

NOT DESIGNATED FOR PUBLICATION

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

CM 11-1259

PROJECT BUILD A FUTURE, ET AL.

VERSUS

BLOCK BUILDERS, L.L.C., ET AL.

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 2010-5335
HONORABLE CLAYTON DAVIS, DISTRICT JUDGE**

SYLVIA R. COOKS

JUDGE

Court composed of Sylvia R. Cooks, John D. Saunders, and James T. Genovese,
Judges.

MOTION TO DISMISS UNLODGED SUSPENSIVE APPEAL DENIED.

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COOKS, Judge.

The Plaintiffs-Appellees, Project Build a Future and Habitat for Humanity: Calcasieu Area, Inc., move to dismiss this unlodged suspensive appeal and convert to a devolutive appeal, on the ground that the appeal was not timely obtained. For the reasons given herein, we deny the motion.

The Plaintiffs filed suit against various Defendants relating to the “Katrina Cottages” built in Lake Charles, alleging defective construction and drainage in the subdivision. Following a failed mediation, the Plaintiffs obtained a preliminary default and confirmed the default judgment in the amount of \$574,701.02 plus attorneys’ fees. The Defendant, Block Builders, L.L.C., filed a motion for new trial and/or to annul the judgment. Following a hearing on the motion, the trial court took the matter under advisement. On June 20, 2011, the trial court signed and issued “Written Reasons for Judgment” denying the motion for new trial and/or to annul judgment. The trial court’s ruling stated that the motion is denied and further instructed counsel for Plaintiffs to prepare a judgment in conformity with the ruling. Notice of the ruling was mailed on June 20, 2011. On July 12, 2011, the trial court signed the subsequent judgment ordering that the motion for new trial and/or to annul judgment is denied. Notice of mailing of judgment was sent on July 19, 2011. The Defendant filed its motion and order for appeal, and the order granting a suspensive appeal was signed by the trial court on August 16, 2011.

In the Plaintiffs’ motion to dismiss the Defendant’s unlodged suspensive appeal and convert to devolutive appeal, they contend that the motion for appeal was untimely filed pursuant to La.Code Civ.P. art. 2123. The Plaintiffs claim that the appeal delays in this case began from the mailing of the trial court’s refusal to grant the new trial, specifically the June 20, 2011, ruling denying the motion for new trial. However, we find that the trial court’s June 20, 2011, ruling titled “Written Reasons for Judgment” did not constitute the trial court’s judgment denying the motion for

new trial and/or to annul judgment. *See Miller v. ConAgra, Inc.*, 06-653 (La.App. 3 Cir. 7/19/06), 935 So.2d 388, *writs denied*, 06-1994 and 06-2247 (La.11/9/06), 941 So.2d 43. Just as in the *Miller* case, although the trial court's written reasons included a provision that the motion for new trial was denied, this action was not sufficient to trigger appeal delays. In *Miller*, 935 So.2d at 389, this court stated: "Pursuant to La.Code Civ.P. art. 1914, the denial of a motion for new trial must be accomplished through a written judgment and notice thereof sent by the clerk." More specifically, this court stated in *Egle v. Egle*, 05-531 (La.App. 3 Cir. 2/8/06), 923 So.2d 780, 783:

"[a] final judgment shall be identified as such by appropriate language." La.Code Civ.P. art.1918. "A valid judgment must be precise, definite and certain." *Jenkins v. Recovery Tech. Investors*, 02-1788, p. 3 (La.App. 1 Cir. 6/27/03), 858 So.2d 598, 600.

In the facts of the instant case, although the trial court's written reasons for ruling included a statement that the motion was denied, the ruling also instructed counsel for Plaintiffs to prepare a judgment in conformity with the ruling. Therefore, we find that the Defendant properly relied on the trial court's statement in its written reasons that a written judgment would be forthcoming. Because it is well settled that appeals are favored in Louisiana, an appeal must be maintained whenever possible and not dismissed for technicalities. *Parfait v. Transocean Offshore, Inc.*, 07-1915 (La. 3/14/08), 980 So.2d 634, *and Hannie v. Guidry*, 10-216 (La.App. 3 Cir. 10/6/10), 48 So.3d 396.

In the case *sub judice*, the suspensive appeal delays began to run from the mailing of the notice of the trial court's July 12, 2011, judgment denying the motion. The notice was mailed on July 19, 2011, and the Defendant timely filed its motion and order for suspensive appeal on August 16, 2011. Accordingly, we deny the motion to dismiss this unlogged suspensive appeal and convert to devolutive.

MOTION TO DISMISS UNLODGED SUSPENSIVE APPEAL DENIED.

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.

Rule 2-16.3 Uniform Rules, Court of Appeal.