Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

BY Weimer, C.J.:

2020-C-01120

SHEILA WILLIAMS VS. ANGELA [APRIL] MONTGOMERY, AND FOREMOST INSURANCE COMPANY, ET AL. (Parish of Lafourche)

AFFIRMED IN PART, REVERSED IN PART AND REMANDED. SEE OPINION.

Crichton, J., concurs in part, dissents in part and assigns reasons.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-C-01120

SHEILA WILLIAMS

VS.

ANGELA [APRIL] MONTGOMERY, AND FOREMOST INSURANCE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE FIRST CIRCUIT COURT OF APPEAL, PARISH OF LAFOURCHE

WEIMER, Chief Justice.

In this tort action, plaintiff timely filed suit against two defendants–a property owner and her alleged liability insurer. The insurer was served with the petition, but plaintiff withheld service on the property owner. The insurer filed an answer on its own behalf within three years of suit being filed, but no action was taken in the suit by any party relative to the property owner within that three years. This writ application was granted to determine whether plaintiff's action against the property owner was abandoned pursuant to La. C.C.P. art. 561(A)(1), which provides an "action ... is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period of three years." The court of appeal found the filing of an answer by the insurer within the three-year abandonment period was effective to interrupt the abandonment period as to the property owner.

For the reasons that follow, this court holds the filing of the insurer's answer did not serve to interrupt the abandonment period as to the property owner.

Therefore, the ruling of the court of appeal is reversed because plaintiff's original action against the property owner was abandoned by operation of law pursuant to Article 561. However, plaintiff's underlying claims against the property owner, that were subsequently reasserted by amended petition, are not necessarily prescribed due to the potential interruption of prescription resulting from the pending suit against an alleged solidary obligor. Because a determination regarding prescription cannot be made based on the existing record, the court of appeal's ruling on the property owner's exception of prescription is affirmed, and the matter is remanded to the district court for an evidentiary hearing on that exception.

FACTS AND PROCEDURAL HISTORY

Sheila Williams filed suit on May 2, 2014, against April Montgomery and her alleged liability insurer, Foremost Insurance Company, for injuries she sustained on May 3, 2013, in a fall at a trailer she rented from Ms. Montgomery. Plaintiff served Foremost with the petition, but withheld service on Ms. Montgomery. The record reflects no action by any of the parties until Foremost filed its answer on February 2, 2017.

On August 4, 2017, Foremost filed a motion for abandonment pursuant to La. C.C.P. art. 561 as to Ms. Montgomery, stating Ms. Montgomery had not been served and asserting that no step had been taken in the prosecution or defense of the case as to Ms. Montgomery in the three years since the suit was filed. On October 2, 2017, Foremost filed exceptions of no cause of action and no right of action, combined with a motion to dismiss, rooted in the assumption that plaintiff's action against Ms. Montgomery was abandoned by operation of law pursuant to Article 561. Foremost asserted plaintiff had no cause of action against it because the petition failed to state any specific allegations against Foremost. Foremost also asserted plaintiff had no

right of action against an insurer alone under the direct action statute. In opposition, plaintiff sought leave to file an amended petition to correct the omission of a specific statement that Foremost is the liability insurer of Ms. Montgomery. Plaintiff further argued that, even if her claims against Ms. Montgomery set forth in the original petition were abandoned, they were not prescribed due to the pending suit against a solidary obligor, Foremost. Plaintiff sought leave to file an amended petition to reassert her claims against Foremost and Ms. Montgomery.

In a February 9, 2018 judgment, the district court granted Foremost's motion for abandonment and the exception of no cause of action,[1] but also granted plaintiff leave to amend her petition.[2] Ms. Montgomery was subsequently served with the original and amended petition, and Foremost was served with the amended petition. In response, Ms. Montgomery filed exceptions of improper venue and res judicata, and, alternatively, a motion to dismiss for abandonment. Ms. Montgomery argued dismissal for abandonment was proper because plaintiff failed to prosecute the action pursuant to La. C.C.P. art. 561 within three years after filing the original petition in this suit. Plaintiff opposed the motion, arguing abandonment only applied to the action brought in the original petition which was dismissed without prejudice. According to plaintiff, her claims against Ms. Montgomery, reasserted in the amended petition, were still viable because prescription was interrupted due to the pending suit against the solidary obligor, Foremost.[3]

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[1] The judgment does not address the exception of no right of action.

