NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 0593

MONIKA UNIQUE CHISHOLM

VERSUS

STATE FARM INSURANCE COMPANIES

Judgment Rendered: November 2, 2007

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Appealed from the
Nineteenth Judicial District Court in and for the
Parish of East Baton Rouge, State of Louisiana
Docket Number 519,491

Honorable Kay Bates, Judge Presiding

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Hughes, J., dissents in part with reasons.
Guidry, J. Concurs.

WHIPPLE, J.

This appeal challenges a trial court judgment taxing costs against the plaintiff. For the reasons that follow, we affirm.

BACKGROUND

On September 14, 2006, the trial court signed a judgment ordering plaintiff, Monika Unique Chisholm to pay State Farm Mutual Automobile Insurance Company (State Farm) damages "in the sum of $5,620.87, plus legal interest from April 22, 2004" and "all costs of these proceedings." On September 27, 2006, State Farm filed a motion to tax costs, seeking to have the court specify the amount of court costs due. While this motion was pending, Ms. Chisholm sought and obtained an order granting her a suspensive appeal of the judgment of September 14, 2006 (the merits judgment).[1] Subsequently, on December 12, 2006 the trial court rendered judgment specifying that the court costs due to State Farm totalled $9,166.17. Ms. Chisholm has appealed.

DISCUSSION

On appeal, Ms. Chisholm contends that the trial court erred in granting the motion to tax costs because it amounted to an improper amendment of a judgment pursuant to LSA-C.C.P. art. 1951. Clearly, this argument is without merit.

The merits judgment awarded damages in the amount of $5,620.87 to State Farm on its reconventional demand, plus all costs of the proceedings. Where a judgment on the merits casts one party with the payment of costs, but does not specifically set forth the amount of those costs, the party in whose favor costs are awarded may file a rule to show cause to have the precise amount of costs set and taxed if not agreed upon by the parties. Cormier v. Roberson, 96-1107, p. 6 (La. App. 1st Cir. 3/27/97), 691 So. 2d 807, 810; see also LSA-C.C.P. art. 1920.

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[1]The appeal challenging the merits judgment has been docketed in this court as Chisholm v. State Farm Insurance Companies, 2007-1132 (La. App. 1st Cir. 11/2/07), also decided this date.

Apparently, the parties to this matter were unable to reach an agreement on the specific amount of costs due under the merits judgment; thus, State Farm was entitled to proceed by rule to show cause to have the trial court fix the specific amount of costs taxed against Ms. Chisholm.[2]

Ms. Chisholm further suggests in her brief to this court that the trial court was without jurisdiction to render the judgment on the rule to tax costs. Ms. Chisholm bases this argument on the fact that the merits judgment was already on appeal to this court at the time the trial court rendered the judgment on the rule to tax costs. Again, this argument is without merit.

Louisiana Code of Civil Procedure article 2088 provides that the jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested upon the granting of the order of appeal. However, the article further provides that the trial court retains jurisdiction over certain proceedings, including the right to set and tax costs and expert witness fees. Clearly, therefore, the trial court acted within its authority in rendering the judgment taxing costs.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to plaintiff, Monika Unqiue Chisholm.

AFFIRMED.

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[2]Ms. Chisholm also suggests that the trial court improperly assessed her with the costs of a deposition introduced into evidence at the trial of the rule to tax costs. It appears that the deposition was necessary because the parties were unable to agree to the reasonableness of a fee charged by a witness who testified in the trial on the merits. We find no error in the trial court's decision to assess the costs of the deposition and the trial of the rule to tax costs to Ms. Chisholm. See Cormier, 96-1107 at p. 6, 691 So. 2d at 810.

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HUGHES, J., dissenting in part.

I respectfully dissent in part. If the witness testified at trial, the deposition was unnecessary, and absent agreement the fee should be set by the court.