

**NOT DESIGNATED FOR PUBLICATION**

**JOHN K. COOPER, SR.** \* **NO. 2007-CA-1444**  
**VERSUS** \* **COURT OF APPEAL**  
**JAZZ CASINO COMPANY,** \* **FOURTH CIRCUIT**  
**L.L.C. D/B/A HARRAH'S NEW** \* **STATE OF LOUISIANA**  
**ORLEANS, JOHN PAYNE AND** \*  
**DAVE TANNEN**

\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2005-2839, DIVISION "N-8"  
HONORABLE ETHEL SIMMS JULIEN, JUDGE

\* \* \* \* \*

**JAMES F. MCKAY III**  
**JUDGE**

\* \* \* \* \*

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge James F. McKay III)

**ARMSTRONG, C.J., CONCURS.**

ROBERT G. HARVEY, SR.  
LAW OFFICE OF ROBERT G. HARVEY, SR., APLC  
New Orleans, Louisiana 70119  
Counsel for Plaintiff/Appellant, Cassandra Parker

AMELIA W. KOCH  
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC  
New Orleans, Louisiana 70170

-and-

MICHAEL F. WEINER  
SANDRA VARNADO  
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC  
Mandeville, Louisiana 70471  
Counsel for Defendants/Appellees

**AFFIRMED**

The plaintiff/intervenor, Cassandra Parker, appeals the trial court's granting of the defendants', Jazz Casino Company, LLC d/b/a Harrah's New Orleans (Harrah's), John Payne and Dave Tannen, exception of no right of action in her attempt to intervene in the plaintiff's, John Cooper, lawsuit against the defendants. We affirm.

#### **FACTS AND PROCEDURAL HISTORY**

On June 14, 2004, a number of Harrah's employees participated in a poker tournament at Ernst Café. The event was not sanctioned by Harrah's and may have been illegal. The event was organized by Mark Staempfli and John Cooper. Cassandra Parker also played an active role in the operation of the tournament. Mr. Staempfli, Mr. Cooper, and Ms. Parker were all employed in Harrah's Poker Room.

Harrah's investigated the incident and concluded that because of their positions in Harrah's Poker Room, it was inappropriate and wrong for Mr. Staempfli, Mr. Cooper, and Ms. Parker to participate in the poker tournament at

Ernst Café. Mr. Staempfli chose to resign. Mr. Cooper and Ms. Parker were both terminated.

Mr. Cooper filed suit against Harrah's, John Payne, Harrah's general manager, and Dave Tannen, Harrah's director of table games, on March 3, 2005, contending that Harrah's discriminated against him on the basis of race by : (1) paying him less than others; (2) denying him a promotion; and (3) terminating his employment. Mr. Cooper contended that Harrah's stated reason for his termination was a pretext for race discrimination. Mr. Cooper also claimed that Mr. Tannen and Mr. Payne defamed him by alleged statements that he had stolen funds at a Harrah's poker tournament in January of 2004.

On May 16, 2005, Ms. Parker filed a petition for intervention in Mr. Cooper's lawsuit, naming Harrah's and Mr. Tannen and claiming that Harrah's terminated her employment based upon her race and that Harrah's stated reason for her termination was merely a pretext for racial discrimination. Harrah's and Mr. Tannen filed an exception of no right of action which the trial court granted on November 2, 2006 and dismissed Ms. Parker's petition without prejudice. On February 1, 2007, Ms. Parker filed a motion for new trial which the trial court denied on July 9, 2007. The trial court held that Ms. Parker's intervention was impermissible because: (1) a judgment in the principal action would have no direct impact on Ms. Parker's rights; and (2) Ms. Parker's claims would enlarge the scope of the principal action, which an intervention may not do. It is from this judgment that Ms. Parker now appeals.

## DISCUSSION

At issue in this appeal is whether the trial court erred in not allowing Ms. Parker to intervene in Mr. Cooper's lawsuit. Accordingly, we must examine whether Ms. Parker's discrimination claim would be directly impacted by the principal action and/or not enlarge the scope of the issues in the principal action.

A party seeking to intervene must establish "that the outcome of the suit will have a direct impact on that party's rights." Diefenthal v. Loungue Vue Found., 2002-1470, p.12 (La.App. 4 Cir. 1/7/04), 865 So.2d 863, 872. This Court has held that intervention is proper only where the judgment in the principal action will have *res judicata* effect and bar the intervenor's claim. Leger v. Kent, 2001-2241 (La.App. 4 Cir. 4/24/02), 817 So.2d 305. There must be complete identity of parties for there to be a *res judicata* effect on a claimant's claim. See Smith v. State, DOTD, 2004-1317, p.22 (La. 3/11/05), 899 So.2d 516, 529-530.

In the instant case, there is not complete identity of parties. Moreover, Ms. Parker's claim arises out of her own termination, while Mr. Cooper's claims arise out of his own termination, Harrah's alleged failure to promote him, the defamatory statements allegedly made about him, and Harrah's setting of his compensation. Ms. Parker has no interest in the damages Mr. Cooper seeks, nor does she sue about any aspect of Mr. Cooper's employment. Ms. Parker seeks her own damages against Harrah's and Mr. Tannen, based on her own termination and her claim that she was a victim of race discrimination. Although the terminations might be related as to cause, that does not lead to the conclusion that a ruling in

one governs the other. *See Leger* at 308-09. Ms. Parker's cause of action will not be adjudicated in Mr. Cooper's suit and any judgment in that case will have no impact on Ms. Parker's rights. A decision for or against Mr. Cooper can not have a *res judicata* effect on Ms. Parker's separate claim.

It is well settled that an intervenor takes the proceedings as she finds them, and she cannot substitute herself for one of the parties and urge matters that enlarge the issues or modify the basic procedural nature of the principal demand by way of intervention. Mike M. Marcello v. Louisiana Gaming Control Bd., 2004-0488, p.5 (La.App. 1 Cir. 5/6/05), 903 So.2d 545, 548. In the instant case, Ms. Parker does not seek to join in Mr. Cooper's claim that he was wrongfully terminated. Instead, she is asserting that she was wrongfully terminated. The new issue of whether Harrah's discriminated against Ms. Parker is not at the heart of the issues in Mr. Cooper's case. Ms. Parker's claim is new to Mr. Cooper's lawsuit. Accordingly, Ms. Parker's proper recourse would be to raise these separate issues in her own lawsuit. *See Rubion Trransfer & Storage Co. v. Louisiana Public Service Commission*, 123 So.2d 880, 883 (La. 1960).

## **CONCLUSION**

For the foregoing reasons, we find no error in the trial court's judgment. The trial court correctly found that Ms. Parker should not be allowed to intervene in the principal action. Accordingly, the judgment of the trial court is affirmed.

**AFFIRMED**