**NOT DESIGATED FOR PUBLICATION**

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| **JAMES H. HOOPER, JR. AND PATSY SPENCER HOOPER** | * | **NO. 2018-CA-0227** |
| | * | |
| **VERSUS** | | **COURT OF APPEAL** |
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| **HERO LANDS COMPANY, ALLEN HERO, AND THE PARISH OF PLAQUEMINES** | * | **FOURTH CIRCUIT** |
| | | **STATE OF LOUISIANA** |

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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 59-740, DIVISION "A"
Honorable Kevin D. Conner, Judge
* * * * * *
**Judge Dale N. Atkins**
* * * * * *
(Court composed of Judge Daniel L. Dysart, Judge Tiffany G. Chase, Judge Dale N. Atkins)

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**APPEAL DISMISSED; REMANDED**
**DECEMBER 19, 2018**

Plaintiffs, Patsy and James Hooper ("Plaintiffs"), seek review of three judgments issued from the 25th Judicial District Court in Plaquemines Parish, Louisiana. For the reasons that follow, we find that the three judgments are not final appealable judgments. Accordingly, we dismiss the appeal without prejudice and remand this matter to the district court.

This litigation originated when Plaintiffs sued Allen Hero and Hero Lands Company ("Hero"), Hugh McCurdy, III ("McCurdy"), and Plaquemines Parish Government ("PPG") (collectively "Defendants"), for trespass and asserted a possessory action and a boundary action along with their request for injunctive relief. This Court, in *Hooper v. Hero Lands Co.*, 2015-0929 (La. App. 4 Cir. 3/30/16), 216 So. 3d 965, found that Plaintiffs had no right of possession over the property in dispute herein. The Court affirmed the district court's judgment finding that the Plaintiffs were not the owners of the entirety of the disputed property and found that the district court had utilized the proper method to fix the boundary between the property of the Plaintiffs and the property of Hero. However, this Court remanded the matter to the district court to provide an accurate legal description of the properties following the fixing of the boundaries.

In connection with that remand, the district court appointed a surveyor to provide legal descriptions consistent with its determination of the boundary lines. The district court next ordered the parties to show cause why the property description provided by the surveyor should not be accepted. After a contradictory hearing, the district court issued a July 7, 2017 judgment finding that the surveyor's legal property description was correct. On October 3, 2017, the district court also signed an Order purporting to designate two prior judgments of the district court dated November 25, 2013 and December 3, 2013, respectively, as final and appealable judgments. Those judgments granted partial summary judgments in favor of McCurdy (the original surveyor) and PPG on Hooper's claim for treble damages based on La. R.S. 3:4278.1. The 2013 judgments were originally challenged on appeal in *Hooper*, 2015-0929, p. 3 n.1 (La. App. 4th Cir. 3/30/16), 216 So. 3d at 969 n.1, but were dismissed by this Court because those judgments were not designated as final for purposes of appeal. *See* La. C.C.P. arts. 966 €; 1915 (A)(3) and (B).

After the instant appeal was filed, this Court *sua sponte* noted that each of these three judgments may not be final and appealable. The Court thus continued the scheduled oral argument, and ordered the parties to submit supplemental briefing. We now discuss the applicable law and each judgment in turn.

As an appellate court, we must first determine whether we have jurisdiction to review this appeal, even when the parties do not raise the issue. *Moon v. City of New Orleans*, 2015–1092, 2015-1093, p. 5 (La. App. 4 Cir. 3/16/16), 190 So. 3d 422, 425. As this Court explained in *Moulton v. Stewart Enterprises, Inc.*, 2017-0243, 2017-0244, pp. 3-7 (La. App. 4 Cir. 8/3/17), 226 So. 3d 569, 571-73:

An appellate court cannot determine the merits of an appeal unless its

subject matter jurisdiction is properly invoked by a valid final judgment. *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 La. C.C.P. art. 2083(A) . . . .

The jurisprudence has required that a valid final judgment be precise, definite, and certain. *Input/Output Marine Sys., Inc. v. Wilson Greatbatch, Techs., Inc.*, 10-477, p. 12 (La. App. 5 Cir. 10/29/10), 52 So. 3d 909, 915. "The decree alone indicates the decision. The result decreed must be spelled out in lucid, unmistakable language. The quality of definiteness is essential to a proper judgment." *Input/Output Marine*, 10–477 at p. 13, 52 So. 3d at 916 (footnote and internal citations omitted).

