

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CA 0393

BOYD LOUISIANA RACING, INC.

VERSUS

CYNTHIA BRIDGES, SECRETARY, DEPARTMENT OF REVENUE AND  
TAXATION, STATE OF LOUISIANA

CONSOLIDATED WITH

NO. 2015 CA 0394

BOYD GAMING CORPORATION

VERSUS

CYNTHIA BRIDGES, SECRETARY, DEPARTMENT OF REVENUE AND  
TAXATION, STATE OF LOUISIANA

CONSOLIDATED WITH

NO. 2015 CA 0395

BOYD KENNER, INC.

VERSUS

CYNTHIA BRIDGES, SECRETARY, DEPARTMENT OF REVENUE AND  
TAXATION, STATE OF LOUISIANA

Judgment rendered **DEC 23 2015**

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Appealed from the  
19th Judicial District Court  
in and for the Parish of East Baton Rouge, Louisiana  
Trial Court Nos. C539824, C548765, & C548766  
Honorable Todd W. Hernandez, Judge

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\* \* \* \* \*

**BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.**

**PETTIGREW, J.**

This is an appeal of a judgment rendered in consolidated suits filed by several plaintiffs, Boyd Louisiana Racing, Inc.; Boyd Gaming Corporation (Boyd Gaming); and Boyd Kenner, Inc., referred to herein collectively as the "Boyd plaintiffs," finding the State, Department of Revenue and Taxation (Department), "liable to" the plaintiffs.<sup>1</sup> The plaintiffs' petitions sought a refund of corporation income and franchise taxes assessed to their businesses for the years 2002, 2003, and 2004, together with interest, that the Boyd plaintiffs had paid under protest, following an audit by the Department that resulted in an upward adjustment of the taxable capital base of each of the three entities. These upward adjustments affected two components of the tax assessment – borrowed capital and retained earnings. According to the Boyd plaintiffs, the Department's audit determination that they had underpaid Louisiana franchise taxes was erroneous, in part, because the auditors misapplied costs and values to taxable income based on a misunderstanding of the cash management system employed by the Boyd entities, which, as previously noted in the footnote, include an out-of-state parent company (Boyd Gaming) and subsidiaries operating in Louisiana (the other two Boyd plaintiffs). The Boyd plaintiffs also generally assert that in assessing the taxes, the auditors ignored established accounting principles, precedents, and the franchise tax law itself.

On the other hand, the Department asserted, and continues to maintain on appeal, that the Boyd plaintiffs' actions (allegedly funneling all of its taxable net capital (profits) to a purported parent company located in another state to avoid Louisiana's franchise tax) run afoul of Louisiana tax laws, which are designed to prevent the precise type of tax avoidance activity in which it alleges the Boyd plaintiffs were engaged.

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<sup>1</sup> Plaintiff Boyd Gaming, a Nevada Corporation (alleged to have no operations in Louisiana during the tax years at issue) and the parent corporation of all Boyd entities around the country, is in the business of owning and developing entities that operate casinos. Plaintiff Boyd Louisiana Racing, one of Boyd Gaming's subsidiaries with physical operations in Louisiana, is the sole member of Boyd Racing, LLC, which operates Delta Downs, a pari-mutuel race track in Vinton, Louisiana. Plaintiff Boyd Kenner, another Louisiana subsidiary owned by Boyd Gaming, is in a partnership with another Boyd subsidiary (Boyd Louisiana, not involved in this litigation) in Treasure Chest, LLC, a casino operating in Kenner, Louisiana. Boyd Gaming provides management, benefit administration, and a variety of other "centralized services" to its subsidiaries, including the other two plaintiffs herein, but alleges that all of those services were performed in Nevada.

The district court granted a partial summary judgment in favor of the Boyd plaintiffs on the issue of "liability" only, and certified that judgment as final for purposes of appeal. The Department appealed that judgment and asserts there are genuine issues of material fact as to whether or not it committed errors in applying Louisiana law and assessing the taxes at issue, and argues that the assessments imposed are valid. The Boyd plaintiffs maintain the district court properly granted summary judgment finding no genuine issues of material fact and concluding that as a matter of law, the Department is liable to them.

### **RULE TO SHOW CAUSE**

After the appeal was lodged but prior to oral argument, this court *ex proprio motu* examined the record and noted the potential jurisdictional defect in the judgment and issued an interim order to the parties, notifying them to come to oral arguments prepared to argue whether the November 24, 2015 judgment is a valid final judgment due to the lack of decretal language.<sup>2</sup> At oral argument, without conceding that the judgment lacked decretal language, the parties suggested that this court could nonetheless review the matter under its supervisory jurisdiction, by converting the otherwise timely filed appeal to a writ, and also asked the court for leave to file a post-oral argument supplemental memorandum addressing the issues. This court granted the parties ten (10) days leave within which to file supplemental memoranda on the issue.

