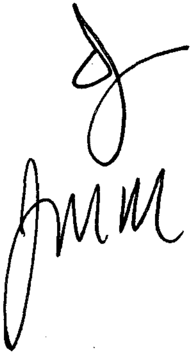
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0669



SUCCESSION OF LATHAN LUCIEN SR.

Judgment Rendered: DEC 2 1 2017

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Docket Number 2001-0030452

Honorable Elizabeth P. Wolfe, Judge Presiding

****

Harvey W. Cook Hammond, LA	Counsel for Plaintiff/Appellee, Estate of Lathan Lucien Sr.
Robert L. Lucien, Sr. New Orleans, LA	Defendant/Appellant, in proper person

****

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

WHIPPLE, C.J.

In this appeal, Robert L. Lucien, Sr. challenges a judgment of the trial court, declaring that he had renounced his interest in the Estate of Lathon Lucien, Sr.[1] For the following reasons, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

By petition filed February 24, 2005, Bobbie Pinckney sought to be appointed administratrix of the succession of her father, Lathon Lucien, Sr. In the petition, she alleged that her father had died intestate on September 14, 2000, and that he had several properties that may be sold, thus making administration of the succession necessary.[2] By order dated January 20, 2006, Pinckney was appointed administratrix, and, thereafter, she filed various pleadings in furtherance of her efforts to administer the estate.

At issue before us is a judgment on rule rendered in response to Pinckney's May 4, 2016 "Motion and Rule to Show Cause Why Heir Should Not Be Compelled to Accept or Renounce Succession," in which she averred that the heirs wished to be sent into possession, but that while Lathon D. Lucien and Robert L. Lucien, Sr., heirs of the succession, had not renounced the succession, they refused to sign a verification indicating their acceptance of the succession.[3] At the hearing on the rule, counsel for Pinckney stated that Lathon D. Lucien, Jr. had indicated

---

[1]We note that the decedent's first name is spelled both as "Lathan" and "Lathon" in pleadings filed in the matter before us. Because the judgment at issue lists his name as "Lathon Lucien, Sr." both in the caption and decree, we will refer to him by that spelling as well.

[2]The record before us does not contain a copy of the death certificate or any affidavits establishing Lathon Lucien, Sr.'s date of death. See LSA-C.C.P. arts. 2821 & 2822.

[3]Pursuant to LSA-C.C. art. 962, a successor "may be compelled to accept or renounce" his succession rights "for good cause." This article authorizes the succession representative to compel an heir to accept or renounce where the succession representative wishes to place the heirs in possession of the assets of the estate. See LSA-C.C. art. 962, Revision Comments—1997, comment (b).

that he accepted the succession; thus, Pinckney wished to dismiss the rule as to him.[4] The hearing then proceeded on the rule only as to Robert L. Lucien, Sr.

Following the hearing, the trial court signed a "Judgment on Rule" on November 28, 2016, decreeing that "Lathon [D.] Lucien, Jr. has accepted the Estate of Lathon Lucien, Sr.," but that "Robert [L.] Lucien, [Sr.] has refused to accept the estate and has therefore renounced his interest in the Estate of Lathon Lucien, Sr." From this judgment, Robert L. Lucien, Sr. filed the instant appeal.

DISCUSSION

Appellate courts have a duty to examine their subject matter jurisdiction *sua sponte*, even if the litigants do not raise the issue. Succession of Matthews, 2016-0289 (La. App. 1st Cir. 1/5/17), 212 So. 3d 547, 551, writs denied, 2017-0230, 2017-0236, 2017-0243 (La. 3/31/17), 217 So. 3d 361. This court cannot determine the merits of an appeal unless our jurisdiction is properly invoked by a final judgment.[5] Phoenix Associates Land Syndicate, Inc. v. E.H. Mitchell & Co., L.L.C., 2007-0108 (La. App. 1st Cir. 9/14/07), 970 So. 2d 605, 610, writ denied, 2007-2365 (La. 2/1/08), 976 So. 2d 723. A final judgment is one that determines the merits in whole or in part, whereas a judgment that does not determine the merits, but only preliminary matters in the course of the action, is an interlocutory judgment. LSA-C.C.P. art. 1841.

When a court renders a partial judgment as to one or more but less than all the claims, demands, issues, or theories against a party, the judgment shall not constitute a final judgment unless it is designated as such by the court after an express determination that there is no just reason for delay. LSA-C.C.P. art.

[4]The record before us indicates that the matter was taken up by the court on August 1, 2016, and the matter was then continued to September 1, 2016, for a continuation of the hearing.

[5]Appeals from orders or judgments rendered in succession proceedings generally shall be governed by the rules applicable to appeals in ordinary proceedings. See LSA-C.C.P. art. 2974; In re Succession of McLean, 2009-1851 (La. App. 1st Cir. 6/11/10), 2010 WL 2342752 (unpublished).

1915(B)(1). 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 the rendition of the judgment adjudicating all the claims, rights, and liabilities of all the parties.[6] LSA-C.C.P. art. 1915(B)(2).

