

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2009 CA 0926**

**N. W. ST. TAMMANY CIVIC ASSOCIATION, GERALDINE F. SINGER,  
LLOYD TURNER, JOSEPH TANET, CECELIA TANET, PAUL NALTY,  
LEE HARRON, ENID GORRINGE, CATHERINE FRIEDRICHS-  
BAUMANN, TIM KELLEY, PAULA KELLEY, JOSEPH LONG, MARY  
LONG, MARK GROTE, JAMES F. WOODARD, M.D.  
AND TELESMAR, L.L.C.**

**VERSUS**

**ST. TAMMANY PARISH THROUGH ST. TAMMANY PARISH COUNCIL,  
ST. TAMMANY PARISH PLANNING AND ZONING COMMISSION,  
AND THE DIRECTOR OF THE DEPARTMENT OF PLANNING,  
SIDNEY FONTENOT**

**Judgment rendered: DEC 23 2009**

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**On Appeal from the 22<sup>nd</sup> Judicial District Court  
Parish of St. Tammany, State of Louisiana  
Suit Number: 2008-14871; Division: D**

**The Honorable Peter J. Garcia, Judge Presiding, Division C**

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**N.W. St. Tammany Civic Association,  
Geraldine F. Singer, Lloyd Turner,  
Joseph Tanet, Cecelia Tanet, Paul Nalty,  
Lee Harron, Enid Gorringer, Catherine  
Friederichs-Baumann, Tim Kelley,  
Paula Kelley, Joseph Long, Mary  
Long, Mark Grote, James F. Woodard, M.D.,  
Tellesmar, L.C.C.**

**Counsel for Plaintiffs/Appellees  
Delbert G. Talley  
Covington, LA**

**St. Tammany Parish through St. Tammany  
Parish Council, St. Tammany Planning  
and Zoning Commission, and the Director  
of the Department of Planning, Sidney  
Fontenot**

**Counsel for Defendants/Appellee  
Neil C. Hall  
Assistant District Attorney  
Covington, LA**

**[Denied] Intervenors/Appellants  
Southeast Investments, L.L.C. and  
CAT-4 Investments, L.L.C.  
Bailey Dirmann Morse  
Leland R. Gallaspy  
Covington, LA**

**[Denied] Intervenor/Appellee  
IESI LA Corporation  
Kurt S. Blankenship  
Guice A. Giambrone, III  
Metairie, LA**

**BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.**

*McClendon, J. concurred and assigned reasons.*

*TOR  
EJG  
by PJD*

## **DOWNING, J.**

This procedurally complex case arose from a dispute over the validity of a conditional use permit issued in November 2006 by the St. Tammany Parish Planning and Zoning Commission (hereinafter "Commission") to Southeast Investments, L.L.C. (hereinafter, "Southeast"), authorizing the construction of a facility to serve as a transfer station for solid waste.

The permit was extended for one year in 2008. At the time Southeast requested and was granted this extension, however, it had already sold the property and purportedly transferred the permit to CAT-4, L.L.C. (hereinafter, "CAT-4"), November 7, 2007. In December 2007, CAT-4 sold part of the property to IESI LA Corporation, Inc. (hereinafter "IESI").

On September 15, 2008, the N.W. St. Tammany Civic Association and various residents (hereinafter "Civic Assn.") filed a Petition for Writ of Mandamus against the Commission alleging numerous irregularities in the permit process and seeking to enjoin operations at the property. On September 23, 2008, St. Tammany Parish was added as a defendant. The mandamus hearing was held, and the district court took the matter under advisement. It issued written reasons for judgment on October 1, 2008, indicating that the writ of mandamus would be granted and a judgment to that effect would be signed upon presentation. IESI filed a petition to intervene on October 7, 2008. Judgment on the merits was signed on October 8, 2008. The following is a chronology of the relevant events in this action after October 10, 2008, the date notice of judgment was mailed:

- (1) Southeast and CAT-4 filed a Motion to Leave to File Petition for Intervention on October 14, 2008, which was denied October 17, 2008.
- (2) On October 20, 2008, St. Tammany moved for and was denied a motion for new trial. St. Tammany appealed October 29, 2008.
- (3) On November 10, 2008, Southeast and CAT-4 filed notice of intent to seek writs on the denial of its petition to intervene.

