

NOT DESIGNATED FOR PUBLICATION

**TRACY RILEY AND THE
ROUGE HOUSE, LLC**

*

NO. 2016-CA-1297

*

VERSUS

COURT OF APPEAL

*

**ROBERT WATTERS, FRENCH
QUARTER MANAGEMENT
DISTRICT, ET AL.**

*

FOURTH CIRCUIT

STATE OF LOUISIANA

* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-05916, DIVISION "M"
Honorable Paulette R. Irons, Judge

* * * * *

Judge Marion F. Edwards, Pro Tempore

* * * * *

(Court composed of Judge Terri F. Love, Judge Marion F. Edwards, Pro Tempore,
Judge Terrel J. Broussard, Pro Tempore)

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IN PROPER PERSON

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**APPEAL DISMISSED WITHOUT
PREJUDICE; REMANDED**

SEPTEMBER 27, 2017

This is a defamation action. Appellants, Tracy Riley and the Rouge House, LLC (collectively “Plaintiffs”), filed a suit for damages against Robert Watters, French Quarter Management District, Adrience M. Monroe, Daniel Altenloh, Diana Canahuati, Edward Shedlock, Louis Faust, Martin Doherty, Rami Freij, Jeremy DeBlieux, Lydia Frazier, Brian Furness, French Quarter Business Association, and Robert Rizzuto (collectively “Defendants”). From the trial court’s September 29, 2016 judgment granting Defendants’ Special Motion to Strike Under La. C.C.P. art. 971, Plaintiffs appeal. For the reasons that follow, we find that the judgment on appeal lacks necessary decretal language and is, thus, not a valid, final, appealable judgment. We therefore dismiss the appeal without prejudice and remand this matter to the trial court so that a valid, final, judgment may be rendered.

FACTUAL AND PROCEDURAL BACKGROUND

This defamation action arises out of the denial of Plaintiffs’ application for an alcoholic beverage permit by the Louisiana Office of Alcohol and Tobacco

Control (“ATC”). On July 3, 2013, Ms. Riley obtained a Special Events Permit from the City of New Orleans for July 4-7, 2013, to celebrate “Essence Fest with family and friends” at 300 Decatur Street in the French Quarter in New Orleans, Louisiana.¹ Thereafter, the ATC received complaints that Plaintiffs were selling and/or serving alcohol without a valid permit and opened an investigation.

On August 2, 2013, Plaintiffs applied for a Class A Restaurant Beer and Liquor permit. In response, many of the Defendants, who either worked or lived in the French Quarter area, submitted to the ATC several signed affidavit petitions in opposition to Plaintiffs’ application for an alcohol beverage permit.² On September 4, 2013, the ATC conducted a public hearing at which some of the Defendants testified. In a letter dated September 16, 2013, the ATC denied Plaintiffs’ Class A Restaurant Beer and Liquor permit.

On June 10, 2016, Plaintiffs filed the present suit against Defendants alleging that Defendants’ affidavits and testimony in opposition to their application for a permit were defamatory. On August 11, 2016, Defendants filed a Special Motion to Strike under La. C.C.P. art. 971 and Peremptory Exception Raising the Objections of Prescription and No Cause of Action. A hearing on Defendants’ motion and exceptions was held on September 7, 2016. On September 29, 2016, the trial court issued a judgment, with written reasons, granting Defendants’

¹ The permit included the following restrictions: “No loitering shall be allowed. There shall be ‘to-go’ cups. All music shall be contained inside. All windows and doors shall be closed. Applicant shall prohibit ‘lines’ of people waiting to get in.”

² Plaintiffs appealed the ATC’s denial of the permit. That issue, however, is not before this court in the present appeal.

motion to strike and denying Defendants' exceptions of prescription and of no cause of action as moot. This appeal followed.

DISCUSSION

It is well-settled that appellate courts cannot determine the merits of an appeal unless its jurisdiction is properly invoked by a valid final judgment.³ A valid final judgment is one that determines the merits in whole or in part and is identified as such by appropriate language.⁴ “A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied.”⁵ “The result being decreed must be spelled out in lucid, unmistakable language. The quality of definiteness is essential to a proper judgment.”⁶ Furthermore, the specific relief granted or denied should be determinable from the judgment itself without reference to an extrinsic source such as pleadings or reasons for judgment.⁷

³ *Freeman v. Phillips 66 Co.*, 16-0247, p. 2 (La. App. 4 Cir. 12/21/16), 208 So.3d 437, 440 (citing *Tsegaye v. City of New Orleans*, 15-0676, p. 3 (La. App. 4 Cir. 12/18/15), 183 So.3d 705, 710, writ denied, 16-0119 (La. 3/4/16), 188 So.3d 1064); see also *Moon v. City of New Orleans*, 15-1092, 15-1093, p. 5 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425. *Bd. of Supervisors of La. State Univ. and Agric. and Mech. College v. Mid City Holdings, L.L.C.*, 14-0506, p. 2 (La. App. 4 Cir. 10/15/14), 151 So.3d 908, 910.

⁴ La. C.C.P. arts. 1841 and 1918.