[2] The amended petition reasserted the claims against Ms. Montgomery and Foremost, and specifically clarified that Foremost was Ms. Montgomery's liability insurer.

[3] Plaintiff also sought leave to amend her petition a second time to add two additional joint and/or solidary obligors. These parties are medical malpractice defendants who allegedly rendered negligent treatment to plaintiff following the accident, thus, aggravating her injuries. The district court granted plaintiff leave to file the second amended petition on November 8, 2018. Plaintiff states she was prohibited from filing suit against these defendants until August 3, 2018, due to

On January 8, 2019, the district court granted Ms. Montgomery's motion to dismiss for abandonment and denied the exceptions as moot.[4] The court of appeal reversed, finding Foremost's answer was a formal action taken in the trial court and was effective to interrupt abandonment as to all parties, including Ms. Montgomery. The court of appeal found it immaterial that Ms. Montgomery was not served with the original petition prior to expiration of the three-year abandonment period. Ms. Montgomery also filed an exception of prescription in the court of appeal, arguing that plaintiff's claims against her as reasserted in the amended petition were prescribed. Finding that plaintiff was entitled to demonstrate that a suspension, interruption, or renunciation of prescription had occurred, the court of appeal remanded the issue to the district court to permit the parties to develop evidence on the prescription issue. **Williams v. Montgomery**, 19-0580 (La.App. 1 Cir. 8/18/20), 311 So.3d 411.

Upon Ms. Montgomery's application, certiorari was granted to review the correctness of the rulings below. **Williams v. Montgomery**, 20-1120 (La. 11/24/20), 304 So.3d 857.

DISCUSSION

Pursuant to La. C.C.P. art. 561(A)(1), an "action ... is abandoned when the parties fail to take any step in its prosecution or defense in the trial court for a period

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medical review panel proceedings.

[4] The judgment erroneously dismissed plaintiff's action against Ms. Montgomery *with prejudice*. An action may be dismissed as abandoned under Article 561 only *without* prejudice. See, e.g., **Johnson v. American Bell Federal Credit Union**, 14-2551 (La. 3/27/15), 164 So.3d 183 (per curiam); **Juengain v. Tervalon**, 17-0155, p. 17 (La.App. 4 Cir. 7/26/17), 223 So.3d 1174, 1186, writ denied, 17-1648 (La. 11/28/17), 229 So.3d 934; **Burgess, Inc. v. Parish of St. Tammany**, 17-0153, p. 3 n.1 (La.App. 1 Cir. 10/25/17), 233 So.3d 58, 61 n.1, writ denied, 17-2179 (La. 2/23/18), 237 So.3d 515; **Claiborne Med. Corp. v. ABC Ins. Co.**, 15-489, p. 8 (La.App. 5 Cir. 1/27/16), 185 So.3d 216, 221, writ denied, 16-0374 (La. 4/15/16), 191 So.3d 1036; **Reed v. Peoples State Bank of Many**, 36,531, p. 7 (La.App. 2 Cir. 3/5/03), 839 So.2d 955, 959; **Total Sulfide Services, Inc. v. Secorp Industries, Inc.**, 96-589, p. 4 (La.App. 3 Cir. 12/11/96), 685 So.2d 514, 515.

of three years." In order to avoid abandonment: (1) a party must take some "step" in the prosecution or defense of the action, (2) the step must be taken in the proceeding and, with the exception of formal discovery, must appear in the record of the suit, and (3) the step must be taken within three years of the last step taken by either party. **Louisiana Dep't of Transp. & Dev. v. Oilfield Heavy Haulers, L.L.C.**, 11-0912, pp. 4-5 (La. 12/6/11), 79 So.3d 978, 981. A "step" is a formal action before the court intended to hasten the suit towards judgment or is the taking of formal discovery. **James v. Formosa Plastics Corp. of La.**, 01-2056, p. 4 (La. 4/3/02), 813 So.2d 335, 338. Sufficient action by either plaintiff or defendant will be deemed a step. See **Oilfield Heavy Haulers, L.L.C.**, 11-0912 at 5, 79 So.3d at 981.

