

PATRICIA M. WILLIAMS

*

NO. 2003-CA-0605

VERSUS

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COURT OF APPEAL

STANLEY H. ABADIE, NANCY

*

FOURTH CIRCUIT

K. HARKESS, JANE WILLIS,

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STATE OF LOUISIANA

THE BOARD OF

SUPERVISORS OF

LOUISIANA STATE

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UNIVERSITY AND

AGRICULTURAL AND

*

MECHANICAL COLLEGE,

JOHN DOE, RICHARD ROE,

MARY MOE, PEGGY POE,

SUSAN SEW, HENRIETTA

HOE AND JENNY JOE

TOBIAS, J., CONCURS.

I respectfully concur in the majority’s reasons and conclusion that the plaintiff’s case must be dismissed for abandonment pursuant to La. C.C.P. art. 561.

The trial court in the case at bar dismissed the plaintiff’s case with prejudice. The plaintiff does not assign such as error. If a court fails to state whether a dismissal on the grounds of abandonment is with or without prejudice, it is presumed to be without prejudice. A dismissal on the grounds of abandonment pursuant to La. C.C.P. art. 561 should be without prejudice. *Total Sulfide Services, Inc. v. Secorp Industries, Inc.*, 96-589 (La. App. 3 Cir. 12/11/96), 685 So.2d 514; *De Salvo v. Waguespack*, 187

So.2d 489 (La. App. 4 Cir. 1966); *St. Tammany Parish Sewerage District No. 7 v. Monjure*, 95-0937 (La. App. 1 Cir. 12/15/95), 665 So.2d 801. Since the plaintiff fails to assign such as error, we need not address the issue.