In addition to requiring that a judgment be precise, definite, and certain, the jurisprudence has required that a valid final judgment be self-contained; stated otherwise, "[o]ne must be able to determine from the judgment itself — without any reference to an extrinsic source — the specific relief granted." *Baker Ready Mix, LLC v. Crown Roofing Servs., Inc.*, 15-0565, p. 2, n.1 (La. App. 4 Cir. 12/16/15), 183 So. 3d 622, 623 (citing *Bd. of Supervisors of La. State Univ. and Agric. and Mech. Coll. v. Mid City Holdings, L.L.C.*, 14-0506, p. 3 (La. App. 4 Cir. 10/15/14), 151 So. 3d 908, 910). "The specific relief granted should be determinable from the judgment without reference to an extrinsic source such as pleadings or reasons for judgment." *Input/Output Marine*, 10-477, p. 13, 52 So. 3d at 916. "To be legally enforceable as a valid judgment, a third person should be able to determine from the judgment the identity of the party cast and the precise amount owed without reference to other documents in the record." *Standard Ins. Co. v. Spottsville*, 16-0020, p. 4 (La. App. 1 Cir. 9/16/16), 204 So. 3d 253, 256 (citing *Conley v. Plantation Management Co., L.L.C.*, 12-1510, pp. 7-8 (La. App. 1 Cir. 5/6/13), 117 So. 3d 542, 547).

Another requirement that the jurisprudence has imposed is that a valid final judgment contain decretal language. " 'Decretal language is defined as the portion of a court's judgment or order that officially states ('decrees') what the court is ordering and generally starts with the formula 'It is hereby ordered, adjudged, and decreed that ....' " *Freeman*, 16-0247 at p. 2, 208 So. 3d at 440 (quoting *Jones v. Stewart*, 16-0329, p. 5 (La. App. 4 Cir. 10/5/16), 203 So. 3d 384, 387). To comply with the decretal language requirement, a judgment must contain the following three elements: (i) it "must name the party in favor of whom the ruling is ordered"; (ii) it must name "the party against whom the ruling is ordered"; and (iii) it must state "the relief that is granted or denied." *Baker Ready Mix*, 15-0565, at p. 2, n. 1, 183 So. 3d at 623; *Input/Output*, 10-477 at p. 13, 52 So. 3d at 916 . . .

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The jurisprudence has held that "[a] judgment that simply states that a defendant's motion for summary judgment is granted, is defective and cannot be considered a final judgment." Eldon E. Fallon, LA. PRAC. TRIAL HANDBOOK FOR LA. LAWYERS § 34:1 (3d ed. 2017) (citing *Contreras v. Vesper*, 16-318, p. 3 (La. App. 5 Cir. 10/19/16), 202 So. 3d 1186, 1188-89); *Gaten v. Tangipahoa Parish School System*, 11-1133, pp. 3-4 (La. App. 1 Cir. 3/23/12), 91 So. 3d 1073, 1074 (finding that a judgment which simply states that a "Motion for Summary Judgment is Granted," without decretal language disposing of or dismissing the claims, is defective and cannot be considered as a "final judgment"); *In re Med. Review Panel of Williams v. EMSA Louisiana, Inc.*, 15-1178, p. 2 (La. App. 4 Cir. 10/21/16), 203 So. 3d 419, 423 (holding that the judgment providing that "It is ordered, adjudged and decreed that the Motion for Summary Judgment filed herein on behalf of Defendant, PCF is granted" lacked the required decretal language and citing *Tomlinson v. Landmark Am. Ins. Co.*, 15-0276, p. 2 (La. App. 4 Cir. 3/23/16), 192 So. 3d 153, 156). As the court in *Contreras* explained, "one must refer to the motion for summary judgment and assume that the relief granted by the judgment is that prayed for in the motion. ... [A] judgment cannot require reference to extrinsic documents or pleadings in order to discern the court's ruling." 16-318 at p. 2, 202 So. 3d at 1188. . . .

The July 7, 2017 Judgment

Considering first the district court's judgment dated July 7, 2017, that judgment states, in pertinent part:

> The Court, upon considering the law, the briefs and the arguments of counsel, and finding the law and the evidence to be in favor of the parties hereinafter specified, renders judgment as follows:
>
> IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT that *the proposed property description delineating the boundary between the Hero property and the Hooper property, submitted to the Court by Walter Stone, PLS of the surveying firm Gandolfo, Kuhn L.L.C. by letter dated March 23, 2017*, is correct and complies with the Fourth Circuit Court of Appeal's March 30, 2016 remand order and with La. C.C.P. art. 1919.
>
> ***
>
> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED BY THE COURT that *the "Amended Judgment" submitted by defendants, filed in the record on June 29, 2017*, satisfies the order of the Fourth Circuit Court of Appeal, *and that it be made the judgment of this*

> *Court* in compliance with the March 30, 2016 order of the Fourth Circuit.

