NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0887

JOHN FILS & DEMITRIA FILS INDIVIDUALLY & ON BEHALF OF GENEVA FILS

VERSUS

ALLSTATE INSURANCE COMPANY, CHARLES T. GUIDRY, JENNIFER R. HAYES, MAYOLA CALAIS, STATE OF LOUISIANA THROUGH DEPARTMENT OF SOCIAL SERVICES AND/OR DEPARTMENT OF HEALTH & HOSPITALS AND/OR OFFICE OF COMMUNITY SERVICES & USAGENCIES CASUALTY INSURANCE COMPANY

VGW by Ebly
JEW by Ebly
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Judgment Rendered: DEC 23 2015

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C553321

Honorable Donald Johnson, Judge Presiding

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

WHIPPLE, C.J.

In this appeal, defendant, the State of Louisiana, through the Department of Social Services, Office of Community Services, now known as the Department of Children and Family Services, ("the Department"), challenges the trial court's ruling, which granted the motion for new trial filed by plaintiff, Calvernia Reed. For the following reasons, we dismiss the appeal as it is an appeal taken from a non-appealable interlocutory judgment.

FACTS AND PROCEDURAL HISTORY

For a detailed recitation of the background facts and procedural history, see this court's opinion in 2015 CA 0357, also handed down this date. Essentially, this lawsuit arises out of an automobile accident that occurred on March 22, 2006, involving Geneva Marie Fils, who was an infant approximately 2 ½ months old at the time, and in the legal custody of the Department, who, in turn, had placed Geneva in the foster care of defendant, Mayola Calais.

The accident occurred while defendant, Jennifer R. Hayes, was operating Calais's vehicle westbound on Louisiana Highway 724, with Calais and Geneva in the vehicle, when defendant, Charles T. Guidry, allegedly drove his vehicle across the centerline and struck the Calais's vehicle head on. As a result of the collision, Geneva, who purportedly was improperly restrained in her car seat at the time, suffered serious personal injuries and a traumatic brain injury.[1]

On March 16, 2007, John Fils and Demitria Fils, Geneva's biological parents, filed suit, individually and on her behalf, seeking damages from both drivers, their insurers, and the Department. Although not included in the caption of the petition, Calvernia Reed, Geneva's maternal aunt, was named as a plaintiff in the body of the petition, in her capacity as "the current guardian of Geneva." In

[1]Geneva was placed in the back seat of the car in a front-facing position, in a car seat without the component car seat base and with the shoulder strap of the seat belt positioned across the carrier. Following the accident, Calais was issued a citation for a child restraint violation. See LSA-R.S. 32:295.

the petition, plaintiffs sought damages on behalf of Geneva and for their own loss of consortium. In February 2011, following the death of Demitria Fils and upon being granted legal and physical custody and judicially appointed as tutor of Geneva, Reed was substituted as the proper party plaintiff in these proceedings.[2]

During the pendency of these proceedings, the parties filed various motions for partial summary judgment, and the trial court rendered numerous rulings, which were designated as final for purposes of immediate appeal, pursuant to LSA-C.C.P. art. 1915(B). Various appeals followed.[3] At issue in the present appeal is the trial court's ruling, granting Reed's motion for new trial and reversing a partial summary judgment in favor of the Department, which dismissed several of Reed's direct negligence claims against the Department.[4] Specifically, in granting the Department's motion for partial summary judgment, the trial court dismissed Reed's claims that the Department was negligent in:

1. Failing to warn and instruct on proper use of car seats including that car seats must not face forward for infants;
2. Failing to train, warn, instruct and supervise on infant care, safety and supervision;
3. Failing to monitor its agents and Geneva Marie Fils; and
4. Entrusting its agents with an infant.

In the motion for new trial, Reed argued that the dismissal of these direct negligence claims against the Department was contrary to the law and evidence

[2]Thereafter, by order dated July 3, 2012, the trial court approved the creation of the "Geneva Marie Fils Trust" and made the Trust a plaintiff herein.

