NOT DESIGNATED FOR PUBLICATION

RAMON T. JACKSON	*	**NO. 2017-CA-0898**
VERSUS	*	
		COURT OF APPEAL
DEPARTMENT OF HEALTH AND HOSPITALS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-11159, DIVISION "B-1"
Honorable Rachael Johnson,
* * * * * *
Judge Paula A. Brown
* * * * * *

(Court composed of Judge Edwin A. Lombard, Judge Daniel L. Dysart, Judge Paula A. Brown)

Ramon N. Jackson
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PLAINTIFF/APPELLEE/IN PROPER PERSON

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REVERSED; REMANDED
March 23, 2018

This appeal arises out a default judgment entered by the district court against Appellant, the "Louisiana Department of Health" ("LDH")[1] and in favor of Appellee, Ramon Jackson ("Mr. Jackson").[2]

For the reasons set forth below, the district court's default judgment is reversed and the matter remanded to the district court for further proceedings.

PROCEDURAL HISTORY

In November 2015, Mr. Jackson filed in the district court a "Petition for Acknowledgment of Paternity" ("Petition"). In the Petition, Mr. Jackson prayed the district court acknowledge that Charlie Morris, who was deceased, was his biological father. Mr. Jackson named LDH as a defendant. Mr. Jackson explained that he attempted many times to comply with LDH's requirements to change the name of his birth father on his birth certificate and to change his name to Ramon N. Morris, but he had been refused by LDH. Mr. Jackson claimed LDH required him to furnish a court order to complete the process. Mr. Jackson prayed that a judgment be issued in his favor, "so that Defendant will honor paternity so that the necessary changes and corrections may be applied to resolve the matter."

Mr. Jackson requested the Petition be served on LDH. The record before this court indicates the Petition, along with the attached exhibits, was served by the sheriff's office on December 10, 2015, on "Michelle" in the legal department of LDH.

[1] The Louisiana Department of Health and Hospitals was renamed the Louisiana Department of Health. 2016 La. Acts 300, § 1, eff. June 2, 2016, amending La. R.S. 36:251.

[2] Appellee refers to himself as "Ramon N. Jackson" and Appellant refers to Appellee as "Ramon T. Jackson." For purposes of this opinion, Appellee will be referred to as "Ramon Jackson."

After no answer was filed by LDH, Mr. Jackson filed in the district court a "Motion for Default" in February 2016. The district court entered a preliminary default against LDH on February 18, 2016. Although service was requested on the preliminary default, no proof of service is contained in the appellate record.

On September 14, 2017, the district court entered a "Judgment on Petition for Acknowledgment of Paternity" confirming the default judgment.[3]

LDH filed a motion and order for a suspensive appeal in the district court on September 25, 2017, which was granted. This appeal follows.

STANDARD OF REVIEW

In *State ex rel. Dep't of Child & Family Servs. v. Dennis,* 11-1736, pp. 2-3 (La.App. 4 Cir. 4/18/12), 90 So.3d 1206, 1208, this Court set forth the applicable law and standard of review for a default judgment and opined:

> Default judgments are governed by La.Code Civ. Proc. art. 1701 et seq. That provision states that "[i]f a defendant in the principal or incidental demand fails to answer within the time prescribed by law, judgment by default may be answered against him." La.Code Civ. Proc. art. 1701. "A judgment of default must be confirmed by proof of the demand sufficient to establish a prima facie case." La.Code Civ. Proc. art. 1702.
>
> "In order to obtain a reversal of a default judgment appealed from, or to obtain a remand, defendant must overcome the presumption that the judgment was rendered upon sufficient evidence and that it is correct." *Ascension Builders, Inc. v. Jumonville,* 263

[3] The judgment provided in pertinent part:

> It is therefore ORDERED AND ADJUDGED:
>
> I. PATERNITY IS ACKNOWLEGDE [sic].
>
> II. FATHER'S NAME. Charlie Morris is established on birth certificate and documents as Petitioner's Father.
>
> III. PETITIONER'S NAME. Ramon N. Jackson is able to take on Father's Last Name.
>
> Present Name: Ramon N. Jackson
> Change: Ramon N. Morris by which Petitioner shall hereafter be known by.

