

MARIANA OROZCO	*	NO. 2017-CA-0656
(FILIBERTO SERNA, JR.	*	
DEC'D)	*	
 VERSUS	*	COURT OF APPEAL
 ARIES BUILDING SYSTEMS,	*	FOURTH CIRCUIT
INC. AND FILSER	*	
CONSTRUCTION		STATE OF LOUISIANA

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APPEAL FROM
THE OFFICE OF WORKERS' COMPENSATION
NO. 2014-05423, DISTRICT "SEVEN"
Honorable Shannon Bruno Bishop, Workers Compensation Judge

* * * * *

Judge Daniel L. Dysart

* * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Daniel L. Dysart, Judge Tiffany G. Chase,)

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APPEAL DISMISSED WITHOUT PREJUDICE; REMANDED

JANUARY 24, 2018

This workers' compensation matter, arising out of the death of Filiberto Serna, Jr. (the "Decedent"), was previously before this Court following a trial before an Office of Workers' Compensation ("OWC") judge. In *Orozco v. Aries Bldg. Sys., Inc.*, 16-0187 (La. App. 4 Cir. 9/28/16), 202 So.3d 1018, 1021, *writ denied*, 16-1949 (La. 12/16/16), 212 So.3d 1173, this Court set forth the salient facts leading to the litigation as follows:

On September 21, 2013, Decedent was killed in a construction accident while attempting to move a series of trailers located at a United States Navy facility in Belle Chasse, Louisiana. At the time of the accident, Decedent was being paid by Filser Construction ("Filser"), which was a subcontractor of Aries [Building Services, Inc.].

On August 15, 2014, [Mariana] Orozco ["Ms. Orozco"] filed a disputed claim for compensation, Form LDOL-WC-1008 (the "disputed claim" or "1008"), against Filser and Aries, alleging that Orozco was the wife of Decedent and was entitled to bring a claim for death benefits against both of Decedent's alleged employers. Decedent's father Filiberto Serna, Sr. ("Serna, Sr."), the owner of Filser and Aries, filed separate responsive pleadings to the 1008 on behalf of Filser and Aries, each contending that Decedent was performing work as an independent contractor and was not their employee.

Id., 16-0187, pp. 1-2, 202 So.3d at 1021.¹

The *Orozco* Court framed the issue before it as "whether Decedent was a business partner of Filser under circumstances that prevent Decedent from qualifying as an employee under the Louisiana Workers' Compensation Act." *Id.*, 16-0187, p. 5, 202 So.3d at 1023. The *Orozco* Court first found that the OWC judge erred in concluding that Decedent was a partner in Filser, noting that "record

¹ The claim was amended on November 13, 2016 to add Ms. Orozco and Decedent's minor child, Aggie, as a claimant. *Id.*, 16-0187, p. 2, 202 So.3d at 1021.

evidence . . . [did] not provide a sufficient factual basis to support” this finding. *Id.*, 16-0187, p. 8, 202 So.3d at 1024. The Court then considered “whether Decedent qualified as an employee under the Louisiana Workers’ Compensation Act.” *Id.*, 16-0187, p. 10, 202 So.3d at 1025. Noting that our workers’ compensation laws include a rebuttable presumption that a “person rendering service for another in any trades, businesses or occupations covered by this Chapter is . . . an employee,” *Id.* (quoting La. R.S. 23:1044), this Court found that the OWC judge:

. . . erred as a matter of law in failing to determine whether the statutory presumption of employment was rebutted. Having failed to determine under the correct standard of law whether Decedent was an employee, the OWC did not properly reach the issues of whether Decedent was an independent contractor performing manual labor, borrowed employee, or statutory employee or any other employment status that would entitle the Claimants to workers’ compensation benefits, if any.

Id., 16-0187, pp. 12-13. 202 So.3d at 1026. The Court, noting the fact intensive nature of these issues, as well as the requirement of credibility determinations, remanded the case to the OWC judge “for adjudication as to Decedent’s employment relationship to both Filser and Aries and a determination of any corresponding benefits that may be due.” *Id.*, 16-0187, p. 14, 202 So.3d at 1027.

On remand and over the objection of Ms. Orozco, Aries filed a Motion to Set Trial on Remand for Argument Only. By order dated January 19, 2017, the trial court granted the motion, setting a new trial for argument only.² The matter proceeded by argument before the OWC judge on March 16, 2017. Thereafter, the parties filed post-trial briefs and various motions not pertinent to this appeal. On

² No application for a supervisory writ of review was taken with respect to the trial court’s ruling that the matter would be heard on argument, alone.

