NOT DESIGNATED FOR PUBLICATION

ZOE C. BROWN	*	**NO. 2000-CA-0402**
VERSUS	*	**COURT OF APPEAL**
A. J. BARCIA'S HEATING & AIR CONDITIONING, INC., A. J. BARCIA, LENNOX INDUSTRIES, INC., FRED PETTENGILL, GARY SHEFFLER, CITY OF NEW ORLEANS, CHRIS DUPLANITER AND GLENN L. EBEYER, JR.,	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 90-7791, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

* * * * * *

Judge Steven R. Plotkin

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(Court composed of Judge William H. Byrnes III, Judge Steven R. Plotkin, Judge Patricia Rivet Murray)

Zoe C. Brown
731 Leontine Street
New Orleans, LA 70115
IN PROPER PERSON, PLAINTIFF/APPELLANT

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AFFIRMED.

Plaintiff Zoe C. Brown appeals a trial court judgment dismissing her suit against defendant Lennox International, Inc. as abandoned. We affirm.

La. C.C.P. art. 561, as amended by the 1997 Louisiana Legislature, provides, in pertinent part, as follows:

> A. (1) An action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years . . ..
>
> (2) This provision shall be operative without formal order, but, on ex parte motion of any party or other interested person by affidavit which provides that no step has been taken for a period of three years in the prosecution or defense of the action, the trial court **shall** enter a formal order of dismissal as of the date of its abandonment. The order shall be served on the plaintiff pursuant to Article 1313 or 1314, and the plaintiff shall have thirty days from the date of service to move to set aside the dismissal. However, the trial court **may** direct that a contradictory hearing be held prior to dismissal.

(Emphasis added.)

The record on appeal in this case does not contain the original petition, or any of the amended and supplemental petitions, filed by Ms.

Brown. However, the record reveals that Lennox International filed a "Motion to Dismiss Suit on Ground of Abandonment" on March 15, 1999, accompanied by a print-out from the trial court's computer system and an affidavit from Burt K. Carnahan, counsel for Lennox, asserting that no step in the prosecution or defense of the action had been taken since Lennox International filed its Answer to Ms. Brown's "Supplemental or Amending Petition" on August 18, 1995. After the motion was served on Ms. Brown, she filed an opposition on April 1, 1999. Nevertheless, as required by La. C.C.P art. 561(A)(1), the trial judge granted the motion on May 13, 1999. Thereafter, on June 23, 1999, Ms. Brown filed a "Motion and Order to Set Aside Dismissal by Contradictory Hearing or Appeal." Following a contradictory hearing held on September 10, 1999, that motion was denied by the trial judge by written judgment dated September 22, 1999. Ms. Brown appeals.

Ms. Brown made numerous arguments in both the trial court and this court in an effort to prevent the dismissal of her case as abandoned. On appeal, she asserts four arguments: (1) that the amended version of La. C.C.P. art. 561 should not be retroactively applied to her because she is a pro se litigant who was not formally notified of the reduction in the abandonment period from five years to three years; (2) that the judgment

erroneously names the wrong defendant, (2) that the policy underlying the abandonment rules is not served by a judgment dismissing this case as abandoned, and (4) that she never intended to abandon her case.

We find no merit in any of the arguments advanced by Ms. Brown. Concerning her first argument, we note that "a pro se litigant assumes all responsibility for his own inadequacies and lack of knowledge of procedural and substantive laws." Ledbetter v. Wheeler, 31-357, p. 3 (La. App. 2 Cir. 12/9/98), 722 So.2d 382, 384; Dronet v. Dronet, 96-982, p. 4 (La. App. 5 Cir. 4/9/97), 694 So.2d 426, 428; Harrison v. McNeese State University, 93-288, p. 3 (La. App. 3 Cir. 3/23/94), 635 So.2d 318, 320, writ denied, 94-1047 (La. 6/17/94), 638 So. 2d 1099; Harry Bourg Corporation v. Vertex, 633 So.2d 285, 286 (La. App. 1st Cir.1993). When a party chooses to represent herself, she "assumes the responsibility of familiarizing [her]self with applicable procedural and substantive law." Deville v. Watch Tower Bible and Tract Society, Inc., 503 So.2d 705, 706 (La. App. 3d Cir.1987). The pro se litigant who fails to familiarize herself with the law is not entitled to "any greater rights than a litigant represented by an attorney." Id.