This court explained in **Oilfield Heavy Haulers, L.L.C.** that the purpose of Article 561 is the prevention of protracted litigation filed for purposes of harassment or without a serious intent to hasten the claim to judgment. Abandonment is not a punitive concept; rather, it balances two competing policy considerations: (1) the desire to see every litigant have his day in court and not to lose same by some technical carelessness or unavoidable delay, and (2) the legislative purpose that suits, once filed, should not indefinitely linger, preserving stale claims from the normal extinguishing operation of prescription. ***Id.*** Article 561 is to be liberally construed in favor of maintaining a plaintiff's action, and any reasonable doubt about abandonment should be resolved in favor of allowing the prosecution of the claim and against dismissal for abandonment. See ***id.***, 11-0912 at 5-6, 79 So.3d at 981-82. However, while the intention of Article 561 is not to dismiss actions as abandoned based on technicalities, abandonment is warranted where plaintiff's inaction during the three-year period has clearly demonstrated his abandonment of the action. ***Id.***, 11-0912 at 5, 79 So.3d at 982. Abandonment functions to relieve courts and parties of

lingering claims by giving effect to the logical inference that a legislatively-designated extended period of litigation inactivity establishes the intent to abandon such claims. When the parties take no steps in the prosecution or defense of their claims during that legislatively-ordained period, the logical inference is that the party intends to abandon the claim and the law gives effect to this inference. **Clark v. State Farm Mut. Auto. Ins. Co.**, 00-3010, p. 10 (La. 5/15/01), 785 So.2d 779, 786-87.

The court of appeal determined that Foremost's answer (filed within three years of suit being filed) "was a 'step' in the prosecution or defense that appeared in the record, which adequately gave notice to the parties that the lawsuit had not been abandoned." **Williams**, 19-0580 at 8, 311 So.3d at 417. The appellate court held the "answer was a formal action in the trial court and was effective *as to all parties*, including [Ms.] Montgomery." ***Id.*** The court of appeal further found it was immaterial that Ms. Montgomery was not served until after the tolling of the three-year abandonment period. "All that is relevant is whether a 'step' in the prosecution of the case was taken within the three years by any party." ***Id.***, 19-0580 at 6, 311 So.3d at 416.

"Whether a step in the prosecution or defense of a case has been taken in the trial court for a period of three years is a question of fact subject to manifest error analysis; by contrast, whether a particular act, if proven, [interrupts] abandonment is a question of law that is examined by ascertaining whether the trial court's conclusion is legally correct." **Martin v. Nat'l City Mortg. Co.**, 52,371, p. 4 (La.App. 2 Cir. 11/14/18), 261 So.3d 144, 147, writ denied, 18-2046 (La. 2/11/19), 263 So.3d 435; see **Hinds v. Glob. Int'l Marine, Inc**., 10-1452, p. 3 (La.App. 1 Cir. 2/11/11), 57 So.3d 1181, 1183. This court is tasked with determining whether Foremost's act of

filing an answer prevented abandonment of plaintiff's action against Ms. Montgomery. This issue presents a question of law subject to *de novo* review. See ***id.***