The Boyd plaintiffs timely submitted a letter to this court arguing primarily that the judgment contains sufficient decretal language to be considered a final appealable judgment, and requesting, only in the alternative, that this court exercise its supervisory jurisdiction, convert the appeal to a writ in the interest of judicial efficiency, and address

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<sup>2</sup> The Louisiana Constitution confers appellate jurisdiction upon the courts of appeal over "all civil matters" and "all matters appealed from family and juvenile courts" and supervisory jurisdiction over "cases which arise within its circuit." La. Const. art. V, § 10(A). As an appellate court, we have a duty to examine subject matter jurisdiction even when the parties do not raise the issue, and we are obligated to recognize our lack of jurisdiction if it exists. See **State, Department of Transportation and Development v. Henderson**, 2009-2212 (La. App. 1 Cir. 5/7/10), 39 So.3d 739, 741.

the merits of the assigned errors regarding the imposition of liability against the Department.

Because we find that the judgment does not contain sufficient decretal language required to constitute a final appealable judgment for the reasons below, we decline to convert the invalid appeal to a supervisory writ. We dismiss the appeal, and remand for further proceedings.

#### **DECRETAL LANGUAGE/JURISDICTIONAL DEFECT?**

Arguing in favor of a finding that the judgment contains sufficient decretal language, the Boyd plaintiffs maintain that they raised six issues at the district court, and in their motion for partial summary judgment, they raised all the issues so that a ruling on the motion would conclude all of the liability issues in the matter. They further assert that the only issue remaining is a determination of the amount of money that should be refunded, requiring only a simple mathematical calculation. Thus, they argue that the judgment in their favor and certified as final by the district court, declaring the state liable to them, is an appealable judgment concluding all issues of the state's liability to them.

The judgment at issue provides, in pertinent part:

Considering the memoranda and exhibits introduced by the parties and the oral argument presented and for the written reasons assigned on October 1, 2014;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Partial Summary Judgment filed on behalf of Plaintiffs[,] BOYD GAMING CORPORATION, BOYD LOUISIANA RACING, INC., and BOYD KENNER, INC.[,] on the issue of liability is hereby granted.

IT IS FURTHER ORDERED that this Court's ruling on liability on the issues set forth in Plaintiffs' Motion for Partial Summary Judgment in these matters shall constitute a final judgment as authorized in Article 1915 B. (1) for purposes of an immediate appeal because there is no just reason for delay.

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. La. C.C.P. art. 1841. Louisiana Code of Civil

Procedure article 1918 states that, "A final judgment shall be identified as such by appropriate language."

It is well settled that a final judgment must be precise, definite, and certain. A final judgment must also contain decretal language. **Conley v. Plantation Management Company, L.L.C.**, 2012-1510 (La. App. 1 Cir. 5/6/13), 117 So.3d 542, 546-47, writ denied, 2013-1300 (La. 9/20/13), 123 So.3d 178. "Generally, 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." *Id.* (Emphasis added.) Citing **Carter v. Williamson Eye Center**, 2001-2016 (La. App. 1 Cir. 11/27/02), 837 So.2d 43, 44. "The decree alone indicates the decision .... The result decreed must be spelled out in lucid, unmistakable language[, and] ... [t]he quality of definiteness is essential to a proper judgment." **Input/Output Marine Systems, Inc. v. Wilson Greatbatch, Technologies, Inc.**, 2010-477 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 916. (Citations omitted.) The *specific relief granted* should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment. **Vanderbrook v. Coachmen Industries, Inc.**, 2001-0809 (La. App. 1 Cir. 5/10/02), 818 So.2d 906, 913. Although a district court judge may grant a partial judgment as to less than all the claims, demands, issues, or theories against a party and designate such judgment as a final judgment after an express determination that there is no just reason for delay, as authorized by La. C.C.P. art. 1915.B.(1), the judgment must still comply with the requirement that it contain decretal language. See e.g., **Gaten v. Tangipahoa Parish School System**, 2011-1133 (La. App. 1 Cir. 3/23/12), 91 So.3d 1073, 1074.

In this case, although the district court granted the Boyd plaintiffs' motion for partial summary judgment "on the issue of liability" and certified the partial judgment as final under La. C.C.P. art. 1915.B.(1), we find that it still lacks the requisite decretal language to render it a final appealable judgment. Specifically, the judgment grants the summary judgment "on the issue of liability;" however, it does not specify the particular basis for the imposition of that liability (i.e., which of the Department's alleged applications of law and/or determinations were erroneous), nor does it delineate what

that relief entails. It also does not order the payment of money (even if only in an amount "to be later determined," as is customarily done in a personal injury bifurcated trial)<sup>3</sup>.