Concerning the retroactivity to the 1997 amendments to La. C.C.P. art. 561, this court recently stated as follows:

> The 1997 La. [Legislature] Acts 1221, § 1, amended Article 561 by shortening the abandonment period from five to three years. The delayed implementation date provided in the

> amendment to Article 561 gave advance notice to those who might be affected by the change in the law and afforded them the opportunity to take whatever actions were necessary to preserve their rights. The retroactive application of Article 561 was upheld recently by this Court in Matthews v. Fontenot, 99-0484 (La. App. 4 Cir. 9/29/99), 745 So.2d 691, 693. Furthermore, our brethren at the 5th Circuit have also upheld the retroactivity of Article 561, in Dempster v. La. Health Services & Indemnity Co., 98-1112 (La. App. 5 Cir. 3/10/99), 730 So.2d 524, writ denied, 98-1319 (La.7/2/99), 747 So.2d 20.
>
> Article 561 of the Code of Civil Procedure previously provided that "a[n] action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of five years. The 1997 La. Acts 1221, § 1, approved July 15, 1997. Section 2 of this amending provision stated that "This Act shall become effective on July 1, 1998, and shall apply to all pending actions." Accordingly, all cases pending on July 1, 1998, are subject to the revisions to Article 561.

Alexander v. Liberty Terrace Subdivision, Inc., 99-2171, pp. 2-3 (La. App. 4 Cir. 4/12/00), 761 So. 2d 62, 63-64. Because this case was clearly pending on July 1, 1998, the effective date of the amendment, the applicable abandonment period is three years.

Pursuant to La. C.C.P. art. 561, plaintiffs are required to show three specific things in order to interrupt an abandonment period: "(1) that they took some step in the prosecution of their lawsuit; (2) they did so on the record in the trial court: (3) that they did so within the legislatively prescribed time period of the last step taken by either party." Alexander, 99-2171, p. 2, 761 So. 2d at 64, citing Delta Development Co., Inc. v. Jurgens,

456 So.2d 145 (La.1984). In the instant case, Ms. Brown has failed to prove the necessary elements. The record on appeal in this case is clear that the last "step" taken in the prosecution or defense of this case occurred on August 18, 1995, when Lennox International filed its "Answer to First Amended Petition." The only record document filed in this case between August 18, 1995, and March 5, 1999, when Lennox International filed its motion to dismiss, is a "Motion and Order to Remove Record From Courthouse." As that motion does not qualify as a "formal action, before the court and on the record, intended to hasten the matter to judgment," Chevron Oil Co. v. Traingle, 436 So. 2d 530, 532 (La. 1983), it does not interrupt the abandonment period.

Concerning Ms. Brown's second argument, the record on appeal is insufficient to allow us to adequately address this argument. Ms. Brown claims that the defendant is incorrectly identified in the judgment as "Lennox International, Inc.," but that the defendant in her case is "Lennox Industries, Inc., a domestic subsidiary of Lennox International, Inc." Lennox International acknowledges in brief that Ms. Brown's original petition, which is not in the record on appeal, named "Lennox Industries, Inc." as a defendant, but asserts that it stated in its first responsive pleading that the corporation's correct legal name was "Lennox International, Inc."

The record on appeal contains Ms. Brown's "Designation of the Record For Appeal of Dismissal with Prejudice on Grounds of Abandonment." Since Ms. Brown designated the record on appeal without providing sufficient pleadings to allow us to determine the merits of her arguments on this issue, we find no merit in her arguments concerning the name of the defendant.

Concerning Ms. Brown's third argument, it is true that the oft-stated purpose of the abandonment article is "to prevent protracted litigation, which is filed for purposes of harassment or without serious intent to hasten the claim to the judgment." Alexander, 99-2171, p. 2. However, abandonment occurs by operation of law whenever the parties fail to take any step in the prosecution or defense of the case, on the record, within the three-year period established by La. C.C.P. art. 561. Neither the article nor the jurisprudence requires a finding that the purpose of the abandonment articles is served by declaring a particular case abandoned.

Concerning Ms. Brown's fourth argument, Ms. Brown's intentions in this case are irrelevant. In Sullivan v. Cabral, 32,454, p. 2 (La. App. 2d Cir. 10/27/99), 745 So. 2d 791, 792, writ denied, 753 So. 2d 837 (La. 1/28/00), the court held that the fact that the plaintiff intended to take a step in the prosecution of the action is insufficient to preclude a finding that the action had been abandoned in the absence of a step actually being taken.

Accordingly, we affirm the trial court judgment dismissing Ms. Brown's case as abandoned.

AFFIRMED.