

NOT DESIGNATED FOR PUBLICATION

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

08-309

CHRISTOPHER M. O'BRIEN, ET UX.

VERSUS

TOWN OF GLENMORA, ET AL.

**APPEAL FROM THE
NINTH JUDICIAL DISTRICT COURT
PARISH OF RAPIDES, NO. 222,615
HONORABLE JOHN C. DAVIDSON, DISTRICT JUDGE**

**MICHAEL G. SULLIVAN
JUDGE**

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

MOTION TO DISMISS APPEAL DENIED.

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SULLIVAN, Judge.

Defendants/Appellees, the Town of Glenmora and Curtis Gunter, filed a motion to dismiss the instant appeal on May 13, 2008, on the ground that the judgment appealed is an interlocutory ruling. For the reasons discussed below, we deny appellees' motion to dismiss.

The trial court signed a judgment on June 6, 2007, which granted appellees' motion for summary judgment. On June 15, 2007, plaintiffs/appellants, Christopher and Candy O'Brien, filed a motion for new trial. The motion for new trial was denied on November 13, 2007, and notice of the signing of the judgment was sent on November 27, 2007. Appellants then filed a motion for appeal on November 30, 2007. In the motion for appeal, appellants stated the following: "1. Final judgment on [the] motion for new trial was signed in the above[-]captioned matter on the 13th day of November, 2007, which is attached. 2. Plaintiffs desire to appeal devolatively from the final Judgment rendered in this action to the Court of Appeal, Third Circuit, State of Louisiana." The trial court signed an order of appeal on December 14, 2007, and the record was lodged in this court. After the lodging of the record, appellees filed a motion to dismiss, alleging that appellants are seeking appellate review solely of the denial of appellants' motion for new trial, which is an interlocutory ruling.

In appellants' brief, the specifications of error are listed as follows:

1. The Trial Judge erred by granting defendants' Motion for Summary Judgment and dismissing all claims.
2. The Trial Judge erred when it failed to grant Plaintiffs' Motion for New Trial to reinstate all claims.

Moreover, appellants' brief is replete with argument on the merits of the trial court's June 6, 2007 ruling, which granted appellees' motion for summary judgment.

We find that the appeal in this case must be maintained and that appellees' motion to dismiss must be denied. Appellants are clearly seeking review of both the June 6, 2007 ruling, which granted appellees' motion for summary judgment, and the November 13, 2007 ruling, which denied appellants' motion for new trial.

In *Fuqua v. Gulf Insurance Co.*, 525 So.2d 190 (La.App. 3 Cir. 1988), *writ denied*, 546 So.2d 1216 (La.1989), this court cited to a line of Louisiana Supreme Court cases that have held that where a motion for appeal refers to the judgment denying a motion for new trial, but the circumstances indicate the appellants' intent to appeal from the judgment on the merits, the appeal should be maintained as an appeal from the judgment on the merits. The *Fuqua* court specifically found that the fact that the appellants' brief raised issues pertaining to the judgment on the merits was a sufficient indication of the appellants' intention to appeal the judgment on the merits.

Here, as discussed above, appellants have clearly indicated an intent to appeal the trial court's judgment on the merits, which granted appellees' motion for summary judgment. Accordingly, we hereby deny appellees' motion to dismiss the appeal at appellees' cost.

MOTION TO DISMISS APPEAL DENIED.

This opinion is NOT DESIGNATED FOR PUBLICATION.
Uniform Rules—Courts of Appeal. Rule 2-16.3.