NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0442

JUSTIN PARKER AND GREGORY GUMPERT

VERSUS

ZURICH AMERICAN INSURANCE COMPANY,
THE SHAW GROUP, INC. AND
GREFORY BEASLEY

Judgment Rendered: DEC 2 2 2016

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On Appeal from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Trial Court No. 2006-15075

The Honorable Peter J. Garcia, Judge Presiding

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* * * * *

BEFORE: PETTIGREW, McDONALD, AND CALLOWAY[1], JJ.

JJP Pettigrew, J. Concurs

[1] Hon. Curtis Calloway, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

McDonald, J. Concurs

CALLOWAY, J.

Third party defendant, HKA Enterprises, Inc., appeals three partial summary judgments rendered by the trial court on the motions of Third party plaintiffs, Zurich American Insurance Company and The Shaw Group, Inc. For the following reasons, we dismiss this appeal.

FACTS AND PROCEDURAL HISTORY

This matter arises out of an accident that occurred on October 12, 2005, when Justin Parker was operating a 1999 International truck traveling east on Interstate 12 with Gregory Gumpert as a guest passenger. A 2005 International truck owned by The Shaw Group, Inc. (Shaw), and operated by Gregory Beasley, rear-ended the truck driven by Parker, injuring both he and Gumpert. Both Parker and Gumpert filed suit on October 10, 2006, against Shaw, Zurich American Insurance Company (Zurich), the insurer of Shaw, and Beasley. On April 4, 2009, Gumpert settled his claims against all three defendants, and the court dismissed Gumpert's suit. Zurich and Shaw subsequently obtained leave of court to file a third party demand against HKA Power Services, LLC (HKA Power). Zurich and Shaw asserted that at the time of the October 12, 2005 accident, Beasley was an employee of HKA Power and performing services for Shaw pursuant to a labor agreement. Zurich and Shaw claimed they were owed a defense and indemnity pursuant to that agreement. Zurich and Shaw were later granted leave of court to file an amended third party demand, which added HKA Enterprises, Inc. (HKA) as a third party defendant.

In response to the third party demand, HKA filed an answer admitting that it had "taken over to a certain extent, the extent to which is unknown at this point in time, the activities of [HKA Power]." Parker also amended his petition and filed suit against HKA Power and HKA. In response to Parker's amended petition, HKA asserted that HKA Power was dissolved in July 2005, and that HKA had

taken over, to a certain extent, the activities of HKA Power. On April 2, 2013, the trial court signed an order dismissing Beasley from the suit, as he had never been served.

Zurich and Shaw filed third party demands against HKA, alleging that HKA was the parent company and/or successor entity to HKA Power. Zurich and Shaw also alleged that at the time of the accident, the parties had in effect a Master Supplemental Labor Services Agreement (Agreement) entered into on November 14, 2003, for the provision of supplemental labor. The Agreement was originally between HKA Power and Energy Delivery Services (EDS). Shaw acquired EDS on November 21, 2003. Shaw alleged that the Agreement required HKA to have Commercial General Liability Insurance and Automobile Liability Insurance and required HKA to name Shaw/EDS as an additional named insured on those insurances. Zurich and Shaw claimed that HKA breached the contract by not naming them as additional named insureds on the appropriate insurance. As result of the breach, Shaw claimed that it was entitled to indemnity and attorney's fees, including attorney's fees to enforce the agreement.

Zurich and Shaw filed a motion for partial summary judgment claiming that they were owed a defense and indemnity from HKA pursuant to paragraph 11.1 of the Agreement. Alternatively, Shaw sought a summary judgment for HKA's breach of contract in failing to name Shaw/EDS as an additional named insured pursuant to paragraphs 8.1 and 8.2 of the Agreement. The trial court rendered judgment on the motion for partial summary judgment on June 10, 2014, granting the motion regarding the defense and indemnity obligation for the claims asserted by Parker, granting the breach of contract claim for failing to name Shaw/EDS as an additional insured, and denying the motion regarding the defense and indemnity obligation for the claims asserted by Gumpert. HKA filed supervisory writs with

this court, which were denied. HKA then sought supervisory writs with the supreme court, which were also denied.