(emphasis added).

Applying the legal principles discussed above, we find that the district court's judgment fails to satisfy the jurisprudential requirements for a valid final judgment. Specifically, the italicized language in the two paragraphs of the judgment set forth above specifically reference extrinsic documents, namely the property description submitted to the court by the surveyor and the "Amended Judgment," which was submitted to the court and filed into the record on June 29, 2017, by the Defendants. In other words, the judgment is not self-contained; in order to understand the ruling, one would have to review other documents outside of the judgment. Moreover, even if the "Amended Judgment" were annexed to the July 7, 2017 judgment, the "Amended Judgment" itself is not signed by the district court. Additionally, in the paragraph that follows the property description, the "Amended Judgment" states:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *in the event it is determined* that plaintiffs James and Patsy Hooper are the owners of property lying to the east of the eastern boundary of the tract acquired by the Parish of Jefferson from Burmaster Land and Development Co., Inc. by Act of Donation dated March 30, 1971, and filed and recorded in the conveyance records of the Parish of Jefferson in COB 732, folio 480 on April 13,1971, the boundary line established between Hero Lot 27 and Hooper Lot 26 shall be extended an additional 100 feet in a northerly direction towards the 8th Naval District Canal in the same course and direction as the boundary set forth above.

Because the extension of the boundary line described above is contingent upon an event that may or may not occur in the future, the language of the "Amended Judgment" cannot be deemed "precise, definite, and certain." *Input/Output Marine Sys., Inc*. 2010-0477 at p. 12, 52 So. 3d at 915. "The quality of definiteness is

essential to a proper judgment." *Id.* at p. 13, 52 So. 3d at 916 (footnote and internal citations omitted). Also, a review of the record on appeal indicates that there is no designation by the district court that the "Amended Judgment" would be a final judgment subject to immediate appeal.

Counsel for Hero, McCurdy and Hooper all concede that the July 7, 2017 judgment is not a final appealable judgment pursuant to La. C.C.P. art. 1918 and the jurisprudence. Counsel for Hero, however, requests that this Court exercise its plenary authority to hear the appeal, affirm the judgment of the district court, and cure the deficiency in the district court's judgment by amending the judgment for compliance with La. C.C.P. art. 1918. Hero argues that this Court has authority to cure the judgment's deficiency pursuant to La. C.C.P. art. 2164, which provides, in pertinent part: "The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal."

Given that the instant appeal, as lodged, lacks a valid final judgment, this Circuit has routinely ruled that we lack appellate jurisdiction to address the merits of the appeal and must, therefore, dismiss the appeal without prejudice. *See Dearmon v. St. Ann Lodging, L.L.C.*, 2018-0377, p. 5 (La. App. 4 Cir. 9/7/18), 255 So. 3d 635, 638; *Moulton*, 2017-0243, 2017-0244, p. 6, 226 So. 3d at 573; *Yokum v. Pat O'Brien's Bar, Inc.*, 2015-0946, p. 3 (La. App. 4 Cir. 3/2/16), 190 So. 3d 352, 354. However, under certain circumstances, this Court has exercised its discretion and "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*, 2010-0986, p. 6 (La. App. 4 Cir. 2/9/11); 68 So. 3d 1099, 1104. *See also Francois v. Gibeault*, 2010-0180, 2010-0181, p. 2 (La. App. 4 Cir.

8/25/10), 47 So. 3d 998, 1000 (finding that, in the interest of justice, court of appeal may convert appeal filed within the delays allowed for applying for supervisory writs to a writ application for review under its supervisory jurisdiction); *Wells Fargo Financial Louisiana, Inc. v. Galloway*, 2017-0413, p. 6 (La. App. 4 Cir. 11/15/17), 231 So. 3d 793, 799 (finding court of appeal may exercise discretion to convert an appeal to an application for supervisory writs); Rule 4-3, Uniform Rules- Courts of Appeal.

