

NOT DESIGNATED FOR PUBLICATION

SELESS PHELPS * **NO. 2003-CA-0465**
VERSUS * **COURT OF APPEAL**
AMY TIGHELAAR AND * **FOURTH CIRCUIT**
ALLSTATE INSURANCE * **STATE OF LOUISIANA**
COMPANY

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 01-56245, SECTION "C"
Honorable Sonja M. Spears, Judge

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Judge Max N. Tobias, Jr.
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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Michael E. Kirby, and Judge Max N. Tobias, Jr.)

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APPEAL DISMISSED.

The plaintiff, Seless Phelps (“Phelps”), appeals a judgment of the First City Court of the City of New Orleans finding him equally at fault with the defendant, Amy Tigehelaar, for an automobile accident. For the following reasons, we dismiss the appeal as untimely and do not reach the merits.

The trial of this matter was held on 8 May 2002. Judgment was rendered in open court. On 16 May 2002 a judgment was signed commemorating the the judgment rendered in open court and a notice of signing of judgment was issued that day. The record does not indicate the date that the notice of signing of the judgment was received by Phelps. On 22 May 2002, Phelps filed a motion for new trial or, alternatively, “judgment notwithstanding the verdict.” The request for new trial was denied without reasons in open court on 27 August 2002, and a judgment commemorating the ruling was signed on 3 September 2002. Notice of signing of judgment was issued on 9 September 2002. The petition for appeal was filed on 16 September 2002.

A review of the record reveals that both the motion for new trial and

the petition for appeal were untimely. La. C.C.P. arts. 4907 and 5002 govern new trial delays and appeal delays from city courts and parish courts.

La. C.C.P. art. 4907 provides:

- A. After judgment is signed in the parish or city court, a party may make a written request or a motion for new trial for any of the grounds provided by Articles 1972 and 1973.
- B. The delay for applying for a new trial shall be three days exclusive of holidays. Where notice of judgment is required, this delay commences to run on the day after the clerk has mailed, or the sheriff has served, the notice of judgment.

A notice of signing of a final judgment is required pursuant to La. C.C.P. arts. 4905 and 1913. In the present case, the notice of signing of judgment is dated 16 May 2002, a Thursday. Under the provisions of article 4907, the three-day delay period for requesting a new trial ended on 21 May 2002. Phelps' motion for a new trial was not filed until 22 May 2002 and is untimely. *First National Bank of Commerce v. Boydell*, 2003-0613 (La. App. 4 Cir. 9/24/03), ___ So.2d ___, 2003 WL 22300171; *see also Jackson v. Julien*, 2001-1024 (La. App. 4 Cir. 9/25/02), 828 So.2d 1147.

An untimely motion for a new trial does not stop the appellate delays from running. *Jones v. Dillard's Department Store, Inc.*, 93-205 (La. App. 5 Cir. 8/26/03), 624 So.2d 4; *First National Bank of Commerce v. Boydell*, *supra*. The appeal delays are set forth in La. C.C.P. art. 5002:

- A. An appeal from a judgment rendered by a city

court or a parish court may be taken only within ten days from the date of the judgment or from the service of notice of judgment, when such notice is necessary.

- B. When an application for new trial is timely filed, however, the delay for appeal commences on the day after the motion is denied, or from service of notice of the order denying a new trial, when such notice is necessary.

Our courts have noted that the wording of article 5002 differs from the wording of article 4907 regarding the commencement of the delay period. *Myles v. Turner*, 612 So.2d 32 (La. 1993). The delay for an appeal pursuant to article 5002 commences upon date of service of the notice of judgment is received, whereas the delay for a new trial pursuant to article 4907 commences on the day after the notice is mailed. *First National Bank of Commerce v. Boydell, supra*.

Given the fact that Phelps' motion for new trial was untimely, the ten-day delay for the appeal commenced on the date of receipt of the notice of signing of the original judgment. The notice of signing of the original judgment was issued on 16 May 2002. Considering the fact that this appeal was filed on 16 September 2002, four months later, we find that the appeal is untimely and must be dismissed, for we are without jurisdiction to review an untimely filed appeal.

For the foregoing reasons, we dismiss Phelps' appeal.

APPEAL DISMISSED.