Zurich and Shaw filed a second motion for partial summary judgment to have the trial court set the damages HKA owed for breach of contract and the defense costs from October 10, 2006, the date the plaintiffs' suit was filed, until November 30, 2014. Zurich and Shaw claimed that Shaw "previously won summary judgment on liability..." The motion indicated that attorney's fees and costs from December 1, 2014, through the end of the case would be sought at a later date. Zurich and Shaw sought $65,000.00 for the amount it paid in settlement to Gumpert based on its breach of contract claim for failing to name them as additional named insureds.

The trial court signed a judgment on April 1, 2015, granting the motion for partial summary judgment and awarding Shaw and Zurich $65,000.00 for the breach of contract claim for the amount they paid to settle Gumpert's claim. The trial court also granted the motion for partial summary judgment as to the attorney's fees and costs, but reserved the amount for a later date.

Shaw and Zurich filed a third motion entitled, "Motion to Set Attorney's Fees and Costs, to Amend the April 1, 2015, Judgment on the Motion for Partial Summary Judgment, and to Make the June 10, 2014, and April 1, 2015, Judgments Final." On November 18, 2015, the trial court granted this motion using the specific language:

> **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Motion to Set Attorney Fees and Costs is **GRANTED** and The Shaw Group, Inc. and Zurich American Insurance Company are awarded $79,025.25 plus interest;
>
> **IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that the Motion to Amend the April 1, 2015, Judgment on the Motion for Partial Summary Judgment is **GRANTED** and the April 1, 2015, Judgment is hereby amended to reflect that Shaw is awarded $79,025.25 in attorney's fees and costs, plus interest, for the period of October 10, 2006, through November 30, 2014; and

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Make the June 10, 2014, and April 1, 2015, Judgments Final Judgments is **GRANTED** and the June 10, 2014, and April 1, 2014, Judgments are hereby made Final Judgments.

After the trial court signed the November 18, 2015 judgment, HKA filed this appeal on all three judgments, June 10, 2014, April 1, 2015, and November 18, 2015.

LAW AND ARGUMENT

Appellate courts have a duty to examine subject matter jurisdiction *sua sponte,* even when the parties do not raise the issue. *Texas Gas Exploration Corp. v. Lafourche Realty Co., Inc.*, 2011-0520 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1054, 1059, *writ denied*, 2012-0360 (La. 4/9/12), 85 So. 3d 698. Our appellate jurisdiction extends to "final judgments." *See* La. C.C.P. art. 2083. A judgment must be precise, definite, and certain. *Laird v. St. Tammany Parish Safe Harbor,* 2002-0045 (La. App. 1 Cir. 12/20/02), 836 So. 2d 364, 365. Moreover, a final appealable judgment 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. *See Carter v. Williamson Eye Center,* 2001-2016 (La. App. 1 Cir. 11/27/02), 837 So. 2d 43, 44. These determinations should be evident from the language of the judgment without reference to other documents in the record. *Laird,* 836 So.2d at 366. In relevant part, a final appealable judgment "must contain appropriate decretal language disposing of or dismissing claims in the case." *State in Interest of J.C.,* 2016-0138 (La. App. 1 Cir. 6/3/16), 196 So.3d 102, 107.

The judgments dated June 10, 2014, and April 1, 2015, are interlocutory judgments. The June 10, 2014 judgment was a judgment on a motion for partial summary judgment. This judgment grants the partial summary judgment as to the defense and indemnity owed by HKA, grants the partial summary judgment as to

the breach of contract for failing to maintain insurance coverage and add Shaw/EDS as an additional named insured, and denies defense and indemnity for the claims of Gumpert. There is no dismissal of any party or any issue. There are no damages set for either the failure to provide defense and indemnity in the Parker case or for breach of contract. *See Matherne v. Lemoine Industrial Group, LLC,* 2014-572 (La. App. 5 Cir. 10/15/14), 182 So. 3d 979, 981.