So.2d 875, 262 La. 519 (1972). This presumption, however, does not attach when the record upon which the judgment is rendered indicates otherwise. *Id.* at 878; *see also Arias v. Stolthaven New Orleans, L.L.C.,*2008–1111, p.8 (La.5/5/09), 9 So.3d 815, 820.

> "In reviewing the confirmation of a default judgment, 'an appellate court is restricted solely to determining whether the record contains sufficient evidence to support a prima facie case.'" *McIntyre v. Sussman,* 2010–1281, p. 5 (La.App. 4 Cir. 10/26/11), 76 So.3d 1257, 1261, *quoting Gresham v. Prod. Mgmt., Inc.,* 2002–1228, p. 3 (La.App. 4 Cir. 2/11/04), 868 So.2d 171, 175. "This determination is a factual one governed by the manifest error standard of review." *McIntyre,* p. 5, 76 So.3d at 1261, *quoting Arias v. Stolthaven New Orleans, L.L.C.,* 08–1111, p. 5 (La.5/5/09), 9 So.3d 815, 818. "When the court of appeal finds that a reversible legal error or manifest error of material fact was made in the trial court, the court of appeal is required to determine the facts *de novo* from the entire record and render a judgment on the merits." *McIntyre,* p. 5, 76 So.3d at 1261, *quoting Arias,* 2008–1111, p. 5, 9 So.3d at 818.

DISCUSSION

LDH raises two assignments of error, which we will address separately.

First, LDH asserts the district court erred in confirming the default judgment. Specifically, it contends that Mr. Jackson failed to follow the proper procedure to attain a default judgment against a department or agency of the State of Louisiana, such as the Louisiana Department of Health, as required by La. C.C.P. art. 1704(A).

Louisiana Code Civil Procedure Article 1704(A) provides:[4]

[4] Effective August 1, 2017, the legislature amended the terminology of this article. The comments to the amendment provide:

> This Article was been amended to substitute "final default judgment" for "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. A "judgment of default" or "judgment by default" is now referred to as a "preliminary default." This amendment is intended to be stylistic only.

> Notwithstanding any other provision of law to the contrary, prior to confirmation of a preliminary default against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, a certified copy of the minute entry constituting the preliminary default entered pursuant to Article 1701, together with a certified copy of the petition or other demand, shall be sent by the plaintiff or his counsel to the attorney general by registered or certified mail, or shall be served by the sheriff personally upon the attorney general or the first assistant attorney general at the office of the attorney general. If the minute entry and the petition are served on the attorney general by mail, the person mailing such items shall execute and file in the record an affidavit stating that these items have been enclosed in an envelope properly addressed to the attorney general with sufficient postage affixed, and stating the date on which such envelope was deposited in the United States mail. In addition the return receipt shall be attached to the affidavit which was filed in the record.

In *Casbon v. State, Appeals Tribunal for Office of Regulatory Serv.,* 03-1951 (La.App. 4 Cir. 6/9/04), 877 So.2d 1026, which is cited by LDH, this Court held the language in La. C.C.P. art. 1704 is clear and there are no exceptions. This Court explained:

> The language of La. C.C.P. art. 1704 provides that prior to confirming a default judgment against a state agency, the Attorney General must be served with the minute entry of the default hearing and provided with a certified copy of the petition. *Ubosi v. Sowela Technical Institute,* 584 So.2d 340 (La.App. 3rd Cir.1991); *Humphries v. Louisiana Dept. of Public Works, Div. Of Transp. And Dev.,* 498 So.2d 297 (La.App. 3rd Cir.1986); *Bonnette v. Caldwell Parish Police Jury,* 415 So.2d 247 (La.App. 2nd Cir.1982). When a party has failed to comply with La. C.C.P. art. 1704, the courts have stated that, "the language of the statute is clear and unequivocal and admits of no exceptions. It is clear that the article was added to the Code of Civil Procedure to afford the state additional protection against the rendition of default judgments against it . . ." *Bonnette,* 415 So.2d at 248-249.

