NOT DESIGNATED FOR PUBLICATION

LISA BROOKS COOPER	*	**NO. 2001-CA-2274**
VERSUS	*	**COURT OF APPEAL**
FUN SERVICES LOUISIANA, INC.; THE AUDUBON INSTITUTE, INC.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-17639, DIVISION "G-11"
HONORABLE ROBIN M. GIARRUSSO, JUDGE
* * * * * *
JUDGE MAX N. TOBIAS, JR.
* * * * * *

(COURT COMPOSED OF JUDGE JOAN BERNARD ARMSTRONG, JUDGE PATRICIA RIVET MURRAY, JUDGE MAX N. TOBIAS, JR.)

MURRAY, J., DISSENTS WITH REASONS

MALCOLM R. PETAL
225 BARONNE STREET
SUITE 1704
NEW ORLEANS, LA 70112
COUNSEL FOR PLAINTIFF/APPELLANT

JOHN W. ELLINGHAUSEN
KINNEY & ELLINGHAUSEN
1250 POYDRAS STREET

SUITE 2450
NEW ORLEANS, LA 70113
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED WITHOUT PREJUDICE

The plaintiff, Lisa Brooks Cooper, appeals the trial court's granting of summary judgment in favor of the Audubon Institute, Inc. (the "Institute").

On 29 October 1998, Ms. Cooper attended the "Boo at the Zoo," an annual fundraising event held at the Audubon Zoo, co-sponsored by the Institute and Children's Hospital. In conjunction with the event, Children's Hospital leased a large inflatable obstacle course from Fun Enterprises, Inc. The plaintiff broke her ankle while sliding down a portion of the obstacle course when her foot got caught in a portion of the slide.

As a result of her injuries, the plaintiff filed suit on 28 October 1999 against Fun Services Louisiana, Inc., the alleged lessor of the obstacle course, and the Institute. She alleged that the Institute was liable to her in negligence and pursuant to the Louisiana Product Liability Act. The Institute answered the plaintiff's petition, therein filing a cross-claim against Fun Services Louisiana, Inc.[3] and a third-party action against Children's Hospital. Soon thereafter, the plaintiff filed what she styled a "cross-claim" against Children's Hospital and St. Paul Fire and Marine Insurance Company, its alleged insurer.

On 26 April 2001, the Institute moved for summary judgment arguing that it owed no duty to Ms. Cooper because Children's Hospital was in sole control of the obstacle course that caused the injury. The plaintiff opposed the motion, arguing that summary judgment was inappropriate because a reasonable jury could infer that the Institute bore some percentage of comparative responsibility for the amusement that injured her. Following a hearing, the trial court granted the Institute's motion for summary judgment. That judgment was signed on 27 June 2001 and the Notice of Signing of Judgment was mailed on 29 June 2001. The plaintiff filed a Motion and Order for Devolutive Appeal from the judgment on 31 August 2001.

The initial issue that we must address in this appeal is whether the 27 June 2001 partial judgment is a final appealable judgment pursuant to La. C.C.P. art. 1915. The judgment provides that "the Motion for Summary Judgment [filed by the Institute] be, and the same is hereby granted." Although the judgment does not expressly state that Ms. Cooper's claims against the Institute are dismissed, the Institute sought dismissal of the plaintiff's suit against it with prejudice, and we conclude that it was the intent of the trial court to dismiss all of the plaintiff's claims against the Institute.

At the time summary judgment was rendered and this appeal was

filed, La. C.C.P. art. 1915(B) provided that a judgment dismissing less than all of the claims or parties 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.[4]

The 27 June 2001 judgment granting summary judgment in favor of the Institute did not adjudicate the plaintiff's claims against the two remaining defendants. In order to be immediately appealable under La. C.C.P. art. 1915, the law required that the judgment, because it was a partial final judgment, be designated as a final judgment by the trial court after making an express determination that there was no just reason for delay. No such designation appears in the record. Likewise, the record contains no evidence that the parties requested that the trial court make such a designation.

In Jackson v. America's Favorite Chicken Co., 98-0605 (La. App. 4 Cir. 2/3/99), 729 So.2d 1060, we held that "[a] trial court's mere signing of an order for appeal from a partial judgment will not make that judgment immediately appealable." In addition, we held that the certification by the court "to consider the partial judgment as final must be of record when the appeal is first filed."

For the foregoing reasons, we dismiss without prejudice Ms. Cooper's

appeal because the 27 June 2001 judgment fails to indicate that it is a final appealable judgment pursuant to La. C.C.P. art. 1915(B).

APPEAL DISMISSED WITHOUT PREJUDICE