[3]See 2015 CA 0357, 2015 CA 0360, and 2015 CA 0888.

[4]The trial court designated the grant of the motion for partial summary judgment as final for purposes of an immediate appeal, pursuant to LSA-C.C.P. art. 1915(B).

and that a new trial and/or rehearing was mandated by LSA-C.C.P. art. 1972.[5]

Following a hearing on Reed's motion for new trial, the trial court signed a "ruling" on February 11, 2015, stating that the October 15, 2014 judgment granting the motion for partial summary judgment regarding claims of direct negligence filed by the Department appeared to be contrary to the law and evidence and that accordingly, the judgment granting the Department's motion was vacated. Subsequently, on February 13, 2015, a "judgment" was signed by Judge Johnson, granting plaintiff's motion for new trial.[6] Neither the "ruling" nor the judgment were designated by the trial court as final for purposes of an immediate appeal, pursuant to LSA-C.C.P. art. 1915(B).

ANALYSIS

The grant of motion for new trial is not a final, appealable judgment, but rather, an interlocutory judgment which is not "subject to being designated as final pursuant to LSA-C.C.P. art. 1915(B)." McGinn v. Crescent City Connection Bridge Authority, 2015-0165 (La. App. 4th Cir. 7/22/15), 174 So. 3d 145, 148, (unpublished opinion), citing Mandina, Inc. v. O'Brien, 2013-0085 (La. App. 4th Cir. 7/31/13), 156 So. 3d 99, 103, writ denied, 2013-2104 (La. 11/22/13), 126 So.

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[5]Louisiana Code of Civil Procedure article 1972 states:

> A new trial shall be granted, upon contradictory motion of any party, in the following cases:
> (1) When the verdict or judgment appears clearly contrary to the law and the evidence.
> (2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.
> (3) When the jury was bribed or has behaved improperly so that impartial justice has not been done.

[6]Judge Robert Downing (judge *pro tempore*) granted the Department's motion for partial summary judgment. However, the motion for new trial was heard and decided by district court Judge Donald Johnson.

3d 485.[7] While the Code of Civil Procedure specifically designates a few interlocutory judgments as appealable, review of all other interlocutory judgments—even those which cause irreparable injury—must be sought through supervisory writs under LSA-C.C.P. art. 2201.[8] A ruling granting a motion for new trial is not among the interlocutory judgments that are "expressly provided by law" as appealable. See LSA-C.C.P. art. 1915(A). Accordingly, pursuant to LSA-C.C.P. art. 2083,[9] an application for supervisory writs under LSA-C.C.P. art. 2201 is the primary means of seeking review of interlocutory judgments. See Alex v. Rayne Concrete Service, 2005-1457, 2344, 2520 (La. 1/26/07), 951 So. 2d 138, 144.

While the Department recognizes that a judgment granting a new trial is not a final judgment subject to appeal, the Department requests that this court review the grant of the motion for new trial under our supervisory jurisdiction, urging that to do so will prevent issues that were "properly disposed of on summary judgment" from being litigated, resulting in a waste of judicial resources.

As recognized by the Louisiana Supreme Court:

> "In the interests of judicial efficiency and fairness to the parties, an appellate court in its discretion may review an interlocutory or final

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[7]See also GE Commercial Finance Business Property Corp. v. Louisiana Hospital Center, L.L.C., 2010-1838 (La. App. 1st Cir. 6/10/11), 69 So. 3d 649, 653 n. 4 ("[T]he established rule in this circuit is that the denial of a motion for new trial is an interlocutory and non-appealable judgment. However, the court may consider interlocutory judgments as part of an unrestricted appeal from a final judgment." (Internal citations omitted.))

Here, an appeal has not been taken from a final judgment, and accordingly, this recognized exception does not apply herein.

