

NOT DESIGNATED FOR PUBLICATION

**DONNER M. ALLEN AND
LINDA M. SMITH**

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NO. 2004-CA-0413

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**JANE DOE, REGIONAL
TRANSIT AUTHORITY AND
TRANSIT MANAGEMENT OF
SOUTHEAST LOUISIANA,
INC.**

*

STATE OF LOUISIANA

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-14003, DIVISION "I-14"
Honorable Piper Griffin, Judge**

Judge Roland L. Belsome

(Court composed of Judge David S. Gorbaty, Judge Leon A. Cannizzaro Jr.,
Judge Roland L. Belsome)

Norman Mopsik
William G. Legrand
3731 Canal Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Nat G. Kiefer, Jr.
KIEFER & KIEFER
2121 Airline Drive
Suite 508

Metairie, LA 70001

COUNSEL FOR DEFENDANT/APPELLANT

REVERSED

This appeal arises from the trial court's denial of Appellants' Motion to Dismiss Suit On The Grounds Of Abandonment. For the reasons assigned, we reverse.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The following filings are reflected in the record. On September 1, 1999, Appellees, Donner M. Allen and Linda M. Smith filed suit against the Appellants, John Doe, Regional Transit Authority and Transit Management of Southeast Louisiana, Inc., for personal injuries resulting from an automobile/bus accident.

Appellants Answer was filed on October 25, 1999. On December 29, 1999, Appellants filed a Notice For Records Depositions. Appellees' Motion to set for trial was filed on June 25, 2003. On December 5, 2003, appellants filed a Motion To Dismiss Suit On The Grounds Of Abandonment, arguing that the action was abandoned as of December 29, 2002. The trial court denied Appellants' motion without explanation on December 9, 2003. On December 17, 2003, appellants filed a Motion For New Trial. After hearing the matter, the trial court rendered judgment dated

January 20, 2004, dismissing Appellants' motion.

ANALYSIS

An action is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years. La. C.C.P. art. 561. The rule implicates two competing policies. The prevention of protracted litigation filed for purposes of harassment or without serious intent to hasten the claim to judgment, is balanced against the maintenance of an action whenever possible so as to afford an aggrieved party his day in court. *Pichon v. Reynolds*, 02-0044 (La. App. 4 Cir. 7/31/02), 828 So.2d 599; *Brister v. Manville Forest Products*, 32,386 (La. App.2 Cir.12/15/99), 749 So.2d 881.

Abandonment pursuant to article 561 is self-executing and occurs automatically upon the passing of three years without a step being taken by either party, and is actually effective without formal court order. *Clark v. State Farm Mut. Auto. Ins. Co.*, 2000-30 (La. 5/15/01), 785 So.2d 779, 784; *Lewis v. City of New Orleans*, 99-0795 (La. App. 4 Cir. 11/17/99), 748 So. 2d 522.

In keeping with the self-operative effect of the abandonment

provision, our Supreme Court has held that formal action "before the court and on the record" is necessary for a "step" in the prosecution. *Chevron Oil Co. v. Traigle*, 436 So.2d 530, 532 (La.1983). "In this way, examination of the record will reveal the status of litigation with certainty and without resort to extrinsic evidence." *Id.*

It is also well established in our jurisprudence that any steps taken in the prosecution of a lawsuit after abandonment has accrued are ineffective. *Semel v. Green*, 252 La. 386, 211 So.2d 300 (1968); *Bell v Schiro*, 95-0114, 00-2024 (La. App. 4 Cir. 3/12/03), 824 So. 2d 1139; *Washington v. City of Baton Rouge*, 99-1987 (La. App. 1 Cir 2/18/00), 752 So.2d 367.

The record is silent to any filings or actions from December 29, 1999, until June 25, 2003. Accordingly, this matter was abandoned by operation of law on December 29, 2002. Thus, we conclude that the trial court was clearly wrong in denying Appellants' motion. For the foregoing reasons, the judgment of the trial court is reversed, and Appellees' action is dismissed on the grounds of abandonment.

REVERSED