NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1067

BRENDA KELLUP AND WOODROW KELLUP

VERSUS

DONNA CARTER-BRISTOL O/B/O HER MINOR DECEASED SON, SYLVESTER BRISTOL, SAFEWAY INSURANCE COMPANY, KIMBERLY MCKNIGHT, DUANE CARPENTER, MARTIN MAPP, MATTHEW SINANAN, H.C. REAVIS AND UNIVERSAL CASUALTY COMPANY

Judgment Rendered: JUN - 6 2008

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 545,825

Honorable Janice Clark, Presiding

* * * * * *

Tamara Kluger Jacobson
Robert G. Harvey, Sr.
New Orleans, LA

Counsel for Plaintiffs/Appellants
Brenda Kellup and Woodrow Kellup

Bradley C. Myers
Lana D. Crump
Katie L. Deranger
John F. Jakuback
Baton Rouge, LA

Counsel for Defendants/Appellees
Duane Carpenter and Martin Mapp

Cleo Fields
Baton Rouge, LA

Counsel for Defendant/Appellee
Donna Carter-Bristol

Keith M. Borne
Lafayette, LA

Counsel for Defendant/Appellee
Safeway Insurance Company

McClendon, J. Agrees and Assigns Additional Reasons.
Hughes, J., dissents with reasons.

Charles C. Foti, Jr., Attorney General
Rodney A. Ramsey,
Assistant Attorney General
Baton Rouge, LA

Counsel for Defendants/Appellees
Matthew Sinanan and H.C. Reavis

* * * * * *

BEFORE: WHIPPLE, GUIDRY, McDONALD, McCLENDON, AND HUGHES, JJ.

GUIDRY, J.

In this personal injury action, plaintiffs, Brenda Kellup and Woodrow Kellup, appeal from the trial court's judgment, which granted two peremptory exceptions raising the objection of prescription filed by defendants, Matthew Sinanan and H.C. Reavis, and defendants, Duane Carpenter and Martin Mapp, and dismissed the plaintiffs' action without prejudice. For the reasons that follow, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

On March 7, 2004, Brenda Kellup was a guest passenger in a vehicle operated by Kimberly McKnight. McKnight was proceeding east on Interstate 10 when her vehicle was struck by a vehicle driven by Sylvester Bristol, Jr., which had crossed the median from the westbound lane of Interstate 10. At the time of the accident, Bristol was the subject of a pursuit that originated with Carpenter and Mapp, Gonzales City police officers, in Ascension Parish and continued with Sinanan and Reavis, Louisiana state troopers, in East Baton Rouge Parish.

On March 5, 2005, plaintiffs filed a petition for damages in the Civil District Court for the Parish of Orleans, naming as defendants: McKnight; Bristol;[1] Bristol's insurer, Safeway Insurance Company; Carpenter; Mapp; Sinanan; Reavis; and the Kellups' uninsured/underinsured motorist carrier, United National Insurance Company.[2] On June 28, 2005, Carpenter and Mapp filed a declinatory exception raising the objection of improper venue, asserting that venue in Orleans Parish was not proper under the mandatory venue provision for municipalities and their employees contained in La. R.S. 13:5104(B), and requested that venue be

[1] Because Bristol was deceased, his mother, Donna Carter-Bristol, was named as a defendant on his behalf.

[2] The Kellups' original petition named Universal Casualty Company as their uninsured/underinsured motorist carrier. However, the Kellups amended their petition on May 2, 2005, to correct the name of their insurer to United National Insurance Company.

transferred to the Nineteenth Judicial District Court for the Parish of East Baton Rouge pursuant to La. C.C.P. art. 123.

In July of 2005, Sinanan and Reavis also filed a declinatory exception raising the objection of improper venue, asserting that under La. R.S. 13:5104(A), Orleans Parish was not a parish of proper venue, and requested that venue be transferred to the Nineteenth Judicial District Court for the Parish of East Baton Rouge. A hearing on these exceptions was held on July 29, 2005. Following the hearing, the trial court signed a judgment on August 12, 2005, granting Carpenter and Mapp's and Sinanan and Reavis's exceptions raising the objection of improper venue and transferred the case to the Nineteenth Judicial District Court for the Parish of East Baton Rouge. Plaintiffs did not appeal from this judgment.

Thereafter, on February 7, 2007, Carpenter and Mapp filed a peremptory exception raising the objection of prescription, asserting that the accident occurred on March 7, 2004, that plaintiffs filed their suit in Orleans Parish on March 2, 2005, which was adjudged to be an improper venue for plaintiffs' suit, and that no defendant was served with the suit within one year of the accident. Accordingly, Carpenter and Mapp alleged that pursuant to La. C.C. art. 3462, plaintiffs' suit had prescribed.