It has generally been recognized that, when any party takes a step in the prosecution or defense of the action in the trial court, the abandonment period is interrupted as to all parties. See, e.g., **James**, 01-2056 at 6, 813 So.2d at 339; **Delta Dev. Co., Inc. v. Jurgens**, 456 So.2d 145, 146 (La. 1984); 1 FRANK L. MARAIST, LOUISIANA CIVIL LAW TREATISE: CIVIL PROCEDURE § 10:4, p. 344 (2d ed. 2008). However, in cases involving more than one defendant, the question of whether a step taken by or against one defendant is effective against another *unserved* defendant is unresolved. There is conflicting jurisprudence from the courts of appeal on this issue. The Fourth Circuit has held an action taken with respect to any one defendant interrupts the abandonment period as to all other defendants regardless of whether they have been served, while jurisprudence from the First, Second and Fifth Circuits has distinguished between served and unserved defendants.[5]

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[5] See, e.g., **Murphy v. Hurdle Planting & Livestock, Inc**., 331 So.2d 566, 568 (La.App. 1 Cir.), writ denied, 334 So.2d 434 (La. 1976) ("The [three years] required to constitute abandonment begins to accrue at the time of filing, not when citation is made, and any steps taken to 'hasten the matter to judgment' are ineffective as to defendants not served."); **Stevens v. Chen**, 11-1486 (La.App. 1 Cir. 6/8/12) (unpublished), 2012 WL 2060878, *5, writ denied, 12-1590 (La. 10/12/12), 98 So.3d 876 (the court found **Murphy** was still controlling in the First Circuit); **Bridges v. Wilcoxon**, 34,660, p. 6 (La.App. 2 Cir. 5/9/01), 786 So.2d 264, 268 ("[I]f no steps are timely taken in the prosecution of a suit as to an unserved defendant, then abandonment is not interrupted as to that defendant, even if steps are taken by or against a served defendant."); **Wicker v. Coca-Cola Bottling Co.**, 418 So.2d 1378, 1381-82 (La.App. 5 Cir.), writ denied, 423 So.2d 1148 (La. 1982) ("In **Murphy v. Hurdle Planting and Livestock, Inc**. ... the First Circuit...held 'any steps taken to hasten the matter to judgment are ineffective as to defendants not served.' We agree."). But see Fourth Circuit cases: **Guarino v. Pendleton Memorial Methodist Hospital**, 94-1264, 94-2064, p. 3 (La.App. 4 Cir. 2/23/95), 650 So.2d 1243, 1245 ("An action taken with respect to any one defendant is considered step in the prosecution of other defendants regardless of whether they have been served."); **Sprowl v. Wohl**, 576 So.2d 638, 639 (La.App. 4 Cir.), writ denied, 580 So.2d 928 (La. 1991) ("After review of the cited jurisprudence we are satisfied that action taken with respect to one defendant interrupts the [three-year] period as to all defendants, and that the rule of law, at least in this circuit, does not make a distinction between served or unserved defendants." (Footnotes omitted.). The First Circuit in this case did not follow its prevailing jurisprudential rule.

Although this court has not directly addressed this issue, broad statements set forth in earlier opinions of this court may have implied support for the position taken by the court of appeal in this case. In **Delta Dev. Co.**, this court stated: "When any party to a lawsuit takes formal action in the trial court, it is effective as to all parties." ***Id.***, 456 So.2d at 146. The issue of service was not raised or discussed, but it was noted that all nine defendants in that case were served except one. ***Id.***, 456 So.2d at 145 n.5. In **James**, this court stated: "it is clear that when all the parties were litigating this suit in the trial court prior to that court's ruling granting [one defendant's] exception of prescription, the abandonment period was interrupted as to all parties when any party took formal action in the trial court." ***Id.***, 01-2056 at 6, 813 So.2d at 339. Importantly, there is no indication that any of the **James** defendants were unserved, and the issue was not raised or discussed.

