So.2d 518, 521.

With these precepts in mind, we will address the merits of the motions to dismiss the appeal with regard to each judgment.

Appeal of the November 14, 2013 Judgment

As previously set forth, the trial court granted Marsha Willis's original motion for appeal on October 3, 2013; however, after the motion for appeal was granted, proceedings continued in the trial court, *i.e.*, the trial court held a hearing on October 28, 2013 and overruled Marsha Willis's exceptions, which were filed on August 1, 2013. Additionally, as noted previously, on November 22, 2013, Marsha Willis filed an amended and supplemental petition for appeal and the trial court signed an order on November 25, 2013, granting a devolutive appeal from the three judgments of August 15, 2013, and the judgment of November 14, 2013. Essentially, with regard to the November 14, 2013 judgment, the issue raised by RIS's opposition to the amending and supplemental appeal and renewed motion to dismiss appeal is whether an appeal, which has already been granted by the trial court, can be expanded to include subsequent rulings by the trial court pursuant to an amended motion for appeal. For reasons that follow, we find that it cannot.

Notably, once the trial court signed the original order granting the devolutive appeal on October 3, 2013, it lost jurisdiction with regard to all matters reviewable under the appeal, with a few exceptions that are not applicable herein. Although the trial court certainly had the authority to supplement the record on appeal, this court cannot review documents or rulings pertaining to matters that occurred after

The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. The court may award damages, including attorney fees, for frivolous appeal or application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

the appeal was granted. Therefore, to the extent that Marsha Willis seeks herein to appeal the November 14, 2013 judgment, which was rendered after the original motion to appeal was granted, RIS's motion to dismiss is granted and that portion of the appeal is dismissed.

Appeal of the April 29, 2013 Judgment

Insofar as Marsha Willis seeks review of the April 29, 2013 judgment granting Troy Thibodeaux's peremptory exception raising the objection of no cause of action and dismissing her reconventional demand, the appeal is untimely. The notice of judgment was mailed on May 1, 2013, and the record does not indicate that Marsha Willis filed a motion for new trial as to this judgment. The motion for appeal was filed on September 27, 2013, almost five months after the judgment was signed and notice was mailed to the parties, and was thus, untimely. Therefore, to the extent that Marsha Willis seeks herein to appeal the April 29, 2013 judgment, RIS's motion to dismiss is granted and that portion of the appeal is dismissed.

Appeal of August 15, 2013 Judgments

As set forth above, three judgments were signed on August 15, 2013, and notices of the judgments were mailed on August 30, 2013. Although Marsha Willis's original motion to appeal referenced an incorrect judgment and the trial court's order granting the appeal does not reflect a specific judgment appealed, we note that the notice of appeal indicates that a devolutive appeal was granted from the judgments of April 29, 2013 and August 15, 2013. We further note that Marsha Willis attempted to correct the error in her original motion for appeal when she filed the amended motion for appeal. It is well-settled that appeals are favored in the law and should be maintained unless the grounds urged for dismissal are free from doubt. **Castillo v. Russell**, 2005-2110 (La. 2/10/06), 920 So.2d 863. Mindful of this principle, to the extent that Marsha Willis seeks herein to appeal

the August 15, 2013 judgments, the appeal is timely. The original motion for appeal was filed on September 27, 2013, and was within the 60 day time delay (from the August 30, 2013 notices of judgment) for filing a devolutive appeal.

As previously set forth, the first August 15, 2013 judgment denied Marsha Willis's motion for new trial as to the trial court's March 13, 2013 order suspending discovery. To the extent that RIS claims that the motion for new trial was untimely, and thus the appeal of that judgment was untimely, we find that Marsha Willis's motion for new trial was essentially a motion for the trial court to reconsider its prior discovery ruling. Notably, that March 13, 2013 judgment pertained to preliminary matters, was interlocutory in nature, and hence, could be modified by the trial court at any time prior to rendition of a final judgment on the merits. See LeBlanc v. Aysenne, 2005-0297 (La. 1/19/06), 921 So.2d 85, 87 n.2 and 88. And although the denial of the motion to reconsider was an interlocutory judgment by itself and was not a final, appealable judgment, it can still be reviewed when an unrestricted appeal is taken from a final judgment. In such a case, the appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him, in addition to the review of the final judgment. **Brown-Knight v. Just Add Gas, Inc.**, 2011-2269 (La. App. 1st Cir. 11/29/12) (*unpublished*); **Succession of Bell**, 2006-1710 (La. App. 1st Cir. 6/8/07), 964 So.2d 1067, 1072. Because we find, for reasons set forth below, that the other two judgments rendered on August 15, 2013, are final appealable judgments, Marsha Willis is entitled to seek review of any adverse interlocutory rulings, including the August 15, 2013 judgment denying her request to reconsider the March 13, 2013 ruling as part of this unrestricted appeal.