The April 1, 2015 judgment sets a damage award for breach of contract for $65,000.00, but does not specify if the amount is for both the Gumpert and Parker claims. It appears from the motion for summary judgment that the $65,000.00 is intended to be for the settlement of the Gumpert claim, but this is not obvious from the judgment. This judgment reserves the right to set attorney's fees and costs, but only for a specific period of time. Furthermore, no party or claim is dismissed by the April 1, 2015 judgment. Therefore, we must first decide if the November 18, 2015 judgment is a final judgment. When an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory judgments prejudicial to him, in addition to the review of the final judgment. *Judson v. Davis*, 2004-1699 (La. App. 1 Cir. 6/29/05), 916 So. 2d 1106, 1112-13, *writ denied,* 2005-1998 (La. 2/10/06), 924 So. 2d 167 (*citing Landry v. Leonard J. Chabert Medical Center*, 2002-1559 (La. App. 1 Cir. 5/14/03), 858 So. 2d 454, 461 n.4, *writs denied*, 2003-1748, 1752 (La. 10/17/03), 855 So. 2d 761). If the November 18, 2015 judgment is not final, we must determine if it amended the interlocutory judgments of June 10, 2014, and April 1, 2015, to make them final.

November 18, 2015 Judgment

A final appealable judgment must contain decretal language, and 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. *See* La. C.C.P. art. 1918; *Carter,* 837 So. 2d at 44. The November 18, 2015 judgment does not specifically

dismiss any claims or any parties. It awards Zurich and Shaw $79,025.25 in attorney's fees and costs, but specifically notes that the award is for a specified period of time. Furthermore, the November 18, 2015 judgment does not address the indemnity claims Zurich and Shaw have for the claims made by Parker against them or the amount of damages, if any, from those claims.[2] The trial court attempted to make the June 10, 2014 and April 1, 2015 judgments final with the language that those judgments "are hereby made [f]inal [j]udgments." However, there is no designation by the trial court that the November 18, 2015 judgment is final or that there is no just reason to delay an appeal.

As an appellate court, we are obligated to recognize any lack of jurisdiction if it exists. This court's appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. La. C.C.P. art. 1841 and 2083; *See Van ex rel. White v. Davis,* 2000-0206 (La. App. 1 Cir. 2/16/01), 808 So. 2d 478, 483. However, a judgment that only partially determines the merits of an action is a partial final judgment and, as such, is immediately appealable only if authorized by La. C.C.P. art. 1915. *Rhodes v. Lewis,* 2001-1989 (La. 5/14/02), 817 So. 2d 64, 66.

Subpart A of Article 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal without the necessity of any designation of finality by the trial court, while Subpart B of Article 1915 provides that when a court renders a partial judgment, partial motion for summary judgment, or exception in part, it may designate the judgment as final when there is no just reason for delay. Article 1915 provides, in pertinent part:

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[2] It appears from the record that Parker settled his claims with Shaw and Zurich **after** the November 18, 2015 judgment was signed. Parker subsequently dismissed his claims against HKA. The third party demand by Shaw and Zurich against HKA for indemnity and the damages has not been determined by the judgment before us.

> 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:
> (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
> (2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.
> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
> (4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.
> (5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.
> (6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).
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> B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.
> (2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

The November 18, 2015 judgment at issue herein does not fall within any of the categories identified in Subpart A of Article 1915. The judgment does not: (1) dismiss the suit as to any party; (2) grant a motion for judgment on the pleadings; (3) pertain to an incidental demand that was tried separately; (4) adjudicate the issue of liability; or (5) impose sanctions or disciplinary action. Thus, because the judgment is not a final judgment for purposes of an immediate appeal under the provisions of Article 1915(A), this court's jurisdiction depends upon whether the judgment was properly designated as a final judgment pursuant to Article 1915(B)(1). *See* La. C.C.P. art. 1911(B) and 2083.