Now, considering the issue directly for the first time, this court finds it logical that a distinction be made between served and unserved defendants. Implicit in the abandonment jurisprudence is the necessity of notice and the right of a defendant to adequately defend himself. For instance, in determining whether a particular act constitutes a "step" in the prosecution of an action, this court, in **Clark**, explained that "the rule requiring a party's action be on the record is designed to protect a defendant. The rule is intended to ensure notice to the defendant of actions taken that interrupt abandonment." ***Id.***, 00-3010 at 17, 785 So.2d at 790. Moreover, the language of Article 561 itself provides support for relating abandonment to the lack of notice. Article 561(B) allows for certain discovery that is not filed in the record to qualify as a "step in the prosecution ... of an action" as long as it is "*served on all parties*." (Emphasis added.) "This requirement of service is in keeping with the concept of notice." **Paternostro v. Falgoust**, 03-2214, p. 6 (La.App. 1 Cir. 9/17/04),

897 So.2d 19, 23, writ denied, 04-2524 (La. 12/17/04), 888 So.2d 870. In **Bridges v. Wilcoxon**, the appellate court noted two defendants were not served until after the abandonment period had run. In finding the actions against them were abandoned, the court focused on the unserved defendants' lack of awareness of the litigation:

> Further, the record does not show any steps by them or against them during that time that would constitute a step in the prosecution of the case. Also, there is no showing that these parties were made aware that the plaintiffs were actively pursuing the lawsuit. Because the record fails to indicate [the unserved defendants] were ever made aware of the litigation in which they were made defendants, the action taken by or against any other served defendant did not interrupt the running of the abandonment period against [the unserved defendants].

Id., 34,660, p. 7 (La.App. 2 Cir. 5/9/01), 786 So.2d 264, 269.

By recognizing notice as an integral component underlying the concept of abandonment, it is equally clear that a lack of service on a defendant will not result in abandonment where sufficient steps are taken in the prosecution of the action against that unserved defendant. In **Bissett v. Allstate Ins. Co.**, 567 So.2d 598 (La. 1990), this court reversed the court of appeal's finding that a suit was abandoned as to an unserved defendant, adopting the reasons of the dissenting judge of the court of appeal, Judge Shortess, who found that although the defendant was unserved, she was served with a notice of deposition, was physically present at a deposition with counsel, and was questioned at length about the facts of the case. See **Bissett v. Allstate Ins. Co.**, 560 So.2d 884, 887 (La.App. 1 Cir. 1990) (Shortess, J., dissenting). "Although her deposition may not constitute a general appearance under LSA-C.C.P. art. 7, it was clearly a step in the prosecution of the action, and she was clearly on notice of the lawsuit." ***Id.*** Noting that abandonment proceedings should be given a liberal interpretation, Judge Shortess stated that there was "absolutely no indication that either side intended to abandon the case." ***Id.***; see also **Bridges**, 34,660 at 6, 786

So.2d at 268 ("If there is no service of process against a defendant, but steps in the prosecution of the suit are taken against that defendant, then the period of abandonment is also interrupted.").

In sum, where no step has been taken in an action against a particular defendant, the lack of service of process on that defendant not only eliminates the necessary notice of the legal action, but also indicates a lack of intent to pursue that action. In such a situation, any steps taken by or against a served defendant to hasten the matter to judgment are ineffective as to defendants not served. Here, it is undisputed there was no step taken in the prosecution or defense of the original action against Ms. Montgomery that operated to interrupt the abandonment period. Further, since Ms. Montgomery was not served with the original petition within the abandonment period, any step taken by or against Foremost did not operate to interrupt the abandonment period as to Ms. Montgomery. Finding plaintiff's original action against Ms. Montgomery was abandoned by operation of law under Article 561, the ruling of the court of appeal is reversed.

Nonetheless, plaintiff argues that even if her original action against Ms. Montgomery is deemed abandoned, her claims remained viable because her pending suit against Foremost and the medical malpractice defendants served to interrupt prescription. Thus, plaintiff avers that her first amended petition that was served on Ms. Montgomery, in which plaintiff reasserted her claims against Ms. Montgomery, remains viable. Plaintiff is correct that an action may be deemed abandoned and yet the substantive claim has not prescribed. In **Melancon v. Cont'l Cas. Co.**, this court recognized the distinction between prescription of a claim and dismissal of an action for abandonment:

> The former is interrupted by the filing of suit in a court of competent jurisdiction. However, if, under article 561 of the Code of Civil Procedure, the plaintiff is later found to have abandoned his suit, the interruption is considered as never having happened, and it must then be determined whether the substantive claim is prescribed also. [Internal citations omitted.]