- (4) On November 19, 2008, the district court signed a judgment denying IESI's motion to file a petition for intervention, but the motion does not appear in this suit record.
- (5) On December 4, 2008, Southeast and CAT-4 filed a motion for appeal of the granting of the writ of mandamus.
- (6) On December 11, 2008, IESI filed a motion for appeal of the granting of the writ of mandamus.
- (7) On December 16, 2008, the district court granted Southeast, CAT-4, and IESI's appeal in docket number 2009 CA 0094.
- (8) On April 16, 2009, Southeast and CAT-4 filed a devolutive appeal in 2009 CA 0926.
- (9) On May 26, 2009, Southeast and CAT-4 filed a motion to consolidate 2009 CA 0094 and 2009 CA 0926, which was denied on June 22, 2009. Although this Court denied the consolidation, it ordered that both appeals be assigned to the same panel.

The only question before us in this matter is whether Southeast and CAT-4 had a right to intervene in Civic Assn's action to prohibit the Commission and St. Tammany Parish from issuing a permanent permit to IESI.

Louisiana Code of Civil Procedure article 1091 provides:

A third person having an interest therein may intervene in a pending action to enforce a right related to or connected with the object of the pending action against one or more of the parties thereto by:

- (1) Joining with plaintiff in demanding the same or similar relief against the defendants;
- (2) Uniting with defendant in resisting the plaintiff's demands; or
- (3) Opposing both plaintiff and defendant.

It is well settled by jurisprudence that the requirements for intervention are twofold: the intervenor must have a justiciable interest in and connexity to, the principal action, and the interest must be so related or connected to the facts or object of the principal action that a judgment on the principal action will have a direct impact on the intervenor's rights. **Mike M. Marcello, Inc. v. Louisiana**

**Gaming Control Board**, 04-0499, 04-1224, p. 4 (La.App. 1 Cir. 5/6/05), 903 So.2d 545, 548.

Here, the permit in question was issued to Southeast and the land in question is partially owned by CAT-4. There is no question that the object of this action, rescinding the permit, will have a direct impact on these parties. Thus, the district court erred in denying these parties' request to intervene in the action.

We note that Southeast and CAT-4 did not file their motion to intervene until October 14, 2008, after judgment had been rendered on October 8. Consequently, since they were not litigants in the action by the Civic Assn. versus St. Tammany Parish and the Commission, Southeast and CAT-4 have a "third-party" interest in the proceedings and qualify under LSA-C.C.P. art. 1091. These intervening parties must take the proceedings as it finds them and may not object to the form of the action. LSA-C.C.P. art 1094; **Dodson v. Community Blood Center of Louisiana, Inc.**, 92-2068, p. (La.App. 1 Cir. 3/18/94), 633 So.2d 252, 256. Here, judgment had been rendered and only post-trial remedies remain. These intervenors' rights are confined to joining or resisting either the plaintiff or the defendant, or to opposing both. LSA-C.C.P. art. 1091; **Marcello**, 04-0499, 04-1224 at p. 5, 903 So.2d at 548.

Thus, the denial of the motion to intervene is harmless because the movers can still appeal, whether or not any other appeal was taken, and in fact, have done so in another action. LSA-C.C.P. art. 2086. Thus, Southeast and CAT-4 had a right to appeal the judgment rendered against St. Tammany and the Commission before they filed their petition for intervention. Accordingly, while the assignment of error alleging that the district court erred in denying these entities to intervene has merit, we decline to reverse because their intervention is now moot.

This memorandum opinion is rendered in accordance with URCA Rule 2-16.1B. Costs associated with this appeal are assessed against appellees/plaintiffs N.W. St. Tammany Civic Association, et al.

**APPEAL DISMISSED AS MOOT**

**STATE OF LOUISIANA**

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TAMMANY PARISH PLANNING AND ZONING COMMISSION, AND THE  
DIRECTOR OF THE DEPARTMENT OF PLANNING, SIDNEY FONTENOT**

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**McCLENDON, J., concurs and assigns reasons.**

I concur with the report. I find the appeal should be dismissed.