On March 5, 2007, Sinanan and Reavis filed a peremptory exception raising the objection of prescription, also asserting that because plaintiffs' action was originally filed in a court of improper venue, and no defendants were served with the suit within one year from the date of the accident, plaintiffs' claims had prescribed under La. C.C. arts. 3462 and 3492. Following a hearing, the trial court granted Carpenter and Mapp's and Sinanan and Reavis's exceptions raising the objection of prescription in a judgment dated April 17, 2007. Plaintiffs appealed from this judgment.

On June 8, 2007, this court, *ex proprio motu*, issued a rule to show cause why the appeal should not be dismissed, finding that the judgment from which the plaintiffs appealed was defective inasmuch as the decretal portion of the judgment did not contain language disposing of and/or dismissing the claims of petitioner nor as to which defendant. Thereafter, this court issued an interim order on August 7, 2007, remanding the appeal to the trial court for the limited purpose of having the trial judge sign a valid written judgment, which includes appropriate language as required by La. C.C.P. art. 1918. Specifically, this court noted that the purported judgment grants the defendants' exceptions of prescription, but fails to set forth the relief granted, as it does not dismiss plaintiffs' action against them.

On August 24, 2007, the trial court signed an amended judgment, granting Carpenter and Mapp's and Sinanan and Reavis's exceptions raising the objection of prescription and dismissing plaintiffs' case without prejudice. This judgment was filed into the district court record on August 28, 2007.[3] On October 16, 2007, this court referred the rule to show cause to the panel hearing the merits of the appeal.

DISCUSSION

Rule to Show Cause

Before reaching the merits of the appeal, we must first address the rule to show cause that was issued by this court on June 8, 2007, and referred to this panel on October 16, 2007.

A judgment is the determination of the rights of the parties in an action. La. C.C.P. art. 1841. A final judgment shall be identified as such by appropriate language; it must contain decretal language, must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief

[3] On August 31, 2007, Sinanan and Reavis filed a motion for leave of court to supplement the record on appeal with the amended judgment, which motion was referred to the panel hearing the merits of the appeal. However, because the record already contains a copy of the amended judgment, we find that Sinanan and Reavis's motion is moot.

that is granted or denied. See La. C.C.P. art. 1918; Jenkins v. Recovery Technology Investors, 02-1788, pp. 3-4 (La. App. 1st Cir. 6/27/03), 858 So. 2d 598, 600. Although the form and wording of judgments are not sacramental, Louisiana courts require that a judgment be precise, definite, and certain. Laird v. St. Tammany Parish Safe Harbor, 02-0045, 02-0046, p. 3 (La. App. 1st Cir. 12/20/02), 836 So. 2d 364, 365.

The amended judgment in the instant case states the matter came for hearing on March 19, 2007 and March 23, 2007, on Carpenter and Mapp's exception raising the objection of prescription and on Sinanan and Reavis's exception raising the objection of prescription, grants those exceptions, and dismisses the case without prejudice. We find from reading the amended judgment as a whole that we can discern the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted. Cf. Laird, 02-0045 at p. 3, 836 So. 2d at 366. Accordingly, we recall the rule to show cause, and the appeal is maintained.

Prescription

A party urging an exception raising the objection of prescription has the burden of proving facts sufficient to support the exception unless the petition is prescribed on its face. Cichirillo v. Avondale Industries, Inc., 04-2894, 04-2918, p. 5 (La. 11/29/05), 917 So. 2d 424, 428. When the face of the petition reveals that plaintiff's claim has prescribed, the burden shifts to the plaintiff to demonstrate that prescription was suspended or interrupted. In re Medical Review Panel for Claim of Moses, 00-2643, p. 6 (La. 5/25/01), 788 So. 2d 1173, 1177. When evidence is introduced at the hearing on an exception of prescription, the trial court's findings of fact are reviewed under the manifest error-clearly wrong standard of review. Babineaux v. State ex rel. Department of Transportation and Development, 04-2649, p. 3 (La. App. 1st Cir. 12/22/05), 927 So. 2d 1121, 1123.