307 So.2d 308, 311 n.1 (La. 1975), abrogated on other grounds by **Oilfield Heavy Haulers, L.L.C.**, 11-0912, 79 So.3d 978.

As aptly explained in **Walker v. Archer**, 16-0171, 16-0172, 16-0173 (La.App. 4 Cir. 10/5/16), 203 So.3d 330, 334-35:

> Importantly, when a suit is dismissed under Article 561 A(3) of the Louisiana Code of Civil Procedure, the dismissal is "without prejudice" not "with prejudice."
>
> The only prescriptive effect on a claim asserted in a suit which is dismissed without prejudice on the grounds of abandonment is that the pendency of the abandoned suit does *not* interrupt the prescriptive period for the claim.
>
> Thus, a dismissal without prejudice, or non-suit, merely restores matters to the status occupied before the suit and leaves the party free to *again* come into court with his complaint. Because the parties are restored to the position they had before the pendency of the abandoned lawsuit, a plaintiff may re-file his lawsuit or re-assert his claim in a new proceeding "provided prescription has not run on [the] claim." ...
>
> "In other words, the abandonment which results as a consequence of a plaintiff's failure to take any action in his suit during a period of ... three ... years merely bars his right to continue with the prosecution of *that* suit." Importantly for our purposes, however, "[i]t does not prevent his bringing another suit for the same cause of action; but, if he brings another suit for that same cause of action, the question of whether his right of action is barred by prescription must be determined as if no suit had been theretofore brought." [Internal citations omitted.]

See also **Jones v. Jones**, 16-536, pp. 5-6 (La.App. 5 Cir. 4/26/17), 220 So.3d 855, 860, writ denied *sub nom.*, **Jones v. Junes**, 17-0883 (La. 9/29/17), 227 So.3d 291.

Plaintiff's claims against Ms. Montgomery are governed by the one-year liberative prescription period for delictual actions set forth in La. C.C. art. 3492, which began to run from the date of the accident–May 3, 2013. Plaintiff timely filed

suit against Ms. Montgomery on May 2, 2014, thus, interrupting prescription pursuant to La. C.C. art. 3462.[6] However, because that action was deemed abandoned pursuant to La. C.C.P. art. 561, the interruption "is considered never to have occurred." La. C.C. art. 3463.[7] Thus, in order for plaintiff's claims against Ms. Montgomery to be viable, plaintiff must demonstrate some other basis of interruption of prescription.

Plaintiff timely filed her original petition against Ms. Montgomery and her alleged liability insurer, Foremost. An insurer is solidarily liable with its insured. **Etienne v. Nat'l Auto. Ins. Co.**, 99-2610, p. 7 (La. 4/25/00), 759 So.2d 51, 56; **Wimberly v. Brown**, 07-559, p. 5 (La.App. 5 Cir. 11/27/07), 973 So.2d 75, 78; see **Pearson v. Hartford Acc. & Indem. Co.**, 281 So.2d 724, 725 (La. 1973). "The interruption of prescription against one solidary obligor is effective against all solidary obligors." La. C.C. art. 1799. Thus, if Foremost provided liability insurance coverage to Ms. Montgomery for claims arising out of plaintiff's accident, plaintiff and Foremost are solidary obligors, and prescription would be interrupted as to plaintiff's claims against Ms. Montgomery because plaintiff's suit against Foremost remains pending.[8] However, that determination cannot be made on the existing

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[6] La. C.C. art. 3462 states: "Prescription is interrupted when the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue. If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period."

[7] In pertinent part, La. C.C. art. 3463 provides: "An interruption of prescription resulting from the filing of a suit in a competent court and in the proper venue or from service of process within the prescriptive period continues as long as the suit is pending. Interruption is considered never to have occurred if the plaintiff abandons, voluntarily dismisses the action at any time either before the defendant has made any appearance of record or thereafter, or fails to prosecute the suit at the trial."

