

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

07-561

**DELTON AUGUSTINE, JR.
VERSUS
JOHNNY E. GRIFFIN, ET AL.**

**APPEAL FROM THE
TWELFTH JUDICIAL DISTRICT COURT
PARISH OF AVOYELLES, NO. 2004-6014-A
HONORABLE MARK A. JEANSONNE, DISTRICT JUDGE**

**ULYSSES GENE THIBODEAUX
CHIEF JUDGE**

Court composed of Ulysses Gene Thibodeaux, Sylvia R. Cooks, and J. David Painter, Judges.

APPEAL DISMISSED.

**Michael Wayne Adley
Judice and Adley
Post Office Drawer 51769
Lafayette, LA 70505-1769
(337) 235-2405
COUNSEL FOR DEFENDANT/APPELLEE:
M & C Ins. Co.**

**John Taylor Bennett
Bennett Law Office
Post Office Box 275
Marksville, LA 71351
(318) 253-4631
COUNSEL FOR PLAINTIFF/APPELLEE:
Delton Augustine, Jr.**

Russell L. Potter
Stafford, Stewart & Potter
Post Office Box 1711
Alexandria, LA 71309
(318) 487-4910
COUNSEL FOR DEFENDANTS/APPELLEES:
GEICO
Johnny Griffin

Michael Joseph Juneau
Kate B. Labue
The Juneau Firm
Post Office Drawer 51268
Lafayette, LA 70505-1268
(337) 269-0052
COUNSEL FOR DEFENDANT/APPELLEE:
National Union Fire Ins. Co.

Stacy Christopher Auzenne
Auzenne Law Firm
3600 Jackson Street, #121
Alexandria, LA 71303
(318) 880-0087
COUNSEL FOR DEFENDANT/APPELLANT:
Republic Vanguard Insurance Company

S. Aaron Siebeneicher
Johnson & Siebeneicher
Post Office Box 648
Alexandria, LA 71309
(318) 484-3911
COUNSEL FOR DEFENDANT/APPELLANT:
Republic Vanguard Insurance Company

Valerie M. Thompson
Attorney at Law
Post Office Box 648
Alexandria, LA 71309
(318) 484-3911
COUNSEL FOR DEFENDANT/APPELLANT:
Republic Vanguard Insurance Company

THIBODEAUX, Judge.

Upon the lodging of the record in the above captioned case, this court, *sua sponte*, issued a rule for the defendant-appellant, Republic Vanguard Insurance Company, to show cause, by brief only, why its appeal in this case should not be dismissed as premature. Subsequently, the plaintiff-appellee, Delton Augustine, Jr., filed a motion to dismiss this appeal based on the argument that the judgment appealed is a partial, final judgment which has not been designated by the trial court as immediately appealable pursuant to La.Code Civ.P. art. 1915. For the reasons given, we dismiss the appeal.

This case arises out of an automobile accident wherein the plaintiff was a passenger in a vehicle owned by a business contractor. The plaintiff sued Johnny E. Griffin, the driver of the vehicle that struck him, and Griffin's liability insurer. The plaintiff also sought recovery under the uninsured motorist provisions of the contractor's liability policy. The contractor's policy was issued by the appellant.

The plaintiff filed a motion for partial summary judgment seeking a finding that one million dollars in UM coverage was available due to the appellant's failure to include the policy number on the alleged selection of the lower limit form. The trial court granted this motion for partial summary judgment on January 26, 2007. The availability of the one million dollars in UM coverage was found to be subject to credit for any amounts already received by the plaintiff.

The appellant filed a motion for an appeal from this ruling on February 28, 2007, which was granted by the trial court on the same day. The appeal in this case was lodged in this court on May 7, 2007, and on May 8, this court

issued the instant rule to show cause why the appeal should not be dismissed as premature. On June 28, 2007, the plaintiff filed a motion to dismiss the appeal. The appellant filed a brief in opposition to the motion to dismiss the appeal in this court on May 17, 2007.

In the opposition brief filed in this court, the appellant readily admits that the trial court's ruling is a partial final judgment pursuant to La.Code Civ.P. art. 1915(B). Moreover, the appellant recognizes that the trial court has failed to designate this judgment as immediately appealable. However, the appellant contends that this court should proceed to decide this matter on appeal because a reversal of the trial court's ruling could put this litigation at an end and because the appellant argues that it has been denied appellate review of this and other rulings throughout this litigation due to fact that these have also been partial, final judgments.

We find that the appellant's arguments are without merit. The judgment appealed is clearly only a partial, final judgment pursuant to La.Code Civ.P. art. 1915(B), which has not been designated as immediately appealable. Moreover, the appellant obtained review of this judgment in its writ application to this court in docket number 07-294, which application was denied by this court in an unpublished writ disposition rendered on April 12, 2007. Therefore, we hereby dismiss the instant appeal at appellant's cost.

APPEAL DISMISSED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3 Uniform Rules, Court of Appeal.