

NOT DESIGNATED FOR PUBLICATION

ATHAN M. JARRELL, ET AL	*	NO. 2000-CA-1110
VERSUS	*	COURT OF APPEAL
SERVICE CORPORATION INTERNATIONAL, INC., LOUISIANA FUNERAL SERVICES, INC., AND LIBERTY INSURANCE SERVICES CORPORATION	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

*
* * * * *
*

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-4991, DIVISION "H"
HONORABLE MICHAEL G. BAGNERIS, JUDGE
* * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * *

(Court composed of Judge James F. McKay, III, Judge Terri F. Love, Judge
Max N. Tobias, Jr.)

STEPHEN B. MURRAY
ROBERT J. DILIBERTO
MURRAY LAW FIRM
909 POYDRAS STREET
SUITE 2550
NEW ORLEANS, LA 70112
-and-
KEENAN K. KELLY
KELLY, TOWNSEND & THOMAS
137 ST. DENIS STREET
P. O. BOX 756
NATCHITOCHEs, LA 714580756
COUNSEL FOR PLAINTIFF/APPELLANT

MARK C. DODART
NORA T. BOLLING
HARRY A. ROSENBERG
PHELPS DUNBAR LLP
365 CANAL STREET
SUITE 2000, CANAL PLACE
NEW ORLEANS, LA 70130-3245
COUNSEL FOR DEFENDANT/APPELLEE

RICHARD A. CHOZEN
RAGGIO, CAPPEL, CHOZEN & BERNIARD
1011 LAKESHORE DRIVE
FIFTH FLOOR
LAKE CHARLES, LA 70601
- and -
ANDREW A. BRAUN
SESSIONS & FISHMAN, L.L.P.
201 ST. CHARLES AVENUE
SUITE 3500
NEW ORLEANS, LA 70170
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED

This matter arises from a dispute relating to four insurance policies owned by Christian Sarah Jarrell, deceased, and in effect at the time of her death. Only two of the four policies are presently before the court.

According to the plaintiff's petition, all of the policies were originally issued by Magnolia Life Insurance Company and subsequently assumed by Liberty

Life Insurance Company (“Liberty” or “the Liberty defendants”). The policies named the policyholder’s son, Athan Jarrell (“Jarrell”), as beneficiary. Following his mother’s death, Jarrell filed claims for benefits under the policies through the official funeral director for such policies, J.E. Hixson & Sons, Inc., a subsidiary of SCI Louisiana Funeral Services, Inc. (“SCI” or “the SCI defendants”). As the official funeral director, SCI was responsible for providing the funeral according to the terms of the policies issued by Liberty to policyholders that died in the SCI service area and requested its services. At the time that Jarrell requested services under the policies, he was advised by SCI that he had to pay an additional sum to affect his mother’s funeral in accordance with his wishes. He chose to do so pursuant to a separate contract. Thereafter, Jarrell brought suit against the SCI and the Liberty defendants for breach of contract. Jarrell maintained that the contracts of insurance obligated the insurer to provide a full funeral and not just a credit against the funeral expenses. Jarrell also alleged that he was a third-party beneficiary to the Official Funeral Director Agreement.

On 26 March 1999, Jarrell brought this matter as a class action pursuant to La. C.C.P. article 591, *et seq.* The class was never certified.

On 11 May 1999, Jarrell filed a first supplemental and amending petition, adding one of the Liberty defendants as a party. On 20 August 1999, Jarrell filed a second supplemental and amending petition alleging that he was a third-party beneficiary of the Official Funeral Director Agreement and withdrawing his demand for exemplary damages as originally prayed for. On 29 September 1999, the trial court entered judgment dismissing with prejudice Jarrell's claims regarding two of the four policies. Thereafter, on 6 October 1999, Jarrell filed a third supplemental and amending petition, delineating further the basis of his third-party beneficiary claim. On 18 January 2000, the trial court heard the preemptory exceptions of prescription and no cause of action filed by the SCI defendants. By judgment dated 19 January 2000, the trial court ruled that Jarrell's claims against SCI on the remaining two policies, as set forth in his original, first, and third petitions were prescribed and that the petition, as amended and supplemented, failed to state a cause of action. Jarrell appealed the judgment of 19 January 2000.

The only assignments of error raised by Jarrell on appeal pertain to the "no cause of action" issue. The judgment of 19 January 2000, insofar as it addresses the issue of prescription, was not suspended by the appeal.

Moreover, the issue of prescription is not raised on appeal, nor is it briefed. Accordingly, it is deemed abandoned by the appellant. Uniform Rules, Courts of Appeal, Rule 2-12.4. See also, *State v. Evans*, 98-1850 (La. App. 3 Cir. 5/05/99), 734 So.2d 866, *writ denied*, 99-1616 (La. 12/17/99), 751 So.2d 871; *American Gulf V, Inc. v. Hibernia National Bank*, 99-376 (La. App. 5 Cir. 11/10/99), 749 So.2d 722. Thus, no issue remains before us for review.

Additionally, we find that the 19 January 2000 judgment is not an appealable judgment. Article 1915 of the Louisiana Code of Civil Procedure provides in pertinent part:

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. . . 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.

See also, *Jackson v. America's Favorite Chicken Co.*, 98-0605 (La. App. 4 Cir. 2/03/99), 729 So.2d 1060. In the case at bar, the judgment appealed from addresses the plaintiff's claims against only the SCI defendants. The Liberty defendants are not referenced in the judgment and have not been dismissed from the lawsuit. Furthermore, the judgment addresses only the

issues as raised in Jarrell's original petition and the first and third supplementations and amendments thereof. It completely omits reference to the second supplemental and amended petition. Not only does the judgment fail to adjudicate all Jarrell's claims, but also it also fails to indicate as required by Article 1915 that "no just reason for delay" exists in obtaining appellate review.

Finding that the record does not show compliance with La. C.C.P. art. 1915(B), we dismiss the appeal.

APPEAL DISMISSED.