[8] Although dismissing plaintiff's action as abandoned yet allowing plaintiff to continue to pursue those claims in a second action appears to create an anomaly, it is legally required. As a consequence of the dismissal of the action without prejudice as a result of abandonment, the parties are placed in the same position in which they were before the action was filed. Thus, it is certainly possible that a plaintiff's substantive claim may not be prescribed. For example, such a situation may occur in claims involving a longer prescriptive period for the cause of action, or in cases such as this one, where there is a pending suit against a potential solidary obligor which may have served to interrupt prescription.

record. Foremost's answer to the original petition generally denied all of plaintiff's allegations based on a lack of information. In its answer to plaintiff's first amended petition, Foremost denied being Ms. Montgomery's liability insurer. In its answer to plaintiff's second amended petition, Foremost admitted it issued a policy of insurance to Ms. Montgomery, but generally denied there was coverage under the terms of the policy and pled the policy was subject to certain exclusions. In argument before this court, counsel for Ms. Montgomery could not confirm whether Foremost provided coverage, noting the lack of discovery on this issue. Being unable to make the necessary determination of whether Foremost provided liability insurance coverage to Ms. Montgomery for claims arising out of plaintiff's accident, this court agrees with the court of appeal and affirms its ruling that the prescription issue be remanded to the district court for an evidentiary hearing.[9]

CONCLUSION

For the above reasons, for purposes of abandonment pursuant to La. C.C.P. art. 561 under the facts of this case, any steps taken by or against Foremost, which was served, to hasten the matter to judgment are ineffective as to Ms. Montgomery, who was not served. Thus, the filing of an answer by Foremost did not interrupt the abandonment period as to Ms. Montgomery. Because no step was taken in the prosecution or defense of plaintiff's original action against Ms. Montgomery within three years of the filing of the original petition, that action was abandoned by operation of law pursuant to Article 561. However, abandonment is separate and distinct from the prescription of the substantive claim itself. When an action is

[9] Likewise, there is insufficient evidence in the record regarding plaintiff's medical malpractice claims for us to make a determination regarding whether prescription may have been interrupted due to alleged solidary liability of these additional defendants. If the district court determines that Foremost does not provide liability insurance to Ms. Montgomery in this case, the court should determine whether plaintiff's medical malpractice claims served to interrupt prescription as to plaintiff's claims against Ms. Montgomery.

dismissed without prejudice as abandoned, a plaintiff may reassert and pursue the claim, as already done in this case by amended petition, provided prescription has not run on the claim. Based on the lack of evidence in the record related to prescription, this issue is remanded to the district court for an evidentiary hearing.

DECREE

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-C-01120

SHEILA WILLIAMS

VS.

ANGELA [APRIL] MONTGOMERY, AND FOREMOST INSURANCE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE 1ST CIRCUIT COURT OF APPEAL, PARISH OF LAFOURCHE

Crichton, J., concurs in part, dissents in part and assigns reasons:

I agree with the majority's holding that the plaintiff's suit against Ms. Montgomery is abandoned. I dissent with respect to the majority's conclusion that La. C.C. art. 1799 may nevertheless revive plaintiff's case against Ms. Montgomery even though it has been abandoned. Irrespective of the relationship between the insured and insurer, La. C.C. art. 3463 does not carve out any exceptions for solidary obligors. *Id.* ("Interruption is considered never to have occurred if the plaintiff abandons, voluntarily dismisses the action at any time either before the defendant has made any appearance of record or thereafter, or fails to prosecute the suit at the trial."). When a case abandons, it abandons for all purposes, including the interruption of prescription. *Guillory v. Pelican Real Est., Inc.*, 2014-1539 (La. 3/17/15), 165 So. 3d 875, 878 (finding "absolutely no authority for engrafting the general rules of prescription into the law of abandonment.").