The prescriptive period applicable in the case *sub judice* is the one-year liberative prescription for delictual actions, commencing the day the injury or damage is sustained. La. C.C. art. 3492. However, the plaintiffs assert that their claim is not prescribed, because contrary to the judgment rendered in the Orleans Parish Civil District Court, venue was proper in Orleans Parish as to Carpenter, Mapp, Sinanan, and Reavis, and therefore, in accordance with La. C.C. art. 3462, prescription was interrupted.

Louisiana Civil Code article 3462 provides that prescription is interrupted when an action is commenced in a court of competent jurisdiction and venue. If an 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. La. C.C. art. 3462.

In reviewing the trial court's determination of the issue of prescription, we are mindful that this court, pursuant to our decision in H.R. 10 Profit Sharing Plan v. Mayeux, 03-0691 (La. App. 1st Cir. 9/17/04), 893 So. 2d 887, 894 (on rehearing), writ denied, 05-0868 (La. 5/13/05), 902 So. 2d 1031, has authority to review the interlocutory judgment on venue. Accordingly, before we reach the issue of prescription, we must first determine if the trial court erred in finding that Orleans Parish was an improper venue as to Carpenter, Mapp, Sinanan, and Reavis.

Sinanan and Reavis and Carpenter and Mapp asserted in their exceptions raising the objection of improper venue that as officers and employees of a state agency and a political subdivision, pursuant to La. R.S. 13:5104, venue was not proper in Orleans Parish. Louisiana Revised Statute 13:5104 provides, in part:

> A. All suits filed against the state of Louisiana or any state agency may be instituted before the district court of the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises.

> B. All suits filed against a political subdivision of the state or against an officer or employee of a political subdivision for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the political subdivision is located or in the district court having jurisdiction in the parish in which the cause of action arises.

The Louisiana Supreme Court has previously determined that the venue provisions of La. R.S. 13:5104 (A) and (B) are mandatory, and that the general venue provisions and exceptions found in La. C.C.P. arts. 42 and 71-85 are inapplicable. Colvin v. Louisiana Patient's Compensation Fund Oversight Board, 06-1104, pp. 8-11 (La. 1/17/07), 947 So. 2d 15, 21-22; White v. Beauregard Memorial Hospital, 02-0902 (La. 6/14/02), 821 So. 2d 481; Underwood v. Lane Memorial Hospital, 97-1997, pp. 4-5 (La. 7/8/98), 714 So. 2d 715, 717-718.

In the instant case, the plaintiffs named Carpenter, Mapp, Sinanan, and Reavis as individual defendants, without reference to their employment with the Gonzales Police Department or the Department of Public Safety and Corrections, Office of State Police, Troop A (Department of Public Safety). Further, the plaintiffs alleged: Officer Carpenter inappropriately initiated and/or continued to chase Bristol's vehicle; Officer Carpenter placed a radio call to Officer Mapp, who joined the chase, which began without cause and disregarded proper practice; Officers Carpenter and Mapp placed another radio call, which was responded to by Officers Sinanan and Reavis, who then took the lead behind Bristol's vehicle.

Because the plaintiffs specifically did not name the Gonzales Police Department or the Department of Public Safety as defendants and omitted reference to Carpenter, Mapp, Sinanan, and Reavis's employment with that department and agency, in order to invoke the mandatory venue provisions in La. R.S. 13:5104, Carpenter, Mapp, Sinanan, and Reavis had to come forward with some evidence to support their assertion. Otherwise, the general venue provision and exceptions found in La. C.C.P. arts. 42 and 71-85 would apply.

First, with regard to Carpenter and Mapp, we note that at the hearing on the exception raising the objection of improper venue, these defendants introduced into evidence two affidavits, with attachments, that had been filed into the record with the Orleans Parish Clerk of Court at 8:57 a.m. on the morning of the hearing. The affidavit of Bill Landry, Chief of Police for the City of Gonzales, stated that Carpenter and Mapp are police officers with the City of Gonzales and were on duty the evening of March 7, 2004, at the time of the fatal accident. Additionally, the affidavit of Amanda Grandeury, the custodian of records for the Louisiana Department of Public Safety, stated that Troopers Sinanan and Reavis were in the course and scope of their employment with the Department of Public Safety on the evening of March 7, 2004, when the vehicle driven by Bristol entered East Baton Rouge Parish while the subject of a pursuit initiated by officers of the Gonzales Police Department, and that Sinanan and Reavis assisted these officers upon their request. Ms. Grandeury also stated that the police report attached to her affidavit is a true and accurate copy of the investigation report prepared by the Department of Public Safety. The police report contains written statements from Carpenter, Mapp, Sinanan, and Reavis as to the events and their corresponding actions leading up to the accident that is the subject of this suit.