In the instant case, however, Plaintiffs filed a Notice of Appeal on August 14, 2017, thirty-eight (38) days after the district court judgment was rendered. Thus, "while [a] motion for appeal could be construed to be a notice of intent to seek supervisory writs, it could not be construed as a timely one where it was filed more than thirty days from the court's ruling." *Babineaux v. Univ. Med. Ctr.*, 2015-292, p. 7 (La. App. 3 Cir. 11/4/15), 177 So. 3d 1120, 1125 (citing *Rain CII Carbon, LLC v. Turner Indus. Grp., LLC*, 2014-121, p. 2 (La. App. 3 Cir. 3/19/14), 161 So. 3d 688, 689, and stating that "the motion [for appeal] was filed untimely for a writ application, and if we allowed the conversion, the writ application would be dismissed because of untimeliness"). Because the instant appeal was not filed within thirty days from the date of the district court's judgment, we decline to convert the Plaintiffs' appeal to a writ application. We therefore dismiss the appeal of the July 7, 2017 judgment without prejudice and remand for further proceedings.

The November 25, 2013 and the December 3, 2013 Judgments

The record shows that, on November 18, 2013, the district court held a hearing on two motions for partial summary judgment, one filed by McCurdy and one by PPG. Each motion urged the district court to deny the Plaintiffs' claims for

treble damages and attorney's fees based upon La. R.S. 3:4278.1. The district court granted each motion for summary judgment and the language of each of those judgments contains appropriate decretal language and properly names the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and states the relief being granted. *Baker Ready Mix*, 2015-0565 at p. 2 n.1, 183 So. 3d at 623 n.1. However, the 2013 partial judgments are interlocutory in nature and are not part of an unrestricted appeal from a valid final judgment because the July 7, 2017 judgment is being dismissed without prejudice.[1] "An interlocutory judgment determines 'preliminary matters in the course of the action' and is generally non-appealable." *Sporl v. Sporl*, 2000-1321, p. 2 (La. App. 5 Cir. 5/30/01), 788 So. 2d 682, 683–84 (citing La. C.C.P. art. 1841 and 2083). "When an unrestricted appeal is taken from a final judgment, the appellant is entitled to a review of all adverse interlocutory rulings prejudicial to him, in addition to the review of the correctness of the final judgment from which the party has taken the appeal." *Id.* (citation omitted).

Moreover, these two judgments were the subject of dismissal without prejudice in *Hooper*, 2015-0929 at p. 3, 216 So. 3d at 969, as the district court had failed to designate those judgments as final for purposes of appeal. *See* La. C.C.P. art. 1915 A(3) and (B). Subsequently, on October 3, 2017, the district court entered an Order that provides:

> Upon consideration of the motion of the plaintiffs, James and Patsy Hooper, it appearing that there is no just reason for delay, that the issues have previously been briefed to the court of appeal, and that

[1] The two judgments fall under La. C.C.P. art. 966 €, which allows for a summary judgment to be rendered in favor of one or more parties when a particular issue, theory of recovery, cause of action, or defense may be determined even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

> disposition of this issue would materially advance the merits of this case.
>
> IT IS ORDERED that the judgments in favor of Hugh McCurdy, III of November 25, 2013 (ROA.2280) and the Plaquemines Parish Government of December 3, 2013 (ROA.2283) be and the same are hereby designated as final judgments.

The original judgments of November 25, 2013 and of December 3, 2013 were not altered or amended nor were they re-issued by the district court. Thus the issue is whether the October 3, 2017 Order makes the November 25, 2013 and the December 3, 2013 judgments final and appealable. We find that it does not.

Once again, in order to determine that the 2013 judgments are final and appealable, one must look to an extrinsic document, contrary to the holding of *Baker Ready Mix, LLC*, 2015-0565, p. 2 n.1, 183 So. 3d at 623 n.1 that requires the judgment to be "self-contained." Furthermore, none of the 2013 judgments specifically comply with La. C.C.P. arts. 1911(B) and 1915 (B). La. C.C.P. art. 1915(B) requires that the "judgment shall not constitute a final judgment unless it is designated by the court after an express determination that there is no reason for delay." The November 25, 2013 and December 3, 2013 judgments, standing alone, do not contain this express determination.

In conclusion, we find that none of the three judgments that are the subject of Plaintiffs' appeal are final and appealable judgments. "A threshold requirement of an appeal is subject matter jurisdiction." *Moulton*, 2017-0243, p. 3, 226 So. 3d at 571. This court cannot determine the merits of an appeal unless our jurisdiction is properly invoked by a valid final judgment. *Id.* (citations omitted). We therefore dismiss the appeal without prejudice and remand for further proceedings.

**APPEAL DISMISSED; REMANDED**