The second judgment of August 15, 2013, granted RIS's motion to strike pleadings filed by Marsha Willis after the filing of her initial answer on August 21, 2012. This judgment also granted RIS's motion for sanctions and ordered Marsha

Willis to pay RIS the sum of \$9,000.00 for the expenses and costs it incurred after Troy Thibodeaux settled.

Louisiana Code Civil Procedure article 1915(A)(6) provides:

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:

* * *

(6) Imposes sanctions or disciplinary action pursuant to [La. C.C.P. art.] 191, 863, or 864 or Code of Evidence Article 510(G).

Thus, the second August 15, 2013 judgment imposing sanctions is a final appealable judgment.

The third August 15, 2013 judgment granted RIS's motion to dismiss, dismissed "all claims by Troy Thibodeaux and Marsha Willis against all parties ...," and cast Marsha Willis with all court costs attributable to her. As this judgment dismissed all claims against all parties, it is a final, appealable judgment. See La. C.C.P. arts. 1841 and 2083.

Accordingly, to the extent that Marsha Willis seeks herein to appeal the August 15, 2013 judgments, RIS's motion to dismiss is denied and that portion of Marsha Willis's appeal is maintained.

MERITS OF MARSHA WILLIS'S APPEAL

On appeal, Marsha Willis raises ten assignments of error, some of which contain multiple subparts, essentially challenging: (1) the trial court's refusal to compel RIS to answer discovery after the case had been settled (the first August 15, 2013 judgment¹⁴); (2) the trial court's decision to sanction her and order her to pay attorney fees, expenses, and costs to RIS in the amount of \$9,000.00 (the

¹⁴ As previously set forth, the first August 15, 2013 judgment denied Marsha Willis's motion for new trial as to the March 13, 2013 discovery order. The March 13, 2013 order determined that Marsha Willis's motion to compel discovery and delay signing of judgment was moot and that all discovery was suspended pending a ruling on any exceptions that might be filed in response to Marsha Willis's reconventional demand.

second August 15, 2013 judgment¹⁵); and (3) the trial court's decision to rescind her status as a pauper and to cast her with the court costs that she incurred (the third August 15, 2013 judgment¹⁶).

Discovery

The record before us reveals that Marsha Willis propounded her discovery to RIS in December 2012. RIS obtained an extension of the deadline to answer the discovery, but prior to that deadline, the case settled. Therefore, by letter dated January 28, 2013, RIS, through its counsel, informed Marsha Willis that the case had been settled and as such, that the discovery was moot. A follow up email from counsel for RIS was likewise sent to Marsha Willis explaining that RIS had

¹⁵ The second August 15, 2013 judgment granting RIS's motion to strike and for sanctions provided, in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Strike filed by Rental Insurance Services, Inc. is granted and all Answers and attachments thereto filed by Marsha Willis after her initial Answer on August 21, 2012, are hereby stricken from the Record.

For the same reasons as well as those stated during the hearing and set forth in the Motion and Memorandum filed by RIS, adopted by this Court as its Reason for Judgment, RIS's Motion for Sanctions is granted and Marsha Willis is hereby ordered to pay Rental Insurance Services, Inc. the sum of \$9,000 (representing a portion of its attorneys' fees, expenses and costs incurred after Troy Thibodeaux agreed to settle all claims against all parties and notice was provided to Marsha Willis of that settlement agreement on January 28, 2013), with all costs of the motion to be assessed against Marsha Willis.

¹⁶ The third August 15, 2013 judgment granting RIS's supplemental motion to dismiss and controvert Marsha Willis's pauper status provided, in pertinent part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Marsha Willis is cast for all costs attributable to her, including but not limited to the amount of \$1,206.77 due to the Clerk of Court for the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, for filing fees, for the reasons presented by Rental Insurance Services, Inc.

FURTHERMORE, all claims by Troy Thibodeaux and Marsha Willis against all parties in the above-captioned matter are dismissed, with prejudice, each party to bear its own costs, as memorialized in the Motion to Dismiss signed by Kelly Balfour, counsel for Troy Thibodeaux, and entered in open court on July 29, 2013. The Court takes judicial notice of La. C.C.P. art. 5188 which provides, "The failure of the indigent party to pay the costs specified in this Article shall not prevent entry of judgment in favor of any party who is not responsible for the costs," and therefore instructs the Clerk of Court to provide copies of the signed Order of Dismissal to counsel for Troy Thibodeaux and for Rental Insurance Services, Inc., notwithstanding any delay of or failure by Marsha Willis to pay the amount of costs owed by her.

negotiated a settlement whereby Troy Thibodeaux had agreed to dismiss all of his claims against all of the parties. Nevertheless, Marsha Willis filed a motion to compel the discovery. The trial court determined that the motion to compel was moot because the case settled and it also issued a stay of all discovery pending a hearing on exceptions filed in response to Marsha Willis's reconventional demand, which were the only remaining claims at that time. After the trial court sustained the exception and dismissed the reconventional demand, it refused to reconsider its prior ruling on discovery.

