

MARCELLA PERKINS BADIE * **NO. 2003-CA-1564**
VERSUS * **COURT OF APPEAL**
CADEAUX EXPRES, INC., * **FOURTH CIRCUIT**
BARBARA G. NORMAND, * **STATE OF LOUISIANA**
AND KRUEGER G. NORMAND *

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-2931, DIVISION "C-6"
HONORABLE ROLAND L. BELSOME, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge
Leon A. Cannizzaro Jr.)

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This case involves a claim for accounting and monies owed filed by plaintiff, Marcella Perkins Badie, against defendants, Cadeaux Expres, Inc., Barbara G. Normand and Krueger G. Normand, regarding certain investments made by plaintiff in the defendant corporation and with the individual defendants. In her petition for appeal, plaintiff stated her desire to appeal the judgment signed by the trial court on June 2, 2003. The complicating factor in this case is that the record contains two separate judgments rendered by the trial court on June 2, 2003. One of the judgments is in favor of plaintiff, and against Cadeaux Expres, Inc., Barbara G. Normand and Krueger G. Normand in the amount of \$4,900.00 plus interest from the date of judgment. The other judgment is in favor of plaintiff, and against Cadeaux Expres, Inc. in the amount of \$4,900.00.

Although the main award is the same in both judgments, one judgment is rendered against all three defendants and includes interest, and

the other judgment is rendered only against Cadeaux Expres, Inc. and does not include interest. There is no indication in the record as to which judgment was signed first. Additionally, the record does not indicate that either party requested clarification of this issue at the trial court level. The trial court did not issue reasons for judgment.

La. C.C.P. article 1951 states:

A final judgment may be amended by the trial court at any time, with or without notice, on its own motion or on motion of any party:

- (1) To alter the phraseology of the judgment, but not the substance; or
- (2) To correct errors of calculation.

Thus, a judgment may be amended by a trial court where the judgment takes nothing away from or adds nothing to the original judgment. *Villaume v. Villaume*, 363 So.2d 448, 450 (La. 1978); *In re Merlin A. Abadie Inter Vivos Trust*, 96-1685, p. 2 (La.App. 4 Cir 7/30/97), 699 So.2d 457, 460. A trial court cannot substantively amend a judgment absent the granting of a new trial. *Caracci v. Williams*, 95-16 (La.App. 5 Cir. 5/10/95), 654 So.2d 889. None of the parties filed a motion for new trial in this matter.

Amending a judgment to add or delete parties constitutes a substantive change. *Davenport v. Amax Nickel, Inc.*, 569 So.2d 23 (La.App. 4 Cir.

1990); *Caracci v. Williams*, *supra*. Similarly, amending a judgment to add or delete judicial interest constitutes a substantive change in the judgment. *Stevenson v. State Farm*, 624 So.2d 28 (La.App. 2 Cir. 1993); *Lovell v. Lovell*, 545 So.2d 1314 (La.App. 1 Cir. 1989). In this case, one of the judgments is rendered against only Cadeaux Expres, Inc. without judicial interest. If that judgment was signed first, then the other judgment rendered against Cadeaux Expres, Inc., Barbara Normand and Krueger Normand with judicial interest includes substantive amendments because of the *addition* of parties and interest. If the judgment against all three defendants with interest was signed first, then the judgment rendered against only Cadeaux Expres, Inc. without interest substantively amends the other judgment because of the *deletion* of parties and interest. Therefore, whichever judgment was rendered second substantively amends the other judgment.

A second judgment containing substantive amendments to an original judgment is an absolute nullity. *Magill v. State of Louisiana, Department of Public Safety and Corrections*, 27,802, p. 5 (La.App. 2 Cir. 1/24/96), 666 So.2d 1260, 1263. The usual remedy of the appellate court is to vacate the amended judgment and reinstate the original judgment. *Id.*

However, in this case, we are unable to determine which ruling was signed first by the trial court. Therefore, we cannot determine which ruling is valid and which one is an absolute nullity. In this particular situation, we conclude that a remand to the trial court is the appropriate course of action for this Court to take. *See, Strawn v. Superfresh*, 98-1624 (La.App. 1 Cir. 9/24/99), 757 So.2d 686.

Accordingly, we remand this matter to the trial court for the limited purpose of determining which of the two June 2, 2003 judgments was signed first. We retain jurisdiction and direct the trial court to cause the appellate record to be relogged with this Court after its decision has been made and to include documentation of its decision in the appellate record.

REMANDED