Specifically, Article 1915(B)(1) provides that partial judgments are not final unless "designated as a final judgment by the court after an express determination

that there is no just reason for delay." Article 1915(B)(2) further provides that in the absence of such a determination and designation, the judgment shall not "constitute a final judgment for the purpose of an immediate appeal," and remains subject to revision in the trial court prior to rendition of a final judgment after adjudicating the entire case. Because the trial court has made no such designation and determination as to the November 18, 2015 partial judgment that adjudicates fewer than all the claims in this case, i.e., no adjudication as to the indemnity claims of the Parker claims, the judgment is interlocutory and not appealable.[3] *See Hayward v. Hayward,* 2012-0720 (La. App. 1 Cir. 3/18/13), 182 So. 3d 966, 971.

Additionally, we decline to convert this matter to an application for supervisory writs, as the granting of a writ application will not terminate the litigation at this time, and the parties have an adequate remedy on appeal after a final judgment is rendered. *See Hayward,* 182 So. 3d at 971.

June 10, 2014 and April 1, 2015 Judgments

Since the November 18, 2015 judgment is not final, the interlocutory judgments of June 10, 2014, and April 1, 2015, are not reviewable, unless they are final judgments. Therefore, we must determine if the language in the November 18, 2015 judgment purporting to convert the previous interlocutory judgments and designate them as final, actually did so.

While the judgments of June 10, 2014, and April 1, 2015 do grant motions for partial summary judgment, both constitute a summary judgment under the provisions of La. C.C.P. art. 966(E), which authorizes the grant of a summary judgment "dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties." However,

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[3] We make no determination as to whether a final judgment designation would meet the requirements set forth in *R.J. Messinger, Inc. v. Rosenblum,* 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122, as this judgment has no such designation.

summary judgments granted pursuant to Article 966(E) are specifically excluded from the types of partial summary judgments that are immediately appealable under Article 1915(A) without the need for a designation of finality. *See* La. C.C.P. art. 1915(A)(3).

A partial summary judgment rendered pursuant to Article 966(E) may be immediately appealed during ongoing litigation only if it has been properly designated as a final judgment by the trial court. La. C.C.P. art. 1915(B). Moreover, although the trial court may designate a partial summary judgment to be a final judgment under Article 1915(B), that designation is not determinative of this court's jurisdiction. *Fils v. Allstate Ins. Co.,* 2015-0357 (La. App. 1 Cir. 12/23/15), 186 So. 3d 152, 155

Article 1915(B) authorizes the appeal of a partial summary judgment as to "one or more but less than all of the claims, demands, issues, or theories" presented where the judgment is designated as a final judgment by the trial court after a determination that there is no just reason for delay. However, a trial court's certification of a partial judgment as final does not make the judgment immediately appealable. *Marquez v. Jack Ussery Const.,* 2006-1852 (La. App. 1 Cir. 6/8/07), 964 So. 2d 1045, 1048, *writ denied,* 2007-1404 (La. 10/12/07), 965 So. 2d 400. When reviewing an order designating a judgment as final for appeal purposes, when accompanied by explicit reasons, the reviewing court must determine whether the trial court abused its discretion in certifying the judgment. *R.J. Messinger. Inc. v. Rosenblum,* 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122.

Pursuant to *Messinger,* the following list of non-exclusive factors are to be considered in determining whether a partial judgment should be certified as final:

> (1) The relationship between the adjudicated and unadjudicated claims;
>
> (2) The possibility that the need for review might or might not be mooted by future developments in the trial court;

(3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and

(4) Miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Messinger, 894 So. 2d at 1122. However, in determining whether a partial judgment is a final one for the purpose of an immediate appeal, a court must always keep in mind the historic policies against piecemeal appeals. *Davis,* 808 So. 2d at 483.

We note that even a trial court's designation that the judgment is final is not determinative of this court's jurisdiction. *Davis,* 808 So.2d at 481, n.2. Rather, we must determine whether the designation was proper. Moreover, since the record contains no reasons for judgment disclosing the basis for the trial court's finality designation, we are required to conduct a *de novo* review to determine whether the judgment was properly designated as final. *Messinger,* 894 So. 2d at 1122 ("If no reasons are given but some justification is apparent from the record, the appellate court should make a *de novo* determination of whether the certification was proper."); *see also State through Dep't. of Transp. and Devel. v. Henderson,* 2009-2212 (La. App. 1 Cir. 5/7/10), 39 So. 3d 739, 741 (*de novo* review required where the trial judge "gave no explicit reasons" for its determination that no just reason for delay existed).

