

NOT DESIGNATED FOR PUBLICATION

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

08-246

SPORTS DESIGN & DEVELOPMENT, INC.

VERSUS

AMSOUTH BANK, ET AL.

**APPEAL FROM THE
NINTH JUDICIAL DISTRICT COURT, NO. 209,533
HONORABLE GEORGE CLARENCE METOYER, JR., DISTRICT JUDGE**

**JIMMIE C. PETERS
JUDGE**

Court composed of John D. Saunders, Jimmie C. Peters, and Michael G. Sullivan,
Judges.

APPEAL DISMISSED.

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PETERS, Judge.

On March 6, 2008, this court issued a rule for the appellant, Robert G. Weeks, Jr., to show cause why the appeal in the instant case should not be dismissed as having been taken prematurely. For the reasons below, we dismiss the appeal.

A judgment of dismissal for abandonment was entered in the trial court on November 14, 2007. Notice of the signing of judgment was sent on November 19, 2007. Appellant filed a motion to set aside the judgment of dismissal on December 4, 2007. In addition, appellant filed a motion for devolutive appeal on January 4, 2008. However, by appellant's admission and as evidenced in the record, no judgment has been entered on the motion to set aside the judgment of dismissal.

Louisiana Code of Civil Procedure Article 561 provides, in pertinent part, the following:

- (4) A motion to set aside a dismissal may be made only within thirty days of the date of the sheriff's service of the order of dismissal.
- ...
- (5) An appeal of an order of dismissal may be taken only within sixty days of the date of the sheriff's service of the order of dismissal. An appeal of an order of denial may be taken only within sixty days of the date of the clerk's mailing of the order of denial.

Here, appellant timely filed a motion to set aside the judgment of dismissal. However, by appellant's own recognition and as evidenced in the record, no judgment has been rendered on the motion to set aside the judgment of dismissal. Therefore, because the instant appeal has been taken prematurely, this court lacks appellate jurisdiction of this matter. Accordingly, the appeal is dismissed. However, this ruling does not preclude appellant from seeking appellate review at a time when this matter becomes ripe for appeal.

APPEAL DISMISSED.

This opinion is **NOT DESIGNATED FOR PUBLICATION.**
Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.