⁵ *Mid-City Holdings*, 14-0506 at pp. 2-3, 151 So.3d at 910 (quoting *Palumbo v. Shapiro*, 11-0769, p. 5 (La. App. 4 Cir. 12/14/11), 81 So.3d 923, 927).

⁶ *Moon*, 15-1092 at 15- 093, p. 6, 190 So.3d at 425.

⁷ *Mid-City Holdings*, 14-0506 at pp. 3, 151 So.3d at 910 (quoting *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Tech., Inc.*, 10-477, p. 13 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 916).

In this matter, the September 29, 2016 judgment from which Plaintiffs appeal states as follows:

This matter came before this Court on September 7, 2016, on Defendant's [sic] special motion to strike; exception of prescription; and exception of no cause of action.

At that time, the Court took these motions under advisement.

After considering the law, pleadings, memoranda, and arguments of counsel, the Court finds that the Defendant's [sic] motion to strike is granted. Therefore, the Court finds that the exceptions of prescription and no cause of action are moot.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant's [sic] special motion to strike is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant's [sic] exception of prescription and exception of no cause of action are MOOT.

We find that this judgment lacks definitive decretal language necessary for the exercise of our appellate jurisdiction. We cannot determine from the face of the judgment whether the granting of Defendants' motion to strike results in the dismissal of all or only some of Plaintiffs' claims. Furthermore, the judgment fails to specifically identify the parties in favor of and against whom the ruling is ordered. Although the judgment and written reasons suggests that the trial court intended to dismiss all of Plaintiffs' claims against Defendants, such relief was not specifically granted in the written judgment. Additionally, any determination of the rights of the parties and the merits of the case must be evident from the language of the judgment without reference to other documents in the record.⁸ In the absence of

⁸ See *Weatherly v. Sanchez*, 15-0534, p. 5 n. 4 (La. App. 4 Cir. 11/25/15), 181 So.3d 218, 221-22 ("Our review of the trial judge's final action is based upon the written judgment and not upon any dispositions made in reasons given, whether the reasons are oral or written.").

decretal language specifying the relief granted and identifying the parties in favor of and against whom the ruling is ordered, the September 29, 2016 judgment cannot be considered a final, appealable judgment. This court, thus, lacks jurisdiction to consider the merits of Plaintiffs' appeal.

On August 14, 2017, this court issued an order directing Plaintiffs to show cause within seven days why the pending appeal should not be dismissed for lack of appellate jurisdiction. On August 23, 2017, Plaintiffs filed a response to this court's order; the response, however, was untimely. Furthermore, Plaintiffs' failed to request that this court exercise its supervisory jurisdiction.

When confronted with the lack of appellate jurisdiction, this court may, in its discretion, exercise its supervisory jurisdiction and convert an appeal to an application for supervisory writs.⁹ In *Mid City Holdings*, this court noted the following:

On occasion, when we are confronted with a judgment in an appellate context that is not final and appealable, we are authorized to exercise our discretion to convert that appeal to an application for supervisory review. *See Stelluto v. Stelluto*, 05-0074, p. 7 (La. 6/29/05); 914 So.2d 34, 39 (“[T]he decision to convert an appeal to an application for supervisory writs is within the discretion of the appellate courts.”). Judicial efficiency and fundamental fairness to the litigants can dictate that the merits of an application for supervisory writs be decided especially when, as here, a decision by us will terminate the litigation. *See Herlitz Constr. Co., Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981) (per curiam). And we have in similar circumstances ordinarily but not necessarily “converted ‘appeals’ of non-appealable judgments to applications for supervisory writs in those cases in which the motions for appeal were filed within the thirty-day period allowed for the filing of applications for supervisory writs.” *Favrot v. Favrot*, 10-0986, pp. 5-6 (La. App. 4

⁹ *Freeman*, 16-0247 at p. 3, 208 So.3d at 441; *see Mid City Holdings*, 14-0506 at pp. 3-4, 151 So.3d at 911.

Cir. 2/9/11); 68 So.3d 1099, 1104 (collecting cases). *See also* Uniform Rules, Courts of Appeal, Rule 4-3.¹⁰

Furthermore, in *Input/Output Marine, supra*, the appellate court found that a judgment without decretal language was fatally defective “and for that reason, there [was] no judgment in the case.”¹¹ Given the indeterminate language of the trial court’s judgment coupled with Plaintiffs’ untimely response to this court’s show cause order and failure to request that this court exercise its supervisory jurisdiction supervisory jurisdiction, we decline to exercise our discretion to convert this appeal to an application for supervisory writ.

As this court lacks jurisdiction to consider the merits of the appeal in the absence of a final appealable judgment, we dismiss the appeal, without prejudice, and remand the matter for further proceedings. Once a valid final judgment is signed, a new appeal may be filed with this court.

DECREE

For the forgoing reasons, we dismiss the instant appeal without prejudice. This matter is remanded to the trial court for further proceedings consistent with this opinion.

APPEAL DISMISSED WITHOUT PREJUDICE; REMANDED

¹⁰ *Mid City Holdings*, 14-0506 at pp. 3-4, 151 So.3d at 911.

¹¹ *Input/Output Marine*, 10-477 at p. 14, 52 So.3d at 916.