Historically, our courts have a policy against multiple appeals and piecemeal litigation. Article 1915(B) attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review at a time when it best serves the needs of the parties. Thus, in considering whether a judgment is properly designated as a final one pursuant to Article 1915(B), a trial court must take into account judicial administrative interests as well as the equities involved. *Messinger,* 894 So. 2d at 1122.

In reviewing the propriety of the trial court's finality designation, we consider the "overriding inquiry" of "whether there is no just reason for delay," as well as the other non-exclusive criteria trial courts use in making the determination of whether certification is appropriate, known as the *Messinger* factors.

In the instant case, the trial court makes no designation that no just reason for delay existed as to either the June 10, 2014 judgment or the April 1, 2015 judgment. As to the June 10, 2014 judgment, it granted a partial summary judgment regarding defense and indemnity for the claims asserted by Parker, granted the breach of contract claims, but denied the defense and indemnity for the claims asserted by Gumpert. There is no determination as to the indemnity claims of Parker or the amount of damages therefrom. Absent a designation of a judgment as final under Article 1915(B)(1), a partial summary judgment may be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties. La. C.C.P. art. 1915(B)(2); *MAPP Const., LLC v. Chenevert Architects,* 2014-0653, *2 (La. App. 1 Cir. 12/23/14), 2014WL7332109 (unpublished opinion), *writ denied,* 2015-0164 (La. 4/17/15), 168 So. 3d 397. Even though this court and the supreme court denied writs on the June 10, 2014 judgment, it is not a final judgment. "[W]rit denials do not make law, and the denial of writs neither blesses nor adopts the court of appeal's factual determinations or expressions of law." *Black v. St. Tammany Parish Hosp.,* 2008-2670 (La. 11/6/09), 25 So. 3d 711, 719 n.4. Therefore, the June 10, 2014 judgment is still subject to revision. The purported certification by the trial court in the November 18, 2015 judgment that the June 10, 2104 judgment was final does not meet the basic requirements of Article 1915. There still remain unadjudicated claims that could be appealed at a later date. We see no reason to encourage such piecemeal litigation.

The April 1, 2015 judgment is again on a motion for partial summary judgment. This judgment appears to determine that attorney's fees and costs are owed for the period October 10, 2006 through November 30, 2014, but reserves the amount for a later date. Apparently, that amount is included in the November 18, 2015 judgment. However, there is no determination in any judgment as to the amount owed on the indemnity claims of Parker.

None of the judgments before this court are precise, definite, and certain. Even if we were to affirm these judgments, the matter of indemnity and the damages therefrom has not been resolved. The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment. *In re Interdiction of Metzler*, 2015-0982 (La. App. 1 Cir. 2/22/16), 189 So. 3d 467, 469. Because only judgments are made executory in Louisiana courts, La. C.C.P. art. 2781, *et seq.,* to be legally enforceable as a valid judgment, a third person should be able to determine from the judgment the party cast and the amount owed without reference to other documents in the record. These determinations should be evident from the language of a judgment without reference to other documents in the record. *Id.* In the absence of such decretal language, the ruling is not a valid "final judgment." *Laird*, 836 So. 2d at 366. None of the judgments in this matter determine the amount of indemnity owed for the Parker claims. Furthermore, it is not ascertainable from either judgment if the $65,000.00 award was for all breach of contract claims, was just for the Gumpert claims, or was just for the Parker claims. In the absence of a valid final judgment, this court lacks jurisdiction to review this matter.

CONCLUSION

For the above and foregoing reasons, we dismiss this appeal and remand this matter to the trial court for further proceedings consistent with the views expressed

herein. Costs of this appeal are assessed one-half against HKA Enterprises, Inc. and one-half against Zurich American Insurance Company and The Shaw Group, Inc.

APPEAL DISMISSED.