Id., 03-1951, p. 2, 877 So.2d at 1027.

Mr. Jackson counters that Article 1704 is inapplicable in this case because the attorney general and his office have no vested right in his request to change his

birth certificate. Mr. Jackson urges LDH has a legal department to handle these matters.

Additionally, Mr. Jackson, a *pro se* litigant, asserts that there is no "logical reason for the plaintiff . . . to believe he was required to seek service against the Attorney General when he was instructed by the representative from the Department of Health and Hospitals Vital Records to complete the petition and the judgment against the Department of Health and Hospitals, which he complied."

Although we sympathize with Mr. Jackson, who strived to follow the instructions given to him by LDH to no avail, the law must be followed by Mr. Jackson. In *In re Med. Review Panel Claim of Scott*, 16-0145, pp. 14-15 (La.App. 4 Cir. 12/14/16), 206 So.3d 1049, 1058, this Court recognized that *pro se* plaintiffs should generally be given more latitude than plaintiffs represented by counsel "because they lack formal training in the law and rules of procedure." However, this Court explained:

> Nevertheless, a *pro se* litigant assumes responsibility for her lack of knowledge of the law, and must carry her burden of proof to be entitled to relief. *See Food Perfect, Inc. v. United Fire and Cas. Co.*, 12–2492, p. 2 (La. 1/18/13), 106 So.3d 107, 108; *see also Albe*, at pp. 13–14, 150 So.3d at 370 (recognizing that while ignorance of facts may, in certain situations, prevent running of prescription, ignorance of the law will not).

*Id.,*16-0145, p. 14, 206 So.3d at 1058.

Review of the record shows that LDH, a department of the state, was served with Mr. Jackson's petition, through its legal department, by the sheriff's office on December 10, 2015. A person named "Michelle" accepted service on behalf of the state's legal department. After securing a preliminary default, the record is devoid of any evidence to reflect that Mr. Jackson complied with the mandated service requirements set forth in Article 1704. As set forth by this court in *Casbon,* there

is no exception to the requirements of Article 1704. Consequently, the confirmation of the default judgment by the district court was improper.

Accordingly, the district court's judgment is reversed, and the matter remanded to the district court.

In its second assignment of error, LDH requests this Court to recognize, *ex proprio motu*, that Mr. Jackson has no right of action, pursuant to La. C.C.P. art. 927(B), against LDH. LDH alleges in pertinent part:

> In order for the appellee to be vested with a right of action to seek an order compelling the Registrar of Vital Records to make his requested birth certificate amendment, he should be required to first obtain legal filiation, through a separate proceeding, to the man he alleges is his father. The record indicates that this has not been done in this case.

Louisiana Code Civil Procedure 927(B) provides in part: "The nonjoinder of a party, peremption, res judicata, the failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit, or discharge in bankruptcy, may be noticed by either the trial or appellate court on its own motion." Additionally, La. C.C.P. art. 2163 states that the appellate court may consider the peremptory exception filed for the first time in that court. In *States Masonry, Inc. v. J.A. Jones Const. Co.,* 507 So.2d 198, 207 (La. 1987), the Supreme Court explained that Article 2163 makes consideration of such an exception discretionary with the appellate court. Because the matter is being remanded to the district court, we decline to exercise our discretion to address this exception.

CONCLUSION

For the reasons stated herein, the default judgment granted by the district court in favor of Mr. Jackson is reversed and the matter remanded for further proceedings.

REVERSED; REMANDED