[8]Louisiana Civil Code of Procedure article 2201 states, "[s]upervisory writs may be applied for and granted in accordance with the constitution and rules of the supreme court and other courts exercising appellate jurisdiction."

[9]Louisiana Civil Code of Procedure article 2083 states:
A. A final judgment is appealable in all causes in which appeals are given by law, whether rendered after hearing, by default, or by reformation under Article 1814.
B. In reviewing a judgment reformed in accordance with a remittitur or additur, the court shall consider the reasonableness of the underlying jury verdict.
C. An interlocutory judgment is appealable only when expressly provided by law.

judgment pursuant to its supervisory jurisdiction, even though the judgment also could be reviewed pursuant to an appeal."

Alex, 951 So.2d at 145 n. 6, citing Uniform Rules of the Courts of Appeal, Rule 4–3, Revision Comment.

Additionally, as recognized by the Supreme Court, LSA-C.C.P. art. 2201 does not provide standards or criteria governing a court's granting or denying such applications; rather, jurisprudence is the primary source of guidance in the preparation and handling of supervisory writs. Alex, 951 So. 2d at 144, n. 5.

Accordingly, the Supreme Court has recognized that the following guidelines are used by appellate courts in granting or denying supervisory writ applications:

> Generally, a court of appeal will initially consider whether the ruling complained of may, as a practical matter, be corrected on appeal. If so, the ruling does not cause irreparable injury, and the application usually will be denied on that basis, without extensive consideration of the merits of the application. But if the ruling cannot as a practical matter be corrected on appeal, the court usually will proceed to consider and determine the merits of the application, and if the ruling was correct, the application will be denied on the merits. But if the ruling was incorrect, the court can grant the application and, within the discretion of the court, either summarily reverse or modify the ruling or set the matter down for oral argument and an opinion.
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> In addition to the existence of irreparable injury as a grounds for full consideration of an application for supervisory writs, there is a jurisprudentially adopted second set of grounds for a court of appeal to determine the merits of the application and to grant or deny on the merits. The Supreme Court has jurisprudentially established guidelines for an appellate court's consideration of supervisory writs on the merits, despite the fact that the error can be corrected on appeal, in certain situations where judicial efficiency and fundamental fairness dictate such action.
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> The Supreme Court [in Herlitz Construction Company, Inc. v. Hotel Investors of New Iberia, Inc., 396 So. 2d 878 (La. 1981)(*per curiam)*] has instructed the appellate courts to exercise supervisory jurisdiction when (1) an appellate reversal will 'terminate the litigation,' (2) there is no dispute of fact to be resolved, and (3) the trial court decision is 'arguable incorrect.'

Alex, 951 So. 2d at 144, n. 5, citing Frank L. Maraist and Harry T. Lemmon, 1 Louisiana Civil Law Treatise, Civil Procedure, §14.3, p. 116 (1999).

Applying these guidelines to the facts of this case, we note that the February 13, 2015 judgment complained of can as a practical matter be corrected on appeal and does not cause irreparable injury. Moreover, the criteria set forth in Herlitz are not satisfied. Specifically, if we were to review the judgment under our supervisory jurisdiction and reverse the trial court's decision to grant the motion for new trial, the litigation would not be terminated as there are various other claims still at issue, in addition to the four direct negligence claims at issue herein. Therefore, we decline to exercise our supervisory jurisdiction in this matter.

CONCLUSION

In the instant case, the February 13, 2015 judgment at issue is not a final appealable judgment. Moreover, the appellant, State of Louisiana, through the Department of Social Services, Office of Community Services, now known as the Department of Children and Family Services, has demonstrated no irreparable injury or that the criteria set forth in Herlitz are satisfied. Accordingly, the appeal is dismissed. Costs of this appeal in the amount of $14,161.00 are assessed against appellant, the State of Louisiana, through the Department of Social Services, Office of Community Services, now known as the Department of Children and Family Services.

APPEAL DISMISSED.