We note that in their memorandum in support of the motion for partial summary judgment, the Boyd plaintiffs list three specific "fundamental errors" allegedly committed by the Department in imposing the tax assessments, each of which would affect the Department's liability in different ways. (The "fundamental" issues arise from allegations concerning allegedly erroneous interpretations applied by the Department to no less than six different components of the tax assessment.) The judgment does not specify which of the alleged errors were made by the Department or how those errors resulted in an erroneous imposition of the taxes. It only stated that the motion is granted "on the issue of liability," thus, it is impossible to determine, without resort to extrinsic evidence (other pleadings, transcript of the hearing, etc.), what relief, if any, is ordered thereby such that a third person could determine from the judgment what the state's liability is without reference to other documents. A judgment cannot require reference to extrinsic documents or pleadings in order to discern the court's ruling. **Vanderbrook v. Coachmen Industries, Inc.**, 818 So.2d at 913; see also **In re Succession of Wagner**, 2008-0212 (La. App. 1 Cir. 8/08/08), 993 So.2d 709, 724-25. Even more significantly, in this case, the lack of precise and certain decretal language specifying the individual and specific bases for the district court's ruling on liability (particularly in light of the many components by which the assessments were alleged to be erroneous) renders it impossible for us, as a court of review, to discern the propriety of the district court's ruling. Accordingly, as written, the judgment lacks the required decretal language and is not a final appealable judgment, notwithstanding the district court's certifying it as such.

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<sup>3</sup> Moreover, this court has noted that even with the authority granted by La. C.C.P. art. 1915.B.(1), it is not every case where the liability issues and the damage issues are easily severed for appeal and trial purposes, even if certified as final and appealable by the district court. **Templet v. State ex rel. Dept. of Public Safety and Corrections**, 2005-1903 (La. App. 1 Cir. 11/3/06), 951 So.2d 182, 186.



## **CONVERSION TO APPLICATION FOR SUPERVISORY WRITS?**

As noted earlier, at oral argument the parties, without conceding or disputing the lack of decretal language, alternatively urge this court to convert the otherwise timely-filed appeal to an application for supervisory writs. The decision to convert an appeal to an application for supervisory writs is within the discretion of the appellate courts. **Stelluto v. Stelluto**, 2005-0074 (La. 6/29/2005), 914 So.2d 34, 39. Under certain circumstances, appellate courts have exercised that discretion to convert an appeal of an interlocutory judgment into an application for supervisory writs, such as when the motion for appeal was filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Rule 4-3 of the Uniform Rules, Courts of Appeal, and where reversal of the district court's decision would terminate the litigation, **Delahoussaye v. Tulane University Hospital and Clinic**, 2012-0906 (La. App. 4 Cir. 2/20/13), 155 So.3d 560, 563; **Reed v. Finklestein**, 2001-1015 (La. App. 4 Cir. 1/16/02), 807 So.2d 1032, 1033-34, writ denied, 2002-0550 (La. 4/26/02), 814 So.2d 560, or where clear error in the district court's judgment, if not corrected, will create a grave injustice. **Mapp Construction, LLC v. Amerisure Mutual Insurance Co.**, 2013-1074 (La. App. 1 Cir. 3/24/14), 143 So.3d 520, 528.

Our review of the jurisprudence reveals that the vast majority of the cases in which the appellate courts exercise the discretion to convert an appeal to an application for supervisory writs involve matters wherein the court lacks jurisdiction because the appeal is of an interlocutory judgment, and not when the jurisdictional defect lies in the non-finality of the judgment. See e.g., **Kimsey v. National Automotive Insurance Company**, 2013-856 (La. App. 3 Cir. 2/12/14), 153 So.3d 1035, 1038-40 (and cases cited therein). Importantly, an appellate court will generally refrain from the exercise of its supervisory jurisdiction when an adequate remedy exists by appeal, particularly when an adequate remedy by appeal will exist upon the entry of the requisite precise, definite, and certain decretal language necessary for appellate review. This is because in the absence of proper decretal language, the judgment is defective; and this court lacks jurisdiction to review the merits, even if we were to convert the matter to an application



for supervisory writs. See Texas Gas Exploration Corporation v. Lafourche Realty Company, Inc., 2011-0520 (La. App. 1 Cir. 11/9/11), 79 So.3d 1054, 1062, writ denied, 2012-0360 (La. 4/9/12), 85 So.3d 698.

Accordingly, we decline to exercise our discretion to convert this appeal, of a judgment that is not final for lack of decretal language, to an application for supervisory writs.

### **CONCLUSION**

For the foregoing reasons, we dismiss the appeal and remand to the district court for further proceedings. Appeal costs in the total amount of \$3,652.00 are assessed equally (one half, \$1826.00) to the Boyd plaintiffs, Boyd Louisiana Racing, Inc.; Boyd Gaming Corporation; and Boyd Kenner, Inc., and (one half, \$1826.00) to the defendant, the Department of Revenue and Taxation, State of Louisiana.

**APPEAL DISMISSED; REMANDED.**