From our review of the record, we cannot find that the trial court was manifestly erroroneous or clearly wrong in finding that Carpenter and Mapp are employees of a political subdivision being sued for conduct arising out of the discharge of their official duties or within the course and scope of their employment. Accordingly, we find that the trial court did not err in finding, based on La. R.S. 13:5104(B), that venue was improper in Orleans Parish as to Carpenter and Mapp.[4]

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[4] In opposing defendants' exception raising the objection of improper venue, plaintiffs rely on Kitchen v. Franklin, 99-C-0221 (La. App. 4th Cir. 9/18/00), which denied writs in a similar case arising from the Civil District Court for the Parish of Orleans. However, reading the trial court's

Further, because plaintiffs' action against Carpenter and Mapp was instituted in a court of improper venue, and no defendant was served with process within the one year prescriptive period, plaintiffs have failed to establish that prescription as to their claim against Carpenter and Mapp was interrupted. Accordingly, we find that the trial court did not err in granting Carpenter and Mapp's exception raising the objection of prescription and in dismissing plaintiffs' claims against them.

However, with regard to Sinanan and Reavis, these defendants requested that the trial court grant their exception raising the objection of improper venue based on La. R.S. 13:5104(A). Unlike La. R.S. 13:5104(B), which specifically includes language regarding suits filed against officers and employees of a political subdivision, La. R.S. 13:5104(A) only refers to suits filed against the State of Louisiana or any state agency and contains no specific language regarding their employees.[5] While the supreme court has found that La. R.S. 13:5104(A) is mandatory, and therefore the general venue provisions and exceptions in La. C.C.P. arts. 42 and 71-85 are inapplicable in a suit filed against the State of Louisiana or a state agency, the supreme court has not squarely addressed whether

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reasons for judgment in that case, it is evident that there are several key distinctions. First, the case was decided only a month after the Louisiana Supreme Court's decision in Underwood v. Lane Memorial Hospital, 97-1997, pp. 4-6 (La. 7/8/98), 714 So. 2d 715, 717-718, wherein the court determined that the provisions of La. R.S. 13:5104(B) are mandatory and supersede the general venue provisions and exceptions in La. C.C. arts. 42 and 71-85, and makes no reference to the court's decision in Underwood. Additionally, the trial court's reasons in Kitchen indicate that at the hearing on the exception of improper venue, the defendants attempted to introduce an affidavit from defendant's employer, stating that he was in the course and scope of his employment at the time of the accident, but declined to consider the affidavit because it was not filed into the record and was not attached to the exception raising the objection of improper venue. Absent the affidavit, the court determined that there was no evidence in the record that Mr. Franklin was in the course and scope of his employment for St. Charles Parish at the time of the accident, or that he was conducting activities arising out of his discharge of his official duties at the time of the accident. Therefore, we do not find that the Kitchen case is dispositive of the issues involved in the instant case.

[5] Louisiana Revised Statute 13:5104(D) also provides that "[a]ll suits against the faculty or staff of the Louisiana State University Board of Supervisors, the Louisiana State Medical School, or the Louisiana State Health Sciences Center alleging administrative or supervisory negligence and arising out of the discharge of the duties of the faculty member or staff created pursuant to R.S. 17:1519 through 1519.8 shall be brought only in the parish where the medical care was actually provided to the patient."

La. R.S. 13:5104(A) extends to officers or employees of the state. See Colvin, 06-1104 at pp. 8-11, 947 So. 2d at 21-22.

From our plain reading of La. R.S. 13:5104 as a whole, we find that that the mandatory venue provision in La. R.S. 13:5104(A) clearly only applies to actions filed against the State of Louisiana or any state agency. In so finding, we are mindful that in interpreting statutes, we are bound to give effect to all parts of a statute and cannot give a statute an interpretation that makes any part superfluous or meaningless. Schackai v. Louisiana Board of Massage Therapy, 99-1957, p. 13(La. App. 1st Cir. 9/22/00), 767 So. 2d 955, 962, writ denied, 00-2898 (La. 12/8/00), 776 So. 2d 464. To interpret subparagraph (A) differently would be to completely disregard the legislature's separate mandate in subparagraph (B), which extends a special venue rule and protection to officers and employees of *political subdivisions*.