June 19, 2017, the OWC judge rendered its judgment.³ The judgment states the following:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Claimants, were unable to prove that Filiberto Serna, Jr. was an employee of Filsner Construction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Claimants, were unable to prove that Filiberto Serna, Jr. was the statutory employee of Aries Building Systems, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Filiberto Serna, Jr. was an independent contractor who was subcontracted by Filsner Construction to perform a job.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Claimants were unable to prove that Filiberto Serna, Jr. was an independent contractor who spent a substantial part of his work in manual labor in carrying out the terms of his contract with the principal and that the work he performed was a part of the principal's trade business or occupation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby rendered in favor of employer, Aries Building Systems, Inc. and against claimants with prejudice, each party to bear its own costs.

DISCUSSION

This Court has consistently noted that appellate courts have a duty, at the outset, of determining, *sua sponte*, whether a case is properly before it and whether subject matter jurisdiction exists. *Neighbors First for Bywater, Inc. v. City of New Orleans/ New Orleans City Council*, 17-0256, p. 4 (La. App. 4 Cir. 12/13/17), ---

³ We note that the judgment states that the “cause came to be heard on the 16th day of March, 2016, pursuant to a Trial on Remand from the Fourth Circuit Court of Appeal.” (Emphasis added). This is clearly a typographical error, as the record reflects that the hearing was held on March 16, 2017.

So.3d ----, ---- 2017 WL 6350339 at *9, citing *Moon v. City of New Orleans*, 2015-1092, 2015-1093, p. 5 (La. App. 4 Cir. 3/16/16), 190 So.3d 422, 425. *See also, Freeman v. Phillips 66 Co.*, 16-0247, p. 2 (La. App. 4 Cir. 12/21/16), 208 So.3d 437, 440; *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. We have also consistently noted that, in order for a final judgment to be valid, it must determine the merits of a case, in whole or in part, and must be identified by appropriate language. *In re Med. Review Panel of Hurst*, 16-0934, p. 2 (La. App. 4 Cir. 5/3/17), 220 So.3d 121, 124, *writ denied*, 17-0803 (La. 9/22/17), 228 So.3d 744. “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.**” *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)(emphasis added); *In re Med. Review Panel of Hurst*, 16-0934, p. 1, 220 So.3d at 124, citing *Moon*, 15-1092, pp. 5-6, 190 So.3d at 425.

This Court also recently reiterated that “the decree dictates the decision, and it must be spelled out in lucid, unmistakable language.” *Wells One Investments, LLC v. City of New Orleans*, 17-0415, p. 2 (La. App. 4 Cir. 11/2/17), --- So.3d ----, ---- 2017 WL 4988660 at *4. “The specific relief granted should be determinable from [a] judgment without reference to an extrinsic source such as pleadings or reasons for judgment.” *Mid City Holdings*, 14-0506 at p. 3, 151 So.3d at 916.

In this matter, the OWC court’s judgment makes findings of fact with respect to Decedent’s capacity at the time of his death. While the judgment is rendered “in favor of employer, Aries,” it fails to “spell out in lucid, unmistakable

language” what relief is granted. Likewise, by identifying Aries as “employer,” the judgment appears to contradict other findings within that judgment; that is, while the judgment states that it was not proven that Decedent “was the statutory employee of Aries,” the judgment suggests that Aries may have been an “employer.”⁴

On this basis, we find that the judgment cannot be considered a valid final appealable judgment, and this Court lacks jurisdiction to consider the merits of the appeal. Accordingly, we dismiss the appeal without prejudice, and remand the matter to the district court for further proceedings.

APPEAL DISMISSED WITHOUT PREJUDICE; REMANDED

⁴ Our jurisprudence reflects that reasons for judgment do not form part of the judgment, *see, e.g.*, *State through Dep't of Children & Family Servs. Child Support Enf't v. Knapp*, 16-0979, p. 24 (La. App. 4 Cir. 4/12/17), 216 So.3d 130, 146, and as such, we do not refer to reasons for judgment in determining whether a judgment is final. We note though, that the OWC court’s written reasons for judgment do not expound any further on the relief being granted and merely restate the findings contained in the judgment.