The judgment at issue, which merely declares that Robert L. Lucien, Sr. has renounced his interest in the estate of his father, determined less than all of the issues within this succession proceeding. As such, it is a partial judgment that is not a final judgment absent a designation as such by the trial court after an express determination that there was no just reason for delay. See generally Succession of Claudette Barilleaux Gore, 16-366 (La. App. 5th Cir. 9/22/16), 202 So. 3d 573, 576 (judgment decreeing status of adopted son as legal heir of a succession was a partial judgment that was not appealable absent a designation as final by the trial court after an express determination that there was no just reason for delay), and In re Succession of Bradford, 550 So. 2d 678, 679-680 (La. App. 2nd Cir. 1989) (judgment ordering an heir to accept or renounce her interest in the succession was

---

[6]In some instances, interlocutory judgments are appealable, but "only when expressly provided by law." LSA-C.C.P. art. 2083. In that regard, LSA-C.C.P. art. 2974 lists an exception to the general rule that succession proceedings shall be governed by the rules applicable to appeals in ordinary proceedings, by providing that orders or judgments confirming, appointing, or removing a succession representative, or granting an interim allowance under LSA-C.C.P. art. 3321 "shall be executed provisionally, notwithstanding appeal." This court has concluded that this language, together with similar language in LSA-C.C.P. art. 2122, expressly allows devolutive appeals of orders or judgments appointing or removing succession representatives. Succession of LeBouef, 2013-0209 (La. App. 1st Cir. 9/9/14), 153 So. 3d 527, 533. Additionally, specific provisions in the succession articles of the Code of Civil Procedure provide that a suspensive appeal may be taken from a judgment homologating a tableau of distribution and that a judgment homologating a final account "has the same effect as a final judgment in an ordinary action." LSA-C.C.P. arts. 3307, 3308, & 3337.

However, there is no similar provision expressly providing for an immediate appeal of an order or judgment rendered on a request by an interested party that a successor "be compelled to accept or renounce" his succession rights pursuant to LSA-C.C. art. 962.

not a final judgment, but attempted appeal of that judgment was not frivolous).[7]

Indeed, apparently recognizing its lack of finality, Robert L. Lucien, Sr., in his motion for appeal of the November 28, 2016 judgment, requested that the trial court certify the judgment as final "and ready for [a]ppeal" pursuant to LSA-C.C.P. art. 1915. However, the trial court did not designate the November 28, 2016 judgment as final for purposes of appeal pursuant to LSA-C.C.P. art. 1915(B)(1). As such, the judgment is an interlocutory ruling, which the trial court, in its discretion, and even on its own motion, may subsequently change or alter prior to rendition of a final judgment. LSA-C.C.P. art. 1915(B)(2); Succession of Sharp, 2011-1984 (La. App. 1st Cir. 5/14/12), 2012 WL 1744467 at *5 (unpublished). Accordingly, we conclude that the judgment before us is not a final appealable judgment and, thus, that this appeal must be dismissed. See Succession of Claudette Barilleaux Gore, 202 So. 3d at 576. In so ruling, we note that Robert Lucien, Sr. will have an opportunity for review of the trial court's ruling in connection with an unrestricted appeal of a final judgment, once rendered, in the

---

[7]Admittedly, the judgment at issue herein goes further than the judgment in In Re Succession of Bradford, in that it does not merely order Robert Lucien, Sr. to accept or renounce his interest in his father's succession, but, rather, declares that he has renounced. To the extent that the instant judgment could be viewed as a declaratory judgment, we recognize that declaratory judgments may be final and appealable under the Louisiana Code of Civil Procedure. Indeed, LSA-C.C.P. art. 1874 specifically addresses an administrator seeking a declaration to ascertain any class of heirs or to determine any question arising in the administration of the estate. However, the jurisdictional problem still remains for purposes of appealability of this particular judgment on rule.

While LSA-C.C.P. art. 1871 provides that courts of record within their respective jurisdictions may declare rights, status, and other legal relations, and that such a declaration shall have the force and effect of a final judgment or decree, the difficulty with the current judgment is that it is a partial judgment that only determines one issue in the case. Thus, for our appellate jurisdiction to be invoked, the judgment would have had to be certified as final pursuant to LSA-C.C.P. art. 1915(B)(1). See generally Succession of Sharp, 2011-1984 (La. App. 1st Cir. 5/14/12), 2012 WL 1744467 at *4 & *6 (unpublished) (because trial court's judgment, which merely declared that the attestation clause of a testament was sufficient to meet the requirements for a valid testament, did not determine the merits of the case, did not qualify as a partial final judgment under LSA-C.C.P. art. 1915(A), and was not designated as final pursuant to LSA-C.C.P. art. 1915(B), appeal of that judgment was dismissed); and Succession of Brantley, 96-1307 (La. App. 1st Cir. 6/20/97), 697 So. 2d 16, 18-19 (trial court's ruling on a petition for declaratory judgment filed within a probate proceeding that decedent's interdiction had been revoked by a previous judgment and that decedent was entitled to presumption of testamentary capacity did not determine ultimate issue of whether decedent had capacity at the time the testament was executed and, thus, was an interlocutory judgment).

succession proceeding.

CONCLUSION

For the above and foregoing reasons, Robert Lucien, Sr.'s appeal of the November 28, 2016 judgment is dismissed, without prejudice, and the matter is remanded for further proceedings. Costs of this appeal are assessed against Robert L. Lucien, Sr.

APPEAL DISMISSED; REMANDED.