In the instant case, though the evidence presented at the hearing on the exception raising the objection of improper venue suggests that Sinanan and Reavis were *employees* of the Department of Public Safety and were acting within the course and scope of their employment at the time of the subject accident, the Department was not named as a defendant in this matter. Further, as stated above, La. R.S. 13:5104(A) does not extend the mandatory venue requirement to suits filed against employees of the State of Louisiana or of a state agency. Accordingly, we must look to the general venue provision and exceptions thereto to determine if venue was appropriate as against Sinanan and Reavis in Orleans Parish.

Louisiana Code of Civil Procedure article 42 provides, in part:

> The general rules of venue are that an action against:
>
> (1) An individual who is domiciled in the state shall be brought in the parish of his domicile; or if he resides but is not domiciled in the state, in the parish of his residence.

However, La. C.C.P. art. 73, which is an exception to the general venue provision outlined above, provides, in subparagraph A:

> An action against joint or solidary obligors may be brought in a parish of proper venue, under Article 42 only, as to any obligor who is made a defendant provided that an action for the recovery of damages for an offense or quasi-offense against joint or solidary obligors may be brought in the parish where the plaintiff is domiciled if the parish of plaintiff's domicile would be a parish of proper venue against any defendant under either Article 76 or R.S. 13:3203.

Louisiana Code of Civil Procedure article 76 provides:

> An action on a life insurance policy may be brought in the parish where the deceased died, the parish where he was domiciled, or the parish where any beneficiary is domiciled
>
> An action on a health and accident insurance policy may be brought in the parish where the insured is domiciled, or in the parish where the accident or illness occurred.
>
> An action on any other type of insurance policy may be brought in the parish where the loss occurred or the insured is domiciled.

In the instant case, plaintiffs named their uninsured/underinsured motorist carrier, Universal Casualty Company, as a defendant. According to La. C.C.P. art. 76, venue is proper as to Universal Casualty in Orleans Parish, as that is the parish of plaintiffs' domicile. Further, the Louisiana Supreme Court has previously determined that the requisites necessary for a solidary obligation exist by effect of law between a tortfeasor and an uninsured/underinsured motorist carrier. See Hoefly v. Government Employees Insurance Co., 418 So. 2d 575, 578-579 (La. 1982). Therefore, because a solidary obligation exists between Sinanan and Reavis, as alleged tortfeasors, and Universal Casualty Company, as plaintiffs' uninsured/underinsured motorist insurance carrier, venue was proper as to Sinanan and Reavis in Orleans Parish pursuant to La. C.C. art. 73.

Because venue was proper in Orleans Parish as to the claims filed against Sinanan and Reavis, prescription was interrupted as to those claims according to La. C.C. art. 3462. Accordingly, the trial court erred in granting Sinanan and

Reavis's exception raising the objection of prescription and dismissing plaintiffs' action against them.

CONCLUSION

For the foregoing reasons, we recall this court's previous show cause order. Further, we affirm the portion of the trial court's judgment granting Duane Carpenter and Martin Mapp's exception raising the objection of prescription and dismissing plaintiffs' claims. However, we reverse that portion of the trial court's judgment granting Matthew Sinanan and H.C. Reavis's exception raising the objection of prescription and dismissing plaintiffs' claims against them. All costs of this appeal are to be borne equally by Brenda Kellup and Woodrow Kellup and Matthew Sinanan and H.C. Reavis.

RULE TO SHOW CAUSE RECALLED; JUDGMENT AFFIRMED IN PART AND REVERSED IN PART; MOTION TO SUPPLEMENT RECORD DENIED AS MOOT.

STATE OF LOUISIANA

COURT OF APPEAL

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BRENDA KELLUP AND WOODROW KELLUP

VERSUS

DONNA CARTER-BRISTOL O/B/O HER MINOR DECEASED SON, SYLVESTER BRISTOL, SAFEWAY INSURANCE COMPANY, KIMBERLY McKNIGHT, DUANE CARPENTER, MARTIN MAPP, MATTHEW SINANAN, H.C. REAVIS, AND UNIVERSAL CASUALTY COMPANY

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McCLENDON, J., agrees and assigns additional reasons.

While it appears illogical to treat state employees differently from employees of political subdivisions for purposes of mandatory venue, based on the clear and unambiguous language of LSA-R.S. 13:5104(A) and (B), I must agree with the result reached by the majority.

STATE OF LOUISIANA

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BRENDA KELLUP & WOODROW KELLUP

VERSUS

DONNA CARTER-BRISTOL, ET AL

HUGHES, J., dissenting

I respectfully dissent.

Does the "all suits" language of L.R.S. 13:5104(B) render an otherwise proper venue in Orleans parish improper? If so, the suit is prescribed. If not, the suit should be transferred but not dismissed on prescription.