Louisiana Code of Civil Procedure article 1422 provides, in pertinent part, that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the *pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis added.)

Additionally, La. C.C.P. art. 1469 provides that when a party fails to respond to discovery, the "discovering party may move for an order compelling ...the request."

After a thorough review of the record, we cannot say that the trial court abused its discretion.¹⁷ Discovery can be obtained (and therefore only compelled) when there is a "pending action." See La. C.C.P. art. 1422. Herein, there was no pending action or remaining claims in the suit. Therefore, Marsha Willis was not entitled to conduct discovery, much less to an order compelling discovery.

¹⁷ Our standard of review on discovery rulings and the type of sanctions arising therefrom is abuse of discretion. See **Hutchinson v. Westport Insurance Corporation**, 2004-1592 (La. 11/8/04), 886 So.2d 438, 440; **Riverside Recycling, LLC v. BWI Companies, Inc. of Texas**, 2012-0588 (La. App. 1st Cir. 12/28/12), 112 So.3d 869, 874.

Therefore, the first August 15, 2013 judgment of the trial court denying Marsha Willis's motion for new trial on the March 13, 2013 discovery order is affirmed.

Sanctions

RIS moved to strike Marsha Willis's various amending and supplemental answers, most of which were filed after the matter had settled, on the basis that the pleadings were full of redundant, immaterial, impertinent, and scandalous matter, including allegations of fraud, moral turpitude and a lack of ethics, all which were made without any factual basis. In addition, RIS sought sanctions pursuant to La. C.C.P. art. 863 against Marsha Willis for filing such pleadings on the basis that the pleadings were not presented for any proper purpose and were intended to harass, cause unnecessary delay, and needless increase in the cost of litigation.

Louisiana Code of Civil Procedure article 964 provides that "[t]he court on motion of a party or on its own motion may at any time and after a hearing order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter."

In addition, with regard to sanctions, La. C.C.P. art. 863 provides, in pertinent part:

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading, and that to the best of his knowledge, information, and belief formed after reasonable inquiry, he certifies all of the following:

(1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

(2) Each claim, defense, or other legal assertion in the pleading is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

(3) Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) Each denial in the pleading of a factual assertion is warranted by the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

* * *

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.

Thus, La. C.C.P. art. 863 imposes an obligation on litigants and their attorneys to make an objectively reasonable inquiry into the facts and law; subjective good faith will not satisfy this duty of reasonable inquiry. **Connelly v. Lee**, 96-1213 (La. App. 1st Cir. 5/9/97), 699 So.2d 411, 414, writ denied, 97-2825 (La. 1/30/98), 709 So.2d 710. The article does not empower a trial court to impose sanctions simply because a particular argument or ground for relief is subsequently found to be unjustified; failure to prevail does not trigger an award of sanctions. Louisiana Code of Civil Procedure article 863 is intended to be used only in exceptional circumstances; where there is even the slightest justification for the assertion of a legal right, sanctions are not warranted. **Tubbs v. Tubbs**, 96-2095 (La. App. 1st Cir. 9/19/97), 700 So.2d 941, 945. A trial court's determination regarding the imposition of sanctions is subject to the manifest error or clearly wrong standard of review. Once the trial court finds a violation of La. C.C.P. art. 863 and imposes sanctions, the determination of the type and/or the amount of the

sanction is reviewed on appeal utilizing the abuse of discretion standard. **Stroscher v. Stroscher**, 2001-2769 (La. App. 1st Cir. 2/14/03), 845 So.2d 518, 526 (citing Connelly, 699 So.2d at 414).

In granting RIS's motion to strike and for sanctions, the trial court gave the following oral reasons for judgment:

...on the sanctions issue...the sanctions has to do with what you have filed and what you have said in there, which by the way, is offensive. ... you know, we have had several conferences on this. I have warned you in conferences about this, and you continue a case that there is nothing pending. You cannot keep filing stuff in a case that is not pending. And, certainly, whatever you do file shouldn't contain the statements that you make. They are offensive to the court and to counsel. I agree that [La. C.C.P. art.] 893 sanctions are appropriate ... you are to pay over to the other parties the \$9000 that has been expended in reacting to your pleadings. ... I know you object. I would be surprised if you didn't object. ...I'm not going to change my mind. The record speaks for itself[,] you shouldn't have put those things down on paper, you shouldn't have filed them to begin with after being warned about it. And, so, this is a very egregious offense against the court. I'm not asking for a fine, I'm asking you to pay their costs they have had to absorb to react to you[r] scurrilous pleadings. ...You have abused the court up [until] now.

From the trial court's reasons for judgment, it is evident that the trial court found that Marsha Willis's pleadings were offensive and egregious to both the court and counsel for RIS, and that despite being warned by the trial court about her actions, she persisted in filing offensive pleadings which needlessly increased the cost of litigation. After a thorough review of the record, and particularly the factual allegations of the pleadings at issue filed by Marsha Willis, we find the trial court's decision to strike Marsha Willis's pleadings and its determination that sanctions were warranted is reasonably supported by the record are not manifestly erroneous or an abuse of discretion. In addition, with regard to the amount of sanctions imposed by the trial court, the record reflects that the sanctions imposed against Marsha Willis represented the attorney fees, costs, and other expenses incurred by RIS in responding to the offending pleadings filed by Marsha Willis. Thus, we cannot say that the trial court abused its discretion in imposing the

amount of sanctions that it did. Therefore, the second August 15, 2013 judgment of the trial court granting RIS's motion to strike and for sanctions and imposing sanctions against Marsha Willis in the amount of \$9,000.00 is affirmed.

Pauper Status and Court Costs

Lastly, on appeal Marsha Willis challenges the trial court's assessment of court costs against her in the amount of \$1,206.77. Essentially, Marsha Willis claims that the trial court erred in rescinding her status as a pauper because she was not properly or timely served with RIS's motion to challenge her status as a pauper.

The code of civil procedure provides a procedure for one who cannot afford to pay costs of court to prosecute or defend litigation without paying court costs in advance or as they accrue or furnishing security. La. C.C.P. arts. 5181-5188. The ability to litigate without prior payment of costs (commonly referred to as having pauper status) is a privilege, not a right, and one seeking to take advantage of this privilege must clearly be entitled to it, must apply for permission to do so, and must submit specific documentation. La. C.C.P. arts. 5182 and 5183. The grant of this privilege is within the trial court's discretion. See **Hollier v. Broussard**, 220 So.2d 175, 178 (La. App. 3rd Cir. 1969). Furthermore, while any adverse party or the clerk of court in which the litigation is pending may traverse the litigants' status as a pauper by rule to show cause, see La. C.C.P. art. 5184, the trial court may reconsider its order granting the privilege of pauper status on its own motion at anytime in a contradictory hearing. See La. C.C.P. art. 5183(B). Lastly, notwithstanding a litigant's status as a pauper, when judgment is rendered against the pauper, the pauper "shall be condemned to pay the costs incurred by him ... and those recoverable by the adverse party" unless the trial court, pursuant to La.

C.C.P. art. 1920,¹⁸ or the appellate court, pursuant to La. C.C.P. art. 2164,¹⁹ casts another party for costs. La. C.C.P. art. 5188.

Herein, although RIS admitted that Marsha Willis was not served with its motion to controvert her status as a pauper until after the hearing on the matter, we recognize that under La. C.C.P. 5183(B), the trial court was clearly entitled to reconsider its order granting Marsha Willis pauper status at any time on its own motion in a contradictory hearing.²⁰ Notably, however, the third August 15, 2013 judgment on appeal herein does not indicate that Marsha Willis's status as a pauper was revoked or rescinded; rather, it dismisses her claims, with prejudice, at her cost and casts her with "for all costs attributable to her ...[in] the amount of \$1,206.77" due to the clerk of court for filing fees. After reviewing the record in its entirety, we find the trial court's judgment was well within the discretion afforded it under La. C.C.P. arts.1920 and 5188, and therefore, we affirm the third August 15, 2013 judgment of the trial court.

CONCLUSION

For all of the above and foregoing reasons, RIS's motion to dismiss Marsha Willis's appeal is granted with respect to the November 14, 2013 and April 29, 2013 judgments of the trial court and denied with respect to the three August 15, 2013 judgments of the trial court. The three August 15, 2013 judgments of the trial court are affirmed.

All costs of this appeal are assessed to the defendant/appellant, Marsha Willis. See La. C.C.P. arts. 2164 and 5188.

¹⁸ Louisiana Code of Civil Procedure article 1920 provides that "[u]nless the judgment provides otherwise, costs shall be paid by the party cast, and may be taxed by a rule to show cause" and that "the court may render judgment for costs, or any part thereof, against any party, as it may consider equitable."

¹⁹ Louisiana Code of Civil Procedure article 2164 provides, in pertinent part, that "[t]he appellate court shall render any judgment which is just, legal, and proper upon the record on appeal" and "may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable."

²⁰ The parties were present in court for a contradictory hearing on other matters on this date.

MOTION TO DISMISS GRANTED IN PART AND DENIED IN PART; JUDGMENTS OF AUGUST 15, 2013 AFFIRMED.