

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 2249

DONNA J. GLASS

VERSUS

DAVID LOUIS VOIRON

Judgment Rendered: **MAY 20 2015**

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of St. Helena
State of Louisiana
Suit Number 21512

Honorable Wayne Ray Chutz, Presiding

Anne Richey Myles
J. Ryan Vivian
Zachary, LA

Counsel for Plaintiff/Appellant
Donna J. Glass

Russell C. Monroe
Greensburg, LA

Counsel for Defendant/Appellee
David Louis Voiron

BEFORE: GUIDRY, HIGGINBOTHAM, AND THERIOT, JJ.

W.J. Theriot, J. dissents and assigns reasons

GUIDRY, J.

In this divorce proceeding, the former wife appeals two conflicting judgments signed by the trial court on the same day regarding the application of certain credits and exemptions. For the reasons that follow, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

The parties to this matter, Donna Glass and David Voiron, have been engaged in a lengthy divorce proceeding since the year 2000. The parties were divorced in 2001, and a trial was held on the partition of the community property on June 25, 2007, resulting in a September 24, 2007 partition judgment.

On October 7, 2011, Ms. Glass filed a petition seeking to make the September 24, 2007 judgment against Mr. Voiron executory. Ms. Glass later sought summary judgment on the grounds that there was no genuine issue of material fact as to Mr. Voiron's liability under the judgment; the value of the former community immovable property located in Choctaw County, Mississippi; the value and application of any credit due; the ability of a judgment creditor to seize property owned in indivision by a judgment debtor; or the availability of the Homestead Exemption under La. R.S. 20:1. In a judgment rendered August 10, 2012, and signed September 19, 2012, the trial court granted summary judgment in favor of Ms. Glass and against Mr. Voiron to the extent that the September 24, 2007 judgment sued upon was made executory, reserving to Mr. Voiron the right to assert any available defenses, credits, and exemptions. A writ of *feri facias* was issued at the request of Ms. Glass's attorney on December 10, 2012, directing the Sheriff of St. Helena Parish to seize Mr. Voiron's undivided interest in immovable property located in St. Helena Parish.

On February 4, 2013, Mr. Voiron filed a "Motion for Determination of Credits and Exemptions Due to David Voiron Against Money Judgment and For Other Relief," seeking to have the amount owed under the September 24, 2007

judgment offset by certain credits and exemptions. A hearing was held March 1, 2013, on Mr. Voiron's motion. The trial court found that Mr. Voiron is entitled to a \$35,000.00 homestead exemption and a \$42,500.00 credit. Mr. Voiron's attorney was to prepare a judgment to that effect; however, the parties were unable to reach an agreement as to the form of the written judgment. The parties apparently agreed that each would prepare a proposed judgment, and the two judgments would be filed contemporaneously for the court's consideration, after which the court could select one of the two judgments, or issue a judgment of its own. The two proposed judgments were filed July 18, 2013, at 1:33 p.m. Both proposed judgments state that Mr. Voiron is entitled to and granted the \$35,000.00 homestead exemption on the St. Helena Parish property, but the judgments differ as to the amount and application of the credit due to Mr. Voiron. On July 25, 2013, the trial court signed both judgments presented by the parties. This appeal by Ms. Glass of both judgments followed.

DISCUSSION

The appellate jurisdiction of this court extends to "final judgments." La. C.C.P. art. 2083; Van ex rel. White v. Davis, 00-0206, p. 5 (La. App. 1st Cir. 2/16/01), 808 So. 2d 478, 483. A final judgment is one that determines the merits, in whole or in part. La. C.C.P. art. 1841.

In the instant matter, the trial court signed a judgment granting Mr. Voiron a credit in the amount of \$42,000.00 against amounts owed to Ms. Glass, stating that the credit represents one-half of the value of the former community property located in Choctaw, Mississippi. However, the trial court also signed a separate judgment, which was filed the same date and time, wherein it granted Mr. Voiron a credit of \$42,500.00 against amounts and interest made executory against him by the August 10, 2012 court order on account of his quit-claim of the Choctaw, Mississippi property to Ms. Glass on September 23, 2010. Both of these

judgments were simultaneously appealed. However, we cannot determine from the record which judgment the trial court judge intended to sign, nor can we determine which judgment was signed first. In the absence of an identifiable final judgment, this court lacks appellate jurisdiction to review this matter. See Gaten v. Tangipahoa Parish School System, 11-1133, p. 4 (La. App. 1st Cir. 3/23/12), 91 So. 3d 1073, 1074.

Furthermore, because the motion for appeal was not filed within thirty days following the mailing of the notice of judgment, it is not appropriate for this court to exercise supervisory jurisdiction to vacate the judgments at issue. 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. Additionally, while La. C.C.P. art. 2164 provides a basis for this court to render any judgment that is just, legal, and proper upon the record on appeal, it presupposes that the appellate court has jurisdiction, either appellate or supervisory, to consider the matter before it. Because, this court lacks either appellate or supervisory jurisdiction in this matter, as detailed above, this court cannot act on the judgments at issue.

CONCLUSION

For the foregoing reasons, we dismiss the appeal. All costs of this appeal are assessed to Donna J. Glass.

APPEAL DISMISSED.

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THERIOT, J., dissents and assigns reasons.

As discussed by the majority, two judgments, filed on the same day and at the same time, were signed by the trial court regarding the Motion for Determination of Credits and Exemptions Due to David Voiron Against Money Judgment and For Other Relief. The actions of the trial court are clearly not an irregularity, error or defect imputable to the appellant.

The judgments are substantively inconsistent: one judgment grants Mr. Voiron a credit in the amount of \$42,000.00 against amount owed to Ms. Glass, the other judgment grants Mr. Voiron a credit of \$42,500.00 against amounts and interest made executory against him by the August 10, 2012 court order, on account of his quit-claim of the Choctaw, Mississippi property to Ms. Glass on September 23, 2010. Both judgments were simultaneously appealed.

The record is completely devoid of any evidence that would aid this Court in determining which judgment the trial court intended to sign or which judgment was signed first; thus, this Court is unable to address the merits of Ms. Glass's appeal. However, I do not agree that dismissal of the



appeal is the appropriate course of action. Pursuant to the authority granted to appellate courts under La. Const. Art. 5, Sec. 10(A) and La. C.C.P. art. 2164, I would vacate both judgments dated July 25, 2013 and remand this matter to the trial court for the issuance of a proper judgment. See, La. C.C.P. art. 2161