

STATE OF LOUISIANA

COURT OF APPEAL

*JEW*  
*WRC by JEW*

FIRST CIRCUIT

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2019 CA 1585

TRAVIS PICKETT

VERSUS

LAUREN ENGINEERS & CONSTRUCTION, INC.

JUDGMENT RENDERED: DEC 30 2020

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Appealed from  
The Office of Workers' Compensation  
In and for the Parish of Ascension • State of Louisiana  
Docket Number 17-02749 • District 9

Elizabeth Lanier, Workers' Compensation Judge Presiding

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Rusty Savoie  
Covington, Louisiana

ATTORNEY FOR APPELLANT  
PLAINTIFF—Travis Pickett

Elizabeth A. Liuzza  
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Metairie, Louisiana

ATTORNEYS FOR APPELLEE  
DEFENDANT—Lauren Engineers  
& Construction, Inc.

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**BEFORE: WHIPPLE, C.J., WELCH, AND CHUTZ, JJ.**

*Whipple, C.J. concurs.*

**WELCH, J.**

The plaintiff, Travis Pickett, appeals a judgment denying his request to set aside a final judgment that dismissed his claim for workers' compensation benefits on the basis of prescription. For reasons that follow, we dismiss this appeal and issue this opinion in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

The plaintiff fax-filed a disputed claim for compensation on May 1, 2017, seeking workers' compensation benefits for a work-related accident that allegedly occurred on May 1, 2016. His employer, the defendant, Lauren Engineers & Construction, Inc., subsequently filed a peremptory exception raising the objection of prescription, arguing that the filing was untimely. The defendant initially passed on the objection of prescription when the plaintiff, through his then counsel, provided the defendant with information that the claim was timely fax-filed with the Office of Workers' Compensation. It was later learned through discovery that the plaintiff's injury actually occurred on April 29, 2016, rather than May 1, 2016. The defendant then re-urged the objection of prescription, pointing out the correct date of the accident. Pursuant to a judgment rendered and signed by the workers' compensation judge ("WCJ") on November 19, 2018, the exception was sustained and the plaintiff's claim was dismissed with prejudice. The record does not reveal that the plaintiff timely filed a motion for new trial in accordance with the delay set forth in La. C.C.P. art. 1974 or that he timely appealed that in judgment in accordance with the delays set forth either in La. C.C.P. art. 2087 (for a devolutive appeal) or La. C.C.P. art. 2123 (for a suspensive appeal).

Thereafter, the plaintiff claimed that he learned that his claim may have been timely under La. C.C.P. art. 5059, which addresses the computation of time and legal holidays. Therefore, on May 13, 2019, the plaintiff filed a "Motion to Vacate Judgment." Therein, the plaintiff argued that since April 29, 2017 was a Saturday,

his claim for workers' compensation benefits filed on Monday, May 1, 2017 was not prescribed. Therefore, the plaintiff sought to vacate the November 19, 2018 judgment based on the "continuing jurisdiction" of the WCJ to modify or change its former findings or orders, as set forth in La. R.S. 23:1310.8, or alternatively, that the November 19, 2018 judgment be nullified pursuant to La. C.C.P. art. 2004, which provides for the annulment of judgments for vices of substance or that are obtained through fraud or ill practice. Pursuant to a judgment signed by the WCJ on June 28, 2019, the WCJ denied the plaintiff's motion. From this judgment, the plaintiff has appealed.

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 - 2011-0523 (La. App. 1<sup>st</sup> Cir. 11/9/11), 79 So.3d 1054, 1059, writ denied, 2012-0360 (La. 4/9/12), 85 So.3d 698. This Court's appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. See La. C.C.P. art. 1841 and 2083. A valid judgment must be "precise, definite, and certain." **Laird v. St. Tammany Parish Safe Harbor**, 2002-0045, 2002-0046 (La. App. 1<sup>st</sup> Cir. 12/20/02), 836 So.2d 364, 365. Moreover, 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 **Carter v. Williamson Eye Center**, 2001-2016 (La. App. 1<sup>st</sup> Cir. 11/27/02), 837 So.2d 43, 44. Additionally, a final appealable judgment must contain appropriate decretal language disposing of or dismissing claims in the case. **Advocate Financial, L.L.C. v. Joseph F. Lahatte, Jr., L.L.C.**, 2009-0609 (La. App. 1<sup>st</sup> Cir. 10/23/09)(*unpublished*), 2009 WL 3452832, \* 3. A judgment that does not contain appropriate decretal language cannot be considered as a final judgment for the purpose of an appeal, and this court lacks jurisdiction to review

such a judgment. See Johnson v. Mount Pilgrim Baptist Church, 2005-0337 (La. App. 1<sup>st</sup> Cir. 3/24/06), 934 So.2d 66, 67.

In this case, while the June 28, 2019 judgment that the plaintiff sought to appeal specifically denied the plaintiff's motion to vacate the November 19, 2018 judgment, we find the judgment is defective and not a final judgment for the purpose of an appeal because it does not contain appropriate decretal language dismissing the request to vacate or nullify the November 19, 2018 judgment. In the absence of a valid final judgment, this Court lacks jurisdiction to review the matter, and we dismiss the appeal from the June 28, 2019 judgment.<sup>1</sup>

### CONCLUSION

For all of the above and foregoing reasons, the appeal of the June 28, 2019 judgment is dismissed. All costs of this appeal are assessed to the plaintiff/appellant, Travis Pickett.

### APPEAL DISMISSED.

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<sup>1</sup> We recognize that this court has discretion to convert an appeal of a non-appealable judgment to an application for supervisory writs. See Stelluto v. Stelluto, 2005-0074 (La. 6/29/05), 914 So.2d 34, 39. Generally, appellate courts have exercised that discretion when the motion for appeal was filed within the thirty-day time period allowed for the filing of an application for supervisory writs under Uniform Rules—Courts of Appeal, Rule 4-3, and where reversal of the trial court's decision would terminate the litigation, or where clear error in the trial court's judgment, if not corrected, will create a grave injustice. However, when the jurisdictional defect lies in the non-finality of a judgment, 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. 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. See Boyd Louisiana Racing, Inc. v. Bridges, 2015-0393 – 2015-0395 (La. App. 1<sup>st</sup> Cir. 12/23/15)(*unpublished*), 2015 WL 9435385, \*2-4. We also note that the denial of the action for modification or nullity, without a dismissal of the claims therein, renders the judgment interlocutory, and therefore it is neither appealable nor susceptible of being certified for immediate appeal. See La. C.C.P. art. 1841, 1911, 1915, and 2083.

Furthermore, to the extent that the plaintiff's motion to vacate can be construed as a motion for new trial, we likewise find the dismissal of this appeal would be warranted, as it is well-settled that a judgment denying a motion for new trial is generally considered to be a non-appealable interlocutory judgment. See Brehm v. Amacker, 2015-1531 (La. App. 1<sup>st</sup> Cir. 12/